

CITY OF HUNTINGTON PARK

Audit Report

PEACE OFFICERS PROCEDURAL BILL OF RIGHTS PROGRAM

Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178,
Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980;
Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983;
Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990

July 1, 2002, through June 30, 2004



JOHN CHIANG
California State Controller

June 2008



JOHN CHIANG
California State Controller

June 18, 2008

The Honorable Elba Guerrero
Mayor of the City of Huntington Park
6550 Miles Avenue
Huntington Park, CA 90255

Dear Mayor Guerrero:

The State Controller's Office audited the costs claimed by the City of Huntington Park for the legislatively mandated Peace Officers Procedural Bill of Rights Program (Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990) for the period of July 1, 2002, through June 30, 2004.

The city claimed \$397,364 (\$398,364 less a \$1,000 penalty for filing a late claim) for the mandated program. Our audit disclosed that the entire amount is unallowable, because the city claimed \$357,523 in costs that were ineligible for reimbursement under the mandated program and \$39,841 in unsupported costs. The State made no payment to the city.

Regarding the unsupported costs, if the city subsequently provides corroborating evidence to support the time it takes to perform individual reimbursable activities and the number of activities performed, we will revise the final audit report as appropriate.

If you disagree with the audit findings, you may file an Incorrect Reduction Claim (IRC) with the Commission on State Mandates (CSM). The IRC must be filed within three years following the date that we notify you of a claim reduction. You may obtain IRC information at CSM's Web site, at www.csm.ca.gov (Guidebook link); you may obtain IRC forms by telephone, at (916) 323-3562, or by e-mail, at csminfo@csm.ca.gov.

If you have any questions, please contact Jim L. Spano, Chief, Mandated Cost Audits Bureau, at (916) 323-5849.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

JVB/vb

cc: Elba Padilla

Acting Finance Director
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Audit Report

Summary

The State Controller's Office (SCO) audited the costs claimed by the City of Huntington Park for the legislatively mandated Peace Officers Procedural Bill of Rights Program (Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990) for the period of July 1, 2002, through June 30, 2004.

The city claimed \$397,364 (\$398,364 less a \$1,000 penalty for filing a late claim) for the mandated program. Our audit disclosed that the entire amount is unallowable, because the city claimed \$357,523 in costs that were ineligible for reimbursement under the mandated program and \$39,841 in unsupported costs. The State made no payment to the city.

Background

Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990 added and amended Government Code Sections 3300 through 3310. This legislation, known as the Peace Officers Procedural Bill of Rights (POBOR) was enacted to ensure stable employer-employee relations and effective law enforcement services.

This legislation provides procedural protections to peace officers employed by local agencies and school districts when a peace officer is subject to an interrogation by the employer, is facing punitive action, or receives an adverse comment in his or her personnel file. The protections apply to peace officers classified as permanent employees, peace officers who serve at the pleasure of the agency and are terminable without cause ("at will" employees), and peace officers on probation who have not reached permanent status.

On November 30, 1999, the Commission on State Mandates (CSM) determined that this legislation imposed a state mandate reimbursable under Government Code section 17561 and adopted the statement of decision. CSM determined that the peace officer rights law constitutes a partially reimbursable state mandated program within the meaning of the California Constitution, Article XIII B, Section 6, and Government Code section 17514. CSM further defined that activities covered by due process are not reimbursable.

The parameters and guidelines establish the state mandate and define reimbursement criteria. CSM adopted the parameters and guidelines on July 27, 2000 and corrected it on August 17, 2000. The parameters and guidelines categorize reimbursable activities into the four following components: Administrative Activities, Administrative Appeal, Interrogation, and Adverse Comment. In compliance with Government Code section 17558, the SCO issues claiming instructions for mandated programs, to assist local agencies in claiming reimbursable costs.

**Objective, Scope,
and Methodology**

We conducted the audit to determine whether costs claimed represent increased costs resulting from the Peace Officers Procedural Bill of Rights Program for the period of July 1, 2002, through June 30, 2004.

Our audit scope included, but was not limited to, determining whether costs claimed were supported by appropriate source documents, were not funded by another source, and were not unreasonable and/or excessive.

We conducted the audit according to *Government Auditing Standards*, issued by the Comptroller General of the United States, and under the authority of Government Code sections 12410, 17558.5, and 17561. We did not audit the city's financial statements. We limited our audit scope to planning and performing audit procedures necessary to obtain reasonable assurance that costs claimed were allowable for reimbursement. Accordingly, we examined transactions, on a test basis, to determine whether the costs claimed were supported.

We limited our review of the city's internal controls to gaining an understanding of the transaction flow and claim preparation process as necessary to develop appropriate auditing procedures.

Conclusion

Our audit disclosed instances of noncompliance with the requirements outlined above. These instances are described in the accompanying Summary of Program Costs (Schedule 1) and in the Findings and Recommendations section of this report.

For the audit period, the City of Huntington Park claimed \$397,364 (\$398,364 less a \$1,000 penalty for filing a late claim) for costs of the Peace Officers Procedural Bill of Rights Program. Our audit disclosed that the entire amount is unallowable. The State made no payments to the city. Regarding the \$39,842 in unsupported costs, if the city subsequently provides corroborating evidence to support the time it takes to perform individual reimbursable activities and the number of activities performed, we will revise the final report as appropriate.

**Views of
Responsible
Officials**

We issued a draft audit report on April 25, 2008. Elba Padilla, Acting Finance Director, responded by letter (Attachment), agreeing with the audit results. This final audit report includes the city's response.

Restricted Use

This report is solely for the information and use of the City of Huntington Park, the California Department of Finance, and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record.

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

June 18, 2008

**Schedule 1—
Summary of Program Costs
July 1, 2002, through June 30, 2004**

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>July 1, 2002, through June 30, 2003</u>				
Direct costs:				
Salaries	\$ 37,005	\$ —	\$ (37,005)	Finding 1
Benefits	20,492	—	(20,492)	Finding 1
Services and supplies	150,653	—	(150,653)	Finding 2
Total direct costs	208,150	—	(208,150)	
Indirect costs	17,503	—	(17,503)	Finding 1
Total direct and indirect costs	225,653	—	(225,653)	
Less late filing penalty	(1,000)	—	1,000	
Total program costs	<u>\$ 224,653</u>	—	<u>\$ (224,653)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ —</u>		
<u>July 1, 2003, through June 30, 2004</u>				
Direct costs:				
Salaries	\$ 20,306	\$ —	\$ (20,306)	Finding 1
Benefits	12,440	—	(12,440)	Finding 1
Services and supplies	129,467	—	(129,467)	Finding 2
Total direct costs	162,213	—	(162,213)	
Indirect costs	10,498	—	(10,498)	Finding 1
Total program costs	<u>\$ 172,711</u>	—	<u>\$ (172,711)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ —</u>		
<u>Summary: July 1, 2002, through June 30, 2004</u>				
Direct costs:				
Salaries	\$ 57,311	\$ —	\$ (57,311)	
Benefits	32,932	—	(32,932)	
Services and supplies	280,120	—	(280,120)	
Total direct costs	370,363	—	(370,363)	
Indirect costs	28,001	—	(28,001)	
Total direct and indirect costs	398,364	—	(398,364)	
Less late filing penalty	(1,000)	—	1,000	
Total program costs	<u>\$ 397,364</u>	—	<u>\$ (397,364)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ —</u>		

Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>Summary by Cost Components</u>				
Administrative activities	\$ 36,881	\$ —	\$ (36,881)	
Administrative appeals	249,428	—	(249,428)	
Interrogations	104,025	—	(104,025)	
Adverse comment	8,030	—	(8,030)	
Subtotal	398,364	—	(398,364)	
Less late filing penalty	(1,000)	—	1,000	
Total program costs	<u>\$ 397,364</u>	<u>\$ —</u>	<u>\$ (397,364)</u>	

¹ See the Findings and Recommendations section.

Findings and Recommendations

**FINDING 1—
Overstated salaries
and benefits**

The city claimed unallowable salaries and benefits totaling \$90,243 for the audit period. The city claimed \$60,070 for activities that are not reimbursable under the mandated program and \$30,173 for allowable activities that were based only upon estimates. The city provided no corroborating documentation to support the estimated costs. Related indirect costs totaled \$28,001.

The following table summarizes the audit adjustments by cost component:

Cost Component	Claimed Costs	Allowable Costs	Audit Adjustment
Administrative Activities	\$ 27,908	\$ —	\$ (27,908)
Administrative Appeal	30,535	—	(30,535)
Interrogation	29,535	—	(29,535)
Adverse Comment	2,265	—	(2,265)
Subtotal	90,243	—	(90,243)
Indirect costs	28,001	—	(28,001)
Total	\$ 118,244	\$ —	\$ (118,244)

Administrative Activities

The city claimed \$27,908 in salaries and benefits during the audit period under the Administrative Activities cost component. Related indirect costs totaled \$8,973. The city claimed time for the allowable activities of revising and updating internal policies, procedures, manuals, and other materials relating to the rights of Public Safety Officers and updating the status of POBOR cases.

The parameters and guidelines allow for reimbursement of the following on-going activities.

1. Developing or updating internal policies, procedures, manuals and other materials pertaining to the conduct of the mandated activities.
2. Attendance at specific training for human resources, law enforcement, and legal counsel regarding the requirements of the mandate.
3. Updating the status of the POBOR cases.

However, we determined that all costs were unallowable because the activities were based entirely on estimates and were not supported by actual time records or other corroborating documentation. In addition, the city could not verify activities performed because the employees who worked on administrative activities during the audit period are no longer employed by the city.

Administrative Appeal Activities

The city claimed \$30,535 in salaries and benefits during the audit period under the Administrative Appeals cost component. Related indirect costs totaled \$9,433. We determined that all costs claimed were unallowable because the city claimed costs for unallowable activities. Specifically, the city claimed costs related to defending various lawsuits filed against the city. In addition, the city did not demonstrate that claimed costs were for administrative appeal hearings resulting from the disciplinary actions of transfer of a peace officer for purposes of punishment or denial of promotion or that they involved actions taken against the Chief of Police.

The parameters and guidelines, Section IV (B-2), allows reimbursement for providing the opportunity for, and the conduct of, an administrative appeal for the following disciplinary actions:

1. Dismissal, demotion, suspension, salary reduction or written reprimand received by the Chief of Police whose liberty interest is not affected (i.e., the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
2. Transfer of permanent employees for purposes of punishment;
3. Denial of promotion for permanent employees for reasons other than merit; and other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss or hardship, and impact the career opportunities of the employee.

In reference to reimbursable circumstances surrounding administrative appeal hearings pursuant to Government Code section 3304, subdivision (b), the CSM statement of decision of the adopted parameters and guidelines states:

The Commission found that the administrative appeal would be required in the absence of the test claim legislation when:

- A permanent employee is dismissed, demoted, suspended, receives a reduction in pay or a written reprimand; or
- A probationary or at-will employee is dismissed and the employee's reputation and ability to obtain future employment is harmed by the dismissal.

Under these circumstances, the Commission determined that the administrative appeal does not constitute a new program or higher lever of service because prior law requires such an appeal under the due process. Moreover, the Commission recognized that pursuant to Government Code section 17556, subdivision (c), the costs incurred in providing the administrative appeal in the above circumstances would not constitute "costs mandated by the state" since the administrative appeal merely implements the requirements of the United States Constitution.

If peace officers appeal actions such as transfers for purposes of punishment or denial of promotion, then administrative appeal costs can be claimed for reimbursement. However, if peace officers appeal actions such as dismissals, demotions, suspensions, reductions in pay, or written reprimands, then those appeal hearings fall under due process and cannot be claimed for reimbursement. Costs incurred for defending the city from lawsuits filed against the city are not reimbursable because the costs do not involve procedural protections of the city's peace officers.

Interrogation Activities

The city claimed \$29,535 in salary and benefit costs during the audit period under the Interrogations cost component. Related indirect costs totaled \$8,900. We determined that all costs claimed were unallowable because the city claimed costs for unallowable activities.

The parameters and guidelines identify specific interrogation activities that are reimbursable when a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer, or any other member of the employing public safety department during off-duty time, if the interrogation could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. Section IV(C) (Interrogation) identifies reimbursable activities under compensation and timing of an interrogation, interrogation notice, tape recording of an interrogation, and documents provided to the employee.

The parameters and guidelines, Section IV(C), also state that claimants are not eligible for interrogation activities when an interrogation of a peace officer is in the normal course of duty. They further state:

When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures [claims are reimbursable].

In reference to compensation and timing of the interrogation pursuant to Government Code section 3303, subdivision (a), the CSM Final Staff Analysis to the adopted parameters and guidelines states:

It does not require local agencies to investigate an allegation, prepare for the interrogation, conduct the interrogation, and review the responses given by the officers and/or witnesses, as implied by the claimant's proposed language. Certainly, local agencies were performing these investigative activities before POBOR was enacted.

The parameters and guidelines, Section IV(C), also state that the following activities are reimbursable:

Tape recording the interrogation when the peace officer employee records the interrogation.

Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers.

However, the department claimed the following activities that are not reimbursable:

- Interrogating accused and witnessing officers during regular hours; and
- Investigators' time to conduct interrogations.

Adverse Comment Activities

The city claimed \$2,265 in salary and benefit costs during the audit period under the Adverse Comment cost component. Related indirect costs totaled \$695. We determined that all costs claimed were unallowable because the costs claimed were based entirely on estimates and were not supported by actual time records or other corroborating documentation.

Depending on the circumstances surrounding an Adverse Comment, the parameters and guidelines, Section IV(B) allow some or all of the following four activities upon receipt of an Adverse Comment:

- Providing notice of the adverse comment;
- Providing an opportunity to review and sign the adverse comment;
- Providing an opportunity to respond to the adverse comment within 30 days; and
- Noting on the document the peace officer's refusal to sign the adverse comment and obtaining the signature or initials of the peace officer under such circumstances.

Section IV(B) also states that:

Included in the foregoing are review of circumstances or documentation leading to adverse comment by supervisor, command staff, human resources staff or counsel, including determination of whether same constitutes an adverse comment, preparation of comment and review for accuracy; notification and presentation of adverse comment to officer and notification concerning rights regarding same; review of response to adverse comment, attaching same to adverse comment and filing.

The city claimed the following activities that were reimbursable; however all costs claimed were based upon estimates and were not corroborated by any supporting source documentation:

- Reviewing documentation;
- Notifying and presenting adverse comment to the officer;
- Time to gather reports and log sheets;
- Reviewing response to adverse comment; and
- Command staff review.

The following table summarizes the overstated salaries and benefits and related indirect costs by fiscal year:

	Fiscal Year		Total
	2002-03	2004-05	
Police Department:			
Salaries	\$ (37,005)	\$ (20,306)	\$ (57,311)
Benefits	<u>(20,492)</u>	<u>(12,440)</u>	<u>(32,932)</u>
Subtotal	(57,497)	(32,746)	(90,243)
Related indirect costs	<u>(17,503)</u>	<u>(10,498)</u>	<u>(28,001)</u>
Audit adjustment	<u>\$ (75,000)</u>	<u>\$ (43,244)</u>	<u>\$ (118,244)</u>

The parameters and guidelines, adopted by the CSM on July 27, 2000, define the criteria for procedural protections for the city’s peace officers.

The parameters and guidelines, section IV (Reimbursable Activities), outline specific tasks that are deemed to go beyond due process. The statement of decision on which the parameters and guidelines were based noted that due process activities were not reimbursable.

The parameters and guidelines, section VA1 (Salaries and Benefits), require that the claimants identify the employees and/or show the classification of the employees involved, describe the reimbursable activities performed, and specify the actual time devoted to each reimbursable activity by each employee.

The parameters and guidelines, section VI (Supporting Data), require that all costs be traceable to source documents showing evidence of the validity of such costs and their relationship to the state mandated program.

Recommendation

We recommend that the city establish and implement procedures to ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.

Regarding the unsupported costs, if the city subsequently provides corroborating evidence to support the time it takes to perform individual reimbursable activities and the number of activities performed, we will revise the audit findings as appropriate.

City’s Response

Planned Corrective Action: It is the intention of the City of Huntington Park to follow all parameters and guidelines as set by the State with regards to mandated costs claims for Peace Officers Procedural Bill of Rights Program. The City of Huntington Park will implement guidelines and procedures for staff to follow in assuring that all supportive documents are properly recorded that will show actual employee cost of actual time specific to this program.

SCO's Comment

The finding and recommendation remain unchanged.

FINDING 2— Overstated services and supplies

The city claimed services and supplies costs totaling \$280,120 during the audit period (\$150,653 in FY 2002-03 and \$129,467 in FY 2003). We determined that the entire amount was unallowable because the city claimed attorney fees for defense and litigation costs that are not reimbursable under the mandated program.

Administrative Appeal Activities

The city claimed \$209,460 for services and supplies under the Administrative Appeals cost component. We determined that the entire amount was unallowable because the city claimed professional services for defense costs, litigation costs, transcriptions costs, and attorney fees that were not reimbursable under the mandated program. The specific details of allowable costs per the parameters and guidelines for the cost component of administrative appeal are noted above in Finding 1 (Overstated salaries and benefits).

In its claims, the city detailed costs incurred from various legal firms under this cost component. During the audit, city staff provided a brief description of the various cases that were included in the billings from these legal firms. However, the city has yet to demonstrate that any of the activities claimed under services and supplies were related to an administrative appeal hearing requested by one of the city's peace officers or the Chief of Police as a result of certain specific disciplinary actions taken against the employee that are allowable under the mandated program. Accordingly, the costs are unallowable.

Interrogation Activities

The city claimed \$65,590 in services and supplies costs under the Interrogations cost component. We determined that the entire amount was unallowable because the city claimed costs that are not reimbursable under the mandated program. According to city staff, claimed costs were incurred for the following reasons:

- R. Lein—investigation and transcription costs for attorney cases
- Richard Shaurette—investigator

The parameters and guidelines identify specific interrogation activities that are reimbursable when a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer, or any other member of the employing public safety department during off-duty time, if the interrogation could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.

Section IV(C) (Interrogation) identifies reimbursable activities under compensation and timing of an interrogation, interrogation notice, tape recording of an interrogation, and documents provided to the employee. The city did not demonstrate that the costs claimed were incurred for these purposes and are, therefore, unallowable.

Adverse Comment Activities

The city claimed \$5,070 in services and supplies costs under the Adverse Comment cost component. We determined that the entire amount was unallowable because the city claimed professional services that were performed by a contract employee.

According to city staff, claimed costs were incurred for the following reasons:

- Reviewing documentation;
- Notifying and presenting adverse comment to the officer;
- Time to gather reports and log sheets; and
- Reviewing response to adverse comment.

While all of these activities are eligible for reimbursement, parameters and guidelines provide for a review of circumstances or documentation leading to adverse comment by supervisor, command staff, human resources staff, or counsel. The costs claimed were incurred by an individual who is not part of this group and are therefore unallowable.

Recommendation

We recommend that the city ensure that claimed costs include only eligible costs that are properly supported.

City's Response

Planned Corrective Action: As part of the guidelines and procedures, the City of Huntington Park will ensure that all costs are eligible and properly supported as required by this program.

SCO's Comment

The finding and recommendation remain unchanged.

**Attachment—
City's Response to
Draft Audit Report**



City of
HUNTINGTON PARK

6550 MILES AVE. #116, HUNTINGTON PARK CA 90255
Phone • (323) 584-6201 Fax • (323) 588-2657

FINANCE DEPARTMENT

**Peace Officers Procedural Bills of Rights Program
For the Period of July 1, 2002 through June 30, 2004**

Finding-1: Overstated Salaries and Benefits

Recommendation: We recommend that the city establish and implement procedures to ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.

Planned Corrective Action: It is the intention of the City of Huntington Park to follow all parameters and guidelines as set by the State with regards to mandated costs claims for Peace Officers Procedural Bill of Rights Program. The City of Huntington Park will implement guidelines and procedures for staff to follow in assuring that all supportive documents are properly recorded that will show actual employee cost of actual time specific to this program.

Finding -2: Overstated Services and Supplies

Recommendation: We recommend that the city ensure that claimed costs include only eligible costs that are properly supported.

Planned Corrective Action: As part of the guidelines and procedures, the City of Huntington Park will ensure that all costs are eligible and properly supported as required by this program.

Elba Padilla

Elba Padilla, Acting Finance Director

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