

SAN DIEGO COUNTY

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, 2001, through June 30, 2004



JOHN CHIANG
California State Controller

May 2007



JOHN CHIANG
California State Controller

May 18, 2007

Tracy M. Sandoval
Assistant Chief Financial Officer/Auditor and Controller
San Diego County
1600 Pacific Highway, Room 166
San Diego, CA 92101

Dear Ms. Sandoval:

The State Controller's Office audited the costs claimed by San Diego County 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, 2001, through June 30, 2004.

The county claimed \$1,848,251 for the mandated program. Our audit disclosed that the entire amount is unallowable because the county claimed reimbursements for ineligible activities. The State paid the county \$8, which the State will offset from other mandated program payments due the county. Alternatively, the county may remit this amount to the State.

If you disagree with the audit finding, you may file an Incorrect Reduction Claim (IRC) with the Commission on State Mandates (COSM). 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 COSM'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, Compliance Audits Bureau, at (916) 323-5849.

Sincerely,

"Original signed by"

JEFFREY V. BROWNFIELD
Chief, Division of Audits

JVB/vb:ams

cc: Suzanne Haynes-Pitts
Senior Auditor and Controller, Manager
San Diego County
Todd Jerue, Program Budget Manager
Corrections and General Government
Department of Finance
Carla Castaneda
Principal Program Budget Analyst
Department of Finance
Paula Higashi, Executive Director
Commission on State Mandates

Contents

Audit Report

Summary	1
Background	1
Objective, Scope, and Methodology	2
Conclusion	2
Views of Responsible Officials	2
Restricted Use	2
Schedule 1—Summary of Program Costs.....	3
Finding and Recommendation	5
Attachment—County’s Response to Draft Audit Report	

Audit Report

Summary

The State Controller's Office (SCO) audited the costs claimed by San Diego County 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, 2001, through June 30, 2004. The last day of fieldwork was November 19, 2005.

The county claimed \$1,848,251 for the mandated program. Our audit disclosed that the entire amount is unallowable because the county claimed reimbursement for ineligible activities. The State paid the county \$8, which the State will offset from other mandated program payments due the county. Alternatively, the county may remit this amount to the State.

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 (COSM) determined that this legislation imposed a state mandate reimbursable under *Government Code* Section 17561 and adopted the *Statement of Decision*. COSM 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. COSM further defined that activities covered by due process are not reimbursable.

Parameters and Guidelines establishes the state mandate and defines reimbursement criteria. COSM adopted the *Parameters and Guidelines* on July 27, 2000 and corrected it on August 17, 2000. *Parameters and Guidelines* categorized 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, 2001, 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 county'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 county'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 Finding and Recommendation section of this report.

For the audit period, San Diego County claimed \$1,848,251 for costs of the Peace Officers Procedural Bill of Rights Program. Our audit disclosed that the entire amount is unallowable. The State paid the county \$8, which the State will offset from other mandated program payments due the county. Alternatively, the county may remit this amount to the State.

For the fiscal year (FY) 2001-02 claim, the State made no payment to the county. Our audit disclosed that all of the costs claimed are unallowable.

**Views of
Responsible
Officials**

We issued a draft audit report on February 28, 2007. Tracy M. Sandoval, Assistant Chief Financial Officer/Auditor and Controller, responded by letter dated March 27, 2007 (Attachment), agreeing with the audit results. This final audit report includes the county's response.

Restricted Use

This report is solely for the information and use of San Diego County, 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

**Schedule 1—
Summary of Program Costs
July 1, 2001, through June 30, 2004**

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment ¹
<u>July 1, 2001, through June 30, 2002</u>			
Salaries	\$ 350,676	\$ —	\$ (350,676)
Benefits	92,405	—	(92,405)
Total direct costs	443,081	—	(443,081)
Indirect costs	107,961	—	(107,961)
Amount claimed	<u>\$ 551,042</u>	—	<u>\$ (551,042)</u>
Less amount paid by the State		—	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ —</u>	
<u>July 1, 2002, through June 30, 2003</u>			
Salaries	\$ 394,217	\$ —	\$ (394,217)
Benefits	108,493	—	(108,493)
Total direct costs	502,710	—	(502,710)
Indirect costs	112,459	—	(112,459)
Amount claimed	<u>\$ 615,169</u>	—	<u>\$ (615,169)</u>
Less amount paid by the State		(8)	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (8)</u>	
<u>July 1, 2003, through June 30, 2004</u>			
Salaries	\$ 425,832	\$ —	\$ (425,832)
Benefits	137,583	—	(137,583)
Total direct costs	563,415	—	(563,415)
Indirect costs	118,625	—	(118,625)
Amount claimed	<u>\$ 682,040</u>	—	<u>\$ (682,040)</u>
Less amount paid by the State		—	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ —</u>	
<u>Summary: July 1, 2001, through June 30, 2004</u>			
Salaries	\$ 1,170,725	\$ —	\$(1,170,725)
Benefits	338,481	—	(338,481)
Total direct costs	1,509,206	—	(1,509,206)
Indirect costs	339,045	—	(339,045)
Total program costs	<u>\$ 1,848,251</u>	—	<u>\$ (1,848,251)</u>
Less amount paid by the State		(8)	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (8)</u>	

¹ See the Finding and Recommendation section.

Schedule 1 (continued)

<u>Cost Components</u>	<u>Actual Costs Claimed</u>	<u>Allowable per Audit</u>	<u>Audit Adjustment ¹</u>
<u>Recap of Costs by Components</u>			
Administrative activities	\$ 123,402	\$ —	\$ (123,402)
Administrative appeal	864,744	—	(864,744)
Interrogation	698,253	—	(698,253)
Adverse comment	<u>161,852</u>	<u>—</u>	<u>(161,852)</u>
Total program costs	<u>\$ 1,848,251</u>	<u>\$ —</u>	<u>\$ (1,848,251)</u>

Finding and Recommendation

FINDING— Unallowable salaries and benefits and related indirect costs

The county claimed \$1,509,206 in costs for the audit period. The entire amount is unallowable because the activities claimed were not identified in the *Parameters and Guidelines* as reimbursable costs or were claimed for cases not related to the mandate. Related indirect costs totaled \$339,045.

Following is a summary of unallowable costs.

	<u>Claimed Costs</u>	<u>Allowable Costs</u>	<u>Audit Adjustment</u>
<u>Salaries and Benefits</u>			
Administrative activities:			
Citizen's Law Enforcement			
Review Board (CLERB)	\$ 105,923	\$ —	\$ (105,923)
District Attorney	9,935	—	(9,935)
Total administrative activities	<u>\$ 115,858</u>	<u>\$ —</u>	<u>\$ (115,858)</u>
Administrative appeal:			
CLERB	\$ 1,350	\$ —	\$ (1,350)
Sheriff's Department	689,506	—	(689,506)
Total administrative appeal	<u>\$ 690,856</u>	<u>\$ —</u>	<u>\$ (690,856)</u>
Interrogations:			
CLERB	\$ 8,132	\$ —	\$ (8,132)
District Attorney	3,655	—	(3,655)
Probation Department	360,026	—	(360,026)
Sheriff's Department	178,429	—	(178,429)
Total interrogations	<u>\$ 550,242</u>	<u>\$ —</u>	<u>\$ (550,242)</u>
Adverse comment:			
CLERB	\$ 144,264	\$ —	\$ (144,264)
District Attorney	7,986	—	(7,986)
Total adverse comment	<u>\$ 152,250</u>	<u>\$ —</u>	<u>\$ (152,250)</u>
Total salaries and benefits:			
CLERB	\$ 259,669	\$ —	\$ (259,669)
District Attorney	21,576	—	(21,576)
Probation Department	360,026	—	(360,026)
Sheriff's Department	867,935	—	(867,935)
Subtotal	1,509,206	—	(1,509,206)
Related indirect costs	<u>339,045</u>	<u>—</u>	<u>(339,045)</u>
Total	<u>\$ 1,848,251</u>	<u>\$ —</u>	<u>\$ (1,848,251)</u>

Parameters and Guidelines Section VI, Supporting Data, requires that all costs be traceable to source documents showing evidence of the validity of such costs and their relationship to the state-mandated program.

Citizen's Law Enforcement Review Board (CLERB)

The citizens of San Diego County voted to establish CLERB in November 1990. CLERB was established for the purpose of receiving and investigating complaints of misconduct by police officers and custodial officers performing their duties while employed by the

Sheriff's Department or the Probation Department. CLERB has authority to investigate complaints and then make recommendations to the County Board of Supervisors and other county law enforcement decision-makers based on the information discovered in its investigations, as outlined in County Charter Section 606.

CLERB claimed costs under all four cost components, but primarily under Administrative Activities and Adverse Comment. Our review of the costs claimed by CLERB determined that the vast majority was claimed for activities that are not identified as reimbursable costs under the mandated program. In addition, CLERB is not eligible to claim most costs under the mandated program because it does not employ county peace officers. It does not have the authority to compel a peace officer to answer interrogation questions, cannot interrogate an officer on its own, has no authority to place an adverse comment document in a peace officer's personnel file, and does not review and/or decide the outcome of a case.

Administrative Activities

For Administrative Activities, the county claimed \$123,402 in costs (\$115,858 in salaries and benefits, and \$7,544 in related indirect costs). We determined that the entire amount is for ineligible activities.

Parameters and Guidelines allows the following ongoing activities.

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

However, the county claimed the following ineligible activities.

- Initial case reviews;
- Case conferences to discuss cases;
- Preparing case summaries;
- Initial intake of complaints;
- Initial correspondence between the complainant, CLERB, and other related parties;
- Initial filing of the required paperwork; and
- Research and document collection by an investigator.

Administrative Appeal

For Administrative Appeal, the county claimed \$864,744 (\$690,856 in salaries and benefits and \$173,888 in related indirect costs). We determined that the entire amount is for ineligible activities.

Parameters and Guidelines states that claimants will be reimbursed for providing the opportunity for, and the conduct of an administrative appeal for permanent peace officer employees and the Chief of Police for the following disciplinary actions:

- 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);
- Transfer of permanent employees for purposes of punishment;
- 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.

The Sheriff's Department included costs for Internal Affairs sergeants to investigate and complete administrative appeals and for administrative secretaries to type, copy, and file reports relative to administrative appeals. Department representatives stated that claims included both peace officer and non-peace officer cases. In addition, the department did not track the cases for peace officers as to the type of punishment an officer would face. Department representatives also stated that it would not be cost effective for them to go through the files to determine eligibility under the mandate.

We determined that CLERB was ineligible to claim costs under the Administrative Appeal cost component because the circumstances surrounding cases must be reviewed and decided on by the employer of the peace officer. While we recognize that CLERB's investigation activities might affect the outcome of a case, CLERB has no authority over the peace officer or involvement in the peace officer's request to appeal a decision rendered by his or her employer.

Interrogation

For Interrogation, the county claimed \$698,253 in costs (\$550,242 in salaries and benefits and \$148,011 in related indirect costs). The entire amount is for ineligible activities.

Parameters and Guidelines states that specifically identified Interrogation activities 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.

Parameters and Guidelines, 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.

Parameters and Guidelines, Section IV(C), states that claimants are not eligible for Interrogation activities when an interrogation of a peace officer is in the normal course of duty. It further states in Section IV(c)(1):

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.

In reference to compensation and timing of the interrogation pursuant to *Government Code* Section 3303, subdivision (a), the COSM 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.

Parameters and Guidelines, Section IV(C), also states that tape recording the interrogation, when the peace officer employee records the interrogation, is a reimbursable activity.

However, the county claimed the following ineligible activities.

- Preparation of questions for the interviews
- Interrogation time for witnessed or accused officers interrogated during normal duty hours
- Time claimed for employees performing interrogations
- Review of interrogation notes by the investigator

Adverse Comment

For Adverse Comment, the county claimed \$161,852 in costs (\$152,250 in salaries and benefits, and \$9,602 in related indirect costs). The entire amount is for ineligible activities.

Depending on the circumstances surrounding an Adverse Comment, *Parameters and Guidelines* allows 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/or
- 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.

However, the county claimed costs for preparing case summary reports, which is a non-reimbursable activity.

Recommendation

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

During the audit exit conference, county representatives were advised that if the county performed activities that are reimbursable under the mandate, it will be allowed to conduct a time study to determine the amount of time it spent performing eligible activities under the mandated program during the current year. The time study results could then be applied retroactively to the audit period. If the time study results affect the audit adjustments, we will revise the report accordingly. If the county chooses to exercise this option, it must verify the actual number of eligible POBOR cases conducted during the audit period.

County's Response

The audit report is presented in conformity with the discussion with the County of San Diego during exit conference conducted by the State Controller's Office (SCO). We concur with the finding that the entire amount of \$1,848,251 claimed is unallowable. The County will ensure that future costs and revenues are calculated correctly with properly supported documents.

We believe appropriate claims would have been made if the Parameters and Guidelines for mandated programs issued by the SCO were clearly written. There should be a specific language or instructions regarding the eligible activities in claiming reimbursable costs to assist local agencies.

SCO's Comment

The finding and recommendation remain unchanged.

The Commission on State Mandates adopts *Parameters and Guidelines*. The latest version, adopted December 4, 2006, deleted a few of the adverse comment activities effective for FY 2006-07 and further clarified reimbursable activities. We believe that this document provides the expanded clarity that will assist local agencies in filing subsequent POBOR mandate claims.

**Attachment—
County’s Response to
Draft Audit Report**



County of San Diego

DONALD F. STEUER
CHIEF FINANCIAL OFFICER
(619) 531-5413
FAX (619) 531-5219

AUDITOR AND CONTROLLER
1600 PACIFIC HIGHWAY STE 166, SAN DIEGO, CALIFORNIA 92101-2478

TRACY M. SANDOVAL
ASST. CHIEF FINANCIAL OFFICER/
AUDITOR & CONTROLLER
(619) 531-5413
FAX (619) 531-5219

March 27, 2007

Jim L. Spano, Chief
Compliance Audits Bureau
State Controller's Office
Division of Audits
P.O. Box 942850
Sacramento, CA 94250

Dear Mr. Spano:

COUNTY OF SAN DIEGO RESPONSE TO THE PEACE OFFICERS PROCEDURAL BILL OF RIGHTS PROGRAM (POBOR) AUDIT

Thank you for the opportunity to review and submit our comments on the draft audit report on POBOR claims submitted by the County of San Diego for the period of July 1, 2001 through June 30, 2004. We are submitting the following comments.

The audit report is presented in conformity with the discussion with the County of San Diego during exit conference conducted by the State Controller's Office (SCO). We concur with the finding that the entire amount of \$1,848,251 claimed is unallowable. The County will ensure that future costs and revenues are calculated correctly with properly supported documents.

We believe appropriate claims would have been made if the Parameters and Guidelines for mandated programs issued by the SCO were clearly written. There should be a specific language or instructions regarding the eligible activities in claiming reimbursable costs to assist local agencies.

Also, please correct the titles of the following individuals under "Views of Responsible Officials," page two of the audit draft: Michelle Crichlow, Financial Services Manager, Sheriff's Department; and Karina Hernandez, Associate Accountant, Sheriff's Department.

If you have any questions, please contact Marilyn Flores of Revenue and Cost Accounting at (619) 531-4825.

Sincerely,

TRACY M. SANDOVAL
Assistant Chief Financial Officer/Auditor and Controller

RCA:MF:kb

**State Controller's Office
Division of Audits
Post Office Box 942850
Sacramento, California 94250-5874**

<http://www.sco.ca.gov>