

COMMISSION ON STATE MANDATES

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September 7, 2006

Ms. Pamela A. Stone
DMG-Maximus
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

And Affected State Agencies and Interested Parties (see enclosed mailing list)

RE: Final Staff Analysis and Proposed Statewide Cost Estimate
Peace Officer Personnel Records: Unfounded Complaints and Discovery, 00-TC-24
City of Hayward and County of San Mateo, Claimants
Statutes 1978, Chapter 630, et al.

Dear Ms. Stone:

The final staff analysis and proposed statewide cost estimate for this program are enclosed for your review.

Commission Hearing

The hearing on this matter is set for Wednesday, **October 4, 2006**, at 1:30 p.m. in Room 126 of the State Capitol, Sacramento, California. This item will be scheduled for the consent calendar unless any party objects. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c), of the Commission's regulations.

Special Accommodations

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

If you have any questions, please contact Tina Poole at (916) 323-8220.

Sincerely,

PAULA HIGASHI
Executive Director

Enclosures

ITEM 13
FINAL STAFF ANALYSIS
PROPOSED STATEWIDE COST ESTIMATE

Education Code Section 1043, subdivision (a)
Penal Code Sections 832.5, subdivisions (b) and (c), and
832.7, subdivisions (b) and (e)
Statutes 1978, Chapter 630
Statutes 1994, Chapter 741
Peace Officer Personnel Records:
Unfounded Complaints and Discovery (00-TC-24)
City of Hayward and County of San Mateo, Claimants

EXECUTIVE SUMMARY

On September 25, 2003, the Commission on State Mandates (Commission) adopted the Statement of Decision for *Peace Officer Personnel Records: Unfounded Complaints and Discovery (00-TC-24)*. The Commission found that Evidence Code section 1043, subdivision (a), Penal Code sections 832.5, subdivisions (b) and (c), and 832.7, subdivisions (b) and (e) constitute a new program or higher level of service and impose a reimbursable state-mandated program upon local agency employers of peace officers within the meaning of article XIII B, section 6, of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514. The *Peace Officer Personnel Records: Unfounded Complaints and Discovery* program requires compliance with new procedures for discovery of peace officer personnel records and the filing and investigation of unfounded complaints against peace officers.

The Commission adopted the Statement of Decision on September 25, 2003, and the parameters and guidelines on December 9, 2005. Eligible claimants were required to file initial reimbursement claims with the State Controller's Office (SCO) by June 21, 2006. The Commission uses these initial claims to develop the statewide cost estimate.

The SCO provided unaudited claims data to the Commission on August 8, 2006. The claims data showed that 25 cities and six counties filed 101 claims between fiscal years 1999-2000 and 2004-2005. Based on the data provided by the SCO, staff made the following assumptions:

1. *The actual claiming data is unaudited.* The 101 actual claims filed by 31 claimants for fiscal years 1999-2000 through 2004-2005 are unaudited and may be inaccurate.¹

¹Claims data reported as of August 8, 2006.

2. *The actual amount claimed will increase if late or amended claims are filed.* As of August 8, 2006, 25 cities and six counties filed reimbursement claims for this program. If reimbursement claims are filed by any of the remaining cities and counties, the amount of reimbursement claimed may exceed the statewide cost estimate. For this program, late claims may be filed until June 21, 2007. However, the claimants note that they are expecting only a few late claims will be filed by small agencies.
3. *The SCO may reduce any reimbursement claim for this program.* If the SCO audits this program and deems any reimbursement claim to be excessive or unreasonable, it may reduce a claim. Therefore, the total amount of reimbursement for this program may be lower than the statewide cost estimate.
4. *Although the costs claimed per complaint varied widely, the costs appear to be reasonable.* The majority of the costs claimed were for reimbursable activities A. 1. and C. 2. The cost to perform these activities ranged from \$3 to \$418 per complaint. The majority of the differences in costs appear to be the result of the hourly rate of the staff person who performed the activities. For example, the City of Los Angeles claimed staff time for a senior clerk typist to perform the activities while the City of Martinez claimed staff time for an administrative assistant and chief of police. There is no limit on who performs this mandate.
5. *The number of complaints received will remain at the same level and will not increase.* The claims data shows that the number of complaints has remained at the same level for the fiscal years that claims were filed.

The proposed statewide cost estimate includes nine fiscal years for a total of \$1,833,051. This averages to \$203,672 annually in costs for the state.

Following is a breakdown of estimated total costs per fiscal year:

Breakdown of Estimated Total Costs per Fiscal Year

Fiscal Year	Number of Claims Filed with SCO	Estimated Cost
1999-2000	4	52,661
2000-2001	6	75,412
2001-2002	17	198,172
2002-2003	20	209,594
2003-2004	24	242,664
2004-2005	30	248,863
2005-2006 (estimated)	N/A	257,573
2006-2007 (estimated)	N/A	265,558
2007-2008 (estimated)	N/A	282,554
TOTAL	101	1,833,051

On August 11, 2006, staff issued the draft staff analysis and proposed statewide cost estimate for comment. No comments were received, therefore no substantive changes were made.

Staff Recommendation

Staff recommends that the Commission adopt the proposed statewide cost estimate of \$1,833,051 for costs incurred in complying with the *Peace Officer Personnel Records: Unfounded Complaints and Discovery* program. If the statewide cost estimate is adopted, staff will report the estimate to the Legislature.

STAFF ANALYSIS

Summary of the Mandate

On September 25, 2003, the Commission on State Mandates (Commission) adopted the Statement of Decision for *Peace Officer Personnel Records: Unfounded Complaints and Discovery* (00-TC-24). The Commission found that Evidence Code section 1043, subdivision (a), Penal Code sections 832.5, subdivisions (b) and (c), and 832.7, subdivisions (b) and (e) constitute a new program or higher level of service and impose a reimbursable state-mandated program upon local agency employers of peace officers within the meaning of article XIII B, section 6, of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514.

The Commission adopted the parameters and guidelines for this program on December 9, 2005. Eligible claimants were required to file initial reimbursement claims with the State Controller's Office (SCO) by June 21, 2006. The Commission uses these initial claims to develop the statewide cost estimate.

Reimbursable Activities

The Commission approved the following reimbursable activities for this program:

- A. Notice to Peace Officers (Evid. Code, § 1043, subd. (a).) Reimbursement period begins July 1, 1999.
 1. Provide immediate notice to an officer that his personnel file is the subject of discovery or disclosure.
- B. Record Retention (Pen. Code, § 832.5, subds. (b) and (c).) Reimbursement period begins July 1, 1999.
 1. Retain complaints against peace officers and any reports on findings relating to these complaints, for an *additional* three years. This is limited to the cost of retaining complaints against peace officers and any reports on findings relating to these complaints, including file storage of those records for the three-year period of time after the mandatory two-year retention period provided in Government Code sections 26202 and 34090. No staff time is required or reimbursable for this activity.
 2. Maintain those complaints found to be frivolous, unfounded or exonerated in a file separate from the officer's general personnel file.
- C. Notice to Complaining Party (Pen. Code, § 832.7, subds. (b) and (e).) Reimbursement period begins July 1, 2001.
 1. Make a copy of the complaining party's own statements at the time the complaint against the peace officer is filed, and provide the complaining party a copy of that statement.
 2. Provide written notification to the complaining party of the disposition of the complaint against the peace officer within thirty days of the disposition.

Statewide Cost Estimate

Staff reviewed the claims data submitted by the claimants and compiled by the SCO. The actual claims data showed that 31 claimants (25 cities and six counties) filed 101 claims between fiscal years 1999-2000 and 2004-2005, for a total of \$1,027,366. Based on this data, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program. If the Commission adopts this proposed statewide cost estimate, it will be reported to the Legislature along with staff's assumptions and methodology.

Assumptions

Staff made the following assumptions:

1. *The actual claiming data is unaudited.* The 101 actual claims filed by 31 claimants for fiscal years 1999-2000 through 2004-2005 are unaudited and may be inaccurate.²
2. *The actual amount claimed will increase if late or amended claims are filed.* As of August 8, 2006, 25 cities and six counties filed reimbursement claims for this program. If reimbursement claims are filed by any of the remaining cities and counties, the amount of reimbursement claimed may exceed the statewide cost estimate. For this program, late claims may be filed until June 21, 2007. However, the claimants note that they are expecting only a few late claims will be filed by small agencies.
3. *The SCO may reduce any reimbursement claim for this program.* If the SCO audits this program and deems any reimbursement claim to be excessive or unreasonable, it may reduce a claim. Therefore, the total amount of reimbursement for this program may be lower than the statewide cost estimate.
4. *Although the costs claimed per complaint varied widely, the costs appear to be reasonable.* The majority of the costs claimed were for reimbursable activities A. 1. and C. 2. The cost to perform these activities ranged from \$3 to \$418 per complaint. The majority of the differences in costs appear to be the result of the hourly rate of the staff person who performed the activities. For example, the City of Los Angeles claimed staff time for a senior clerk typist to perform the activities while the City of Martinez claimed staff time for an administrative assistant and chief of police. There is no limit on who performs this mandate.
5. *The number of complaints received will remain at the same level and will not increase.* The claims data shows that the number of complaints has remained at the same level for the fiscal years that claims were filed.

Methodology

Fiscal Years 1999-2000 through 2004-2005

The proposed statewide cost estimate for fiscal years 1999-2000 through 2004-2005 is based the 101 actual reimbursement claims filed with the SCO for these years.

Fiscal Years 2005-2006 and 2006-2007

Staff estimated fiscal year 2005-2006 costs by multiplying the 2004-2005 estimate by the implicit price deflator for 2005-2006 (3.5%), as forecast by the Department of Finance. Staff

²Claims data reported as of August 8, 2006.

estimated fiscal year 2006-2007 costs by multiplying the 2005-2006 estimate by the implicit price deflator for 2006-2007 (3.1%).

Staff estimated fiscal year 2007-2008 costs by multiplying the 2006-2007 estimate by the implicit price deflator for 2007-2008 (6.4%).

The proposed statewide cost estimate includes nine fiscal years for a total of \$1,833,051. This averages to \$203,672 annually in costs for the state.

Following is a breakdown of estimated total costs per fiscal year:

Breakdown of Estimated Total Costs per Fiscal Year

Fiscal Year	Number of Claims Filed with SCO	Estimated Cost
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TOTAL	101	1,833,051

Staff Recommendation

Staff recommends that the Commission adopt the proposed statewide cost estimate of \$1,833,051 for costs incurred in complying with the *Peace Officer Personnel Records: Unfounded Complaints and Discovery* program.