

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Penal Code Section 293, as added and amended by Statutes of 1992, Chapter 502; Statutes of 1993, Chapter 555; and Statutes of 1993- 1994, 1st Extraordinary Session, Chapter 36;

Filed on June 30, 1999;

By the City of Hayward. Claimant.

No. 98-TC-21

Sex Crime Confidentiality

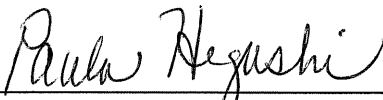
ADOPTION OF PARAMETERS AND GUIDELINES PURSUANT TO GOVERNMENT CODE SECTION 17557 AND TITLE 2, CALIFORNIA CODE OF REGULATIONS, SECTION 1183.12

(Adopted on May 23, 2002)

ADOPTED PARAMETERS AND GUIDELINES

The attached Parameters and Guidelines is hereby adopted in the above-entitled matter.

This Decision shall become effective on May 24, 2002.



PAULA HIGASHI, Executive Director

Parameters and Guidelines

Penal Code Section 293

Statutes of 1992, Chapter 502

Statutes of 1993, Chapter 555

Statutes of 1993-1994, First Extraordinary Session, Chapter 36

Sex Crime Confidentiality

I. SUMMARY OF THE MANDATE

Penal Code section 293 requires a law enforcement agency employee who receives a report from a person who alleges that he or she was the victim of specified sex crimes to inform the reporting person that his or her name will become a matter of public record unless he or she requests confidentiality. This statute also requires that the person's response be memorialized in any written report of the alleged sex offense. Finally, if the person has requested confidentiality, the law enforcement agency may not disclose the person's name or address except to specified persons.

On September 28, 2001, the Commission on State Mandates (Commission) adopted its Statement of Decision that the test claim legislation constitutes a reimbursable state mandated program upon local governments within the meaning of article XIII B, section 6, of the California Constitution and Government Code section 17514 for the following activities:

- Law enforcement personnel who personally receive a report of a sex offense from an alleged victim shall inform the alleged victim of a sex offense that his or her name will become a matter of public record unless he or she requests that it does not.
- Law enforcement personnel shall indicate on any written report that the alleged victim has been properly informed of his or her right to confidentiality and shall memorialize his or her response.
- Law enforcement agencies shall not disclose the address or name of a person who is alleged to be the victim of a sex offense to any person except the prosecutor, parole officers of the Department of Corrections, hearing officers of the parole authority, or other person or public agencies where authorized or required by law.

II. ELIGIBLE CLAIMANTS

Any county, city, or city and county that has incurred increased costs as a direct result of this mandate is eligible to claim reimbursement of those costs.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557 states that a test claim must be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The test claim for this mandate was filed on June 30, 1999. Therefore, costs incurred for compliance with the mandate are eligible for reimbursement on or after July 1, 1997.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent fiscal year may be included on the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d)(1), all claims for reimbursement of initial years' costs shall be submitted within 120 days of notification by the State Controller of the issuance of claiming instructions.

If total costs for a given year do not exceed \$200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

For each eligible claimant, the following activities are eligible for reimbursement:

A. One-Time Activities

1. Train those employees that actually perform the reimbursable activities listed in Section IV, A and B, of these parameters and guidelines. (One-time activity per employee .)
2. Update the police report to include fields so that the victim's desire to keep his or her name confidential may be recorded.
3. Develop policies and procedures to implement the reimbursable activities listed in Section IV, A and B, of these parameters and guidelines.

B. On Going Activities (*Beginning July 1, 1997*)

1. When a law enforcement agency employee receives a report of a sex offense from an alleged victim, inform the person that his or her name will become a matter of public record unless he or she requests that it does not. (Pen. Code, § 293, subd. (a).)
2. Indicate on any written report of an alleged sex offense, as defined in Penal Code section 293, subdivision (e),¹ that the alleged victim has been properly informed of his or her right to keep his or her name confidential, and memorialize his or her response. (Pen. Code, § 293, subd. (b).)
3. Redact a victim's name and address from all public records, except as provided in Penal Code section 293, subdivisions (c), (d), and (f).

¹ Penal Code section 293, subdivision (e), states: "For purposes of this section, sex offense means any crime listed in paragraph (2) of subdivision (f) of Section 6254 of the Government Code which is also defined in Chapter 1 (commencing with Section 261) or Chapter 5 (commencing with Section 281) of Part 1 of Title 9."

V. CLAIM PREPARATION AND SUBMISSION

Each reimbursement claim for this mandate must be timely filed. Each of the following cost elements must be identified for each reimbursable activity identified in Section IV of this document.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. Direct costs that are eligible for reimbursement are:

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time

according to the rules of cost element A. 1, Salaries and Benefits, for each applicable reimbursable activity.

6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A. 1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services. This data, if too voluminous to be included with the claim, may be reported in a summary. However, supporting data must be maintained as described in Section VI.

B. Indirect Cost Rates

Indirect costs are defined as costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the Claimant shall have the choice of one of the following methodologies :

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect

costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or

2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

VI. SUPPORTING DATA

A. Source Documents

For auditing purposes, all incurred costs claimed shall be traceable to source documents that show evidence of their validity and relationship to the reimbursable activities. Documents may include, but are not limited to, worksheets, employee time records or time logs, cost allocation reports (system generated), invoices, receipts, purchase orders, contracts, agendas, training packets with signatures and logs of attendees, calendars, declarations, and data relevant to the reimbursable activities otherwise reported in compliance with local, state, and federal government requirements.

B. Record Keeping

Pursuant to Government Code section 17558 .5, subdivision (a), a **reimbursement** claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to audit by the State Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended.* See the State Controller's claiming instructions regarding retention of required documentation during the audit period.

VII. OFFSETTING SAVINGS AND REIMBURSEMENTS

Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, federal funds and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S OFFICE REQUIRED CERTIFICATION

An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the State contained herein.

IX. PARAMETERS AND GUIDELINES AMENDMENTS

Parameters and guidelines may be amended pursuant to Title 2, California Code of Regulations section 1183.2.

* This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95 8 14.

May 24, 2002, I served the:

Adopted Parameters and Guidelines

Sex Crime Confidentiality, CSM 98-TC-21

City of Hayward, Claimant

Penal Code Section 293

Statutes of 1992, Chapter 502

Statutes of 1993, Chapter 555

Statutes of 1993-1994, 1st Extra. Sess., Chapter 36

by placing a true copy thereof in an envelope addressed to:

Mr. Allan Burdick
MAXIMUS
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95841

Mr. Glenn Haas, Bureau Chief
State Controller's Office
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

State Agencies and Interested Parties (See attached mailing list);

and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully paid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 24, 2002, at Sacramento, California.



VICTORIA SORIANO