

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Penal Code Sections 148.6, Subdivisions (a)(2)
and (a)(3); Statutes 1995, Chapter 590;
Statutes 2000, Chapter 289,

Filed on July 2, 2001;

by County of San Bernardino, Claimant.

No. 00-TC-26


False Reports of Police Misconduct

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

(Adopted on March 30, 2005)

PARAMETERS AND GUIDELINES

On March 30, 2005, the Commission on State Mandates adopted the attached Parameters and Guidelines.



PAULA HIGASHI, Executive Director

April 5, 2005

Date

PARAMETERS AND GUIDELINES

Penal Code Section 148.6, Subdivisions (a)(2) and (a)(3)

Statutes of 1995, Chapter 590

Statutes of 2000, Chapter 289

False Reports of Police Misconduct (00-TC-26)

County of San Bernardino, Claimant

I. SUMMARY OF THE MANDATE

Statutes 1995, chapter 590; and Statutes 2000, chapter 289 added or amended Penal Code section 148.6. This provision made it a misdemeanor for any individual to knowingly file a false complaint against a peace officer. These statutes:

- Require any law enforcement agency accepting an allegation of misconduct against a peace officer to have the complainant read and sign a specified information advisory.
- Require the advisory to be available in multiple languages.

On January 29, 2004, the Commission on State Mandates (Commission) adopted the Statement of Decision for *False Reports of Police Misconduct* (00-TC-26). The Commission found that Penal Code section 148.6, subdivision (a), sections (2) and (3), constitute a new program or higher level of service and impose a reimbursable state-mandated program upon city and county law enforcement agencies within the meaning of article XIII B, section 6, of the California Constitution and Government Code section 17514. Accordingly, the Commission approved this test claim for the following reimbursable activities:

- In accepting an allegation of peace officer misconduct, requiring the complainant to read and sign the advisory prescribed in Penal Code section 148.6, subdivision (a)(2).
- Make the advisory available in multiple languages, utilizing the translations available from the State, as prescribed in Penal Code section 148.6, subdivision (a)(3).

The Commission denied any remaining alleged activities or costs, including any from Penal Code section 148.6, subdivision (a)(1), as added by Statutes 1995, chapter 590, and subdivision (b) as added by Statutes 1996, chapter 586, because they do not impose a new program or higher level of service, and do not impose costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code sections 17514 and 17556.

II. ELIGIBLE CLAIMANTS

Any city, county, city and county, or special district employing peace officers and incurring increased costs as a direct result of this mandate are eligible to claim reimbursement of these 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 Monday, July 2, 2001. Since June 30 fell on a Saturday in 2001, the filing deadline for establishing a July 1, 1999 reimbursement period pursuant to Government Code section 17557, subdivision (c), and the operative regulations, was delivery or postmark by Monday, July 2, 2001. Thus, costs incurred for compliance with Statutes 1995, chapter 590 are eligible for reimbursement on or after July 1, 1999. Statutes 2000, chapter 289 was operative January 1, 2001. Therefore, costs incurred for compliance with Statutes 2000, chapter 289 are reimbursable on or after January 1, 2001.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent 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 the total costs for a given year do not exceed \$1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, the following activities are reimbursable:

Reimbursement Period July 1, 1999 through December 31, 2000¹:

In accepting an allegation of peace officer misconduct, requiring the complainant to read and sign the advisory prescribed in Penal Code section 148.6, subdivision (a)(2).²

¹ Pursuant to Government Code section 17557, subdivision (c).

² Penal Code section 148.6, subdivision (a)(2), as added by Statutes 1995, chapter 590.

A. One-Time Activity

1. Update policies and procedures to implement the reimbursable activities listed in Section IV., B, of these parameters and guidelines.

B. On-going Activity

1. Provide the complainant with the PC 148.6 advisory form. See Section V. A. for uniform time allowance for this activity.

Reimbursement Period Begins January 1, 2001³:

Make the advisory available in multiple languages, utilizing the translations available from the state.⁴

C. One-Time Activities

1. Create an electronic and/or paper advisory form folder to file multi-language PC 148.6 advisory forms, which are created and released by the Department of Justice.
2. Update policies and procedures to implement the reimbursable activities listed in Section IV., C, and D, of these parameters and guidelines.

D. Ongoing Activities

1. Downloading the PC 148.6 advisory form and saving it to an electronic and/or paper advisory form folder.
2. Update the multi-language advisory form folder as needed, if additional PC 148.6 advisory forms become available through the Department of Justice.
3. Inform the local law enforcement agency employees about the availability of the new (or any changes made to the existing) PC 148.6 advisory forms by the Department of Justice.
4. Provide the complainant with the advisory form written in a language understood by the complainant if the advisory form is available from the Department of Justice.⁵ See Section V. A. for uniform time allowance for this activity.

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Uniform Allowances (Time)

The uniform time allowances cover the cost of the salaries and benefits of the employees performing the ongoing activities listed in Part B. 1, and Part D. 3, in Section IV of these parameters and guidelines. For purposes of the following calculations, productive hours

³ Pursuant to Government Code section 17557, subdivision (c).

⁴ Penal Code section 148.6, subdivision (a)(3), as added by Statutes 2000, chapter 289.

⁵ Penal Code section 148.6, subdivision (a)(2) and (a)(3).

mean: "Time spent performing any kind of mental or physical work. Paid leave is not included."

Citizens Filing Complaints of Police Misconduct Under P.C. Section 148.6

For activities IV. B. 1. and D. 3. multiply as follows:

(the total number of P.C. Section 148.6 cases) x (0.033 hours⁶) x (the productive hourly rate [total wages and related benefits divided by productive hours] for employees performing the reimbursable activities).

The Commission has not identified any circumstances that would cause an eligible claimant to incur additional costs to perform any other activities not incorporated in Section IV of these parameters and guidelines. Eligible claimants incurring any such costs within the scope of the reimbursable activities may submit a request to amend the parameters and guidelines to the Commission for such costs to be approved for reimbursement, subject to the provisions of Government Code section 17557 and California Code of Regulations, title 2, section 1183.2.

B. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement:

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

⁶ Equivalent to 2 minutes.

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.

C. 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 bear 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. RECORD RETENTION

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 chapter⁷ is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

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 from any source, including but not limited to, services fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

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

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.