STATE OF CALIFORNIA
COMMISSION ON STATE MANDATES
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SACRAMENTO, CA 95814
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May 28, 2013

Ms. Dorothy Holzem
California Special
Districts Association
1112 I Street, Suite 200
Sacramento, CA 95814

Mr. Ed Jewik
County of Los Angeles
Auditor-Controller's Office
500 W. Temple Street, Room 603
Los Angeles, CA 90012

Mr. Keith Petersen
SixTen and Associates
P.O. Box 340430
Sacramento, CA 95834-0430

And Interested Parties and Affected State Agencies (See Mailing List)

RE: Request for Reconsideration of Statement of Decision and Parameters and Guidelines and Hearing
California Public Records Act, 02-TC-10 and 02-TC-51
Government Code Section 6253, et al.
County of Los Angeles and Riverside Unified School District, Claimants
California Special Districts Association, Requester

Dear Ms. Holzem, Mr. Jewik, and Mr. Petersen:

The Commission on State Mandates (Commission) granted the request for reconsideration of the statement of decision and parameters and guidelines for the above-named matter and directed staff to schedule a second hearing on the merits of the request. A copy of the agenda item for this request is enclosed. The second hearing shall be limited to the issue of whether the adopted parameters and guidelines contain an error of law by omitting special districts from the eligible claimants for this program.

Hearing

Pursuant to Commission regulations section 1188.4(g), a hearing shall now be conducted to determine if the prior final decision is contrary to law and to correct any errors of law. Therefore, this matter is scheduled for hearing on **Friday July 26, 2013**.

Please contact Camille Shelton at (916) 323-3562 if you have any questions.

Sincerely,

Heather Halsey
Executive Director

Hearing Date: May 24, 2013
J:\mandates\2002\tc\02-TC-10 (CPRA)\Ps&Gs SOD\1188.4 Reconsideration\staff analysis – May hearing.doc

ITEM 7

STAFF ANALYSIS

REQUEST FOR RECONSIDERATION

of Statement of Decision and Parameters and Guidelines
Adopted April 19, 2013

Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255

Statutes 1992, Chapter 463 (AB 1040); Statutes 2000, Chapter 982 (AB 2799); and Statutes 2001, Chapter 355 (AB 1014)

California Public Records Act

02-TC-10 and 02-TC-51

California Special Districts Association, Requester

EXECUTIVE SUMMARY

This is a request for reconsideration made pursuant to Government Code section 17559 and section 1188.4 of the Commission on State Mandates' (CSM) regulations. The California Special Districts Association (CSDA) requests reconsideration of the Commission's statement of decision and parameters and guidelines for the *California Public Records Act* (CPRA) program, adopted April 19, 2013. CSDA contends that the decision and parameters and guidelines contain an error of law with respect to the description of eligible claimants. The decision describes the eligible claimants as "any city, county, and city and county, or any school district as defined in Government Code section 17519," but omits special districts required to comply with the CPRA.

Within a limited statutory timeframe, the Commission is authorized to reconsider a prior final decision to consider only an alleged error of law. Any party, interested party, or Commission member may file a petition with the Commission requesting that the Commission reconsider and change a prior final decision to correct an error of law. The petition must be filed within 30 days after the statement of decision is issued. Before the Commission can fully consider the request, Commission staff is required to prepare a written analysis and recommend whether the request for reconsideration should be granted. Five affirmative votes are required to grant the request for reconsideration and schedule the matter for a hearing on the merits. If no action is taken on the request, or the request to grant reconsideration does not receive five affirmative votes, the petition is deemed denied.

Staff Analysis

Staff recommends that the Commission grant the request for reconsideration and direct staff to schedule a second hearing on the merits of the request.

Except for certain provisions relating only to school districts, the activities mandated by the CPRA, by definition, apply equally to all levels of government.[1] The test claim statement of decision acknowledged that "local agencies" were eligible for reimbursement under the program, and "local agencies" are defined in Government Code section 17518 to include special districts.

The decision on the parameters and guidelines, however, did not address the issue of eligible claimants, but was primarily focused on the scope of reimbursable activities. The draft staff analysis and proposed statement of decision and parameters and guidelines identified eligible claimants as counties, cities, and school districts as defined, but did not include special districts or the more general phrase "local agency as defined in Government Code section 17518," which includes special districts. No comments on the draft analysis for that issue were received. The final proposed decision did not address the issue of special districts as eligible claimants for this program, and kept the same language as the draft analysis identifying eligible claimants as counties, cities, and school districts as defined. The issue was not identified until CSDA filed its request for reconsideration on May 2, 2013.

The identification of eligible claimants in the decision and the parameters and guidelines cannot be corrected by staff as a "clerical error" under section 1188.2 of the regulations because the issue will require further legal analysis. The CPRA definition of "local agency" is very broad and is intended to cover any type of local public agency, and certainly those who are eligible to claim reimbursement under article XIII B, section 6. The courts have made clear, however, that despite the broad statutory definitions of "local agency," reimbursement under article XIII B, section 6 is required only when the local agency is subject to the tax and spend limitations of articles XIII A and XIII B, and only when the costs in question can be recovered solely from "proceeds of taxes," or tax revenues.[2] Article XIII B, section 6 does not require reimbursement when the costs are for expenses that are recoverable from sources other than tax revenue; i.e., service charges, fees, or assessments.[3] There are many special districts that receive their revenue solely from fees, or receive some of their funding through fees that can be applied to this program. Thus, not all special districts are eligible to claim reimbursement under article XIII B, section 6 and some eligible districts may also have fee authority that applies to this program.

Therefore, the only way to properly address the issue and to correct the identification of eligible claimants is through this request for reconsideration.

Staff Recommendation

Staff recommends that the Commission grant the CSDA's request for reconsideration and direct staff to schedule a second hearing on the merits of the request to determine if the statement of decision on the parameters and guidelines adopted April 19, 2013, contains the error of law alleged and to correct any errors of law in the decision and the parameters and guidelines.

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[1] Government Code section 6252.

[2] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486-487.

[3] *County of Fresno, supra,* 53 Cal.3d at p. 487; *Redevelopment Agency of the City of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 987; *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281-282.

STAFF ANALYSIS

Background

This is a request for reconsideration made pursuant to Government Code section 17559 and section 1188.4 of the Commission on State Mandates' (CSM) regulations. The California Special Districts Association (CSDA) requests reconsideration of the statement of decision and parameters and guidelines for the *California Public Records Act* (CPRA) program, adopted April 19, 2013. CSDA contends that the decision and parameters and guidelines contain an error of law with respect to the description of eligible claimants. The decision describes the eligible claimants as "any city, county, and city and county, or any school district as defined in Government Code section 17519," but omits special districts required to comply with the CPRA.

Government Code section 17559(a) grants the Commission the authority to reconsider a prior final decision to correct an error of law as follows:

> The commission may order a reconsideration of all or part of a test claim or incorrect reduction claim on petition of any party. The power to order a reconsideration or amend a test claim decision shall expire 30 days after the statement of decision is delivered or mailed to the claimant. If additional time is needed to evaluate a petition for reconsideration filed prior to the expiration of the 30-day period, the commission may grant a stay of that expiration for no more than 30 days, solely for the purpose of considering the petition. If no action is taken on a petition within the time allowed for ordering reconsideration, the petition shall be deemed denied.

Section 17559 refers to the reconsideration of test claim and incorrect reduction claim decisions, and does not specifically address decisions on other matters. However, parameters and guidelines are part of the test claim process, contain findings of law, and are adopted under the Commission's article 7 quasi-judicial hearing regulations. Thus, the authority to reconsider a prior decision to correct an error of law extends to a decision on parameters and guidelines.

The process provides that any interested party, affected state agency or Commission member may file a petition with the Commission requesting that the Commission reconsider and change a prior final decision to correct an error of law.[4] The request has to be filed within 30 days after the decision is mailed. Before the Commission considers a request for reconsideration, Commission staff is required to prepare a written analysis and recommend whether the request for reconsideration should be granted.[5] Five affirmative votes are required to grant the request for reconsideration and schedule the matter for a hearing on the merits.[6]

If the Commission grants the request for reconsideration, a subsequent hearing on the merits is conducted to determine if the prior final decision is contrary to law and to correct an error of

[4] California Code of Regulations, title 2, section 1188.4 (a) and (b).

[5] California Code of Regulations, title 2, section 1188.4(f).

[6] *Ibid*.

law.[7] A draft staff analysis is prepared by staff and issued 8 weeks before the date that the matter is set for hearing for a 3-week comment period. Five affirmative votes are required to change a prior final decision.[8] If no action is taken by the Commission on the request for reconsideration within the time allowed for ordering reconsideration, the petition for reconsideration "shall be deemed denied."[9]

Request for Reconsideration

CSDA filed this request on May 2, 2013 and contends that the Commission's decision and parameters and guidelines contain an error of law by omitting special districts from the definition of eligible claimants for this program. CSDA states the following:

> The Parameters and Guidelines for the CPRA . . . provides that "Any city, county, and city and county, or any 'school district' as defined in Government Code section 17519, which incurs increased costs as a result of this mandate, is eligible to claim reimbursement." It appears that the term "local agencies" was replaced by "Any city, county, and city and county" for eligible claimants. This language is inconsistent with the eligible claimants identified in the following documents, in which all eligible claimants and affected entities are repeatedly identified as "local agencies":
>
> - Test Claim filed by the County of Los Angeles (October 2002)
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> Government Code section 17518 defines "Local agency" to mean any city, county, special district, authority, or other political subdivision of the state. Thus, special districts have been incorrectly removed as eligible claimants. Therefore, we respectfully request that the Commission reconsiders [sic] this omission as allowed under Title 2, California Code of Regulations Section 1188.4 and includes [sic] special districts as eligible claimants to ensure they may continue to seek reimbursement for their adherence to the CPRA mandates.

Discussion

Issue: Staff recommends that the Commission grant CSDA's request for reconsideration.

For purposes of this hearing, the sole issue before the Commission is whether the Commission should grant the request for reconsideration and set the matter for a second hearing. For the reasons below, staff recommends that the Commission grant CSDA's request for reconsideration to address the issue of special districts as eligible claimants.

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[7] California Code of Regulations, title 2, section 1188.4(g).

[8] California Code of Regulations, title 2, section 1188.4(g)(2).

[9] California Code of Regulations, title 2, section 1188.4(a).

CSDA correctly asserts that the test claim filed by County of Los Angeles on the CPRA program was filed as a class action request for reimbursement on behalf of all "local agencies" eligible to claim reimbursement,[10] and that the statement of decision on the test claim for CPRA acknowledges that "local agencies" are required to comply with mandated activities.[11] Except for certain provisions relating only to school districts, the activities mandated by the CPRA, by definition, apply equally to all levels of government, including special districts. Government Code section 6252, a statute within the CPRA, defines "local agency" to include "a county; city, whether general law or chartered; city and county; school district; municipal corporation; *district*; political subdivision; or any board, commission or agency thereof; other local public agency; or entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Section 54952."

CSDA is also correct that the decision on the parameters and guidelines did not address the issue of eligible claimants, but was primarily focused on the scope of reimbursable activities. The draft staff analysis and proposed statement of decision and parameters and guidelines identified eligible claimants as counties, cities, and school districts as defined, but did not include special districts or the more general phrase "local agency as defined in Government Code section 17518," which includes special districts. No comments on the draft analysis for that issue were received. The final proposed decision did not address the issue of special districts as eligible claimants for this program, and kept the same language as the draft analysis identifying eligible claimants as counties, cities, and school districts as defined. The issue was not identified until CSDA filed its request for reconsideration on May 2, 2013.

The identification of eligible claimants in the decision and the parameters and guidelines cannot be corrected by staff as a "clerical error" under section 1188.2 of the regulations because the issue will require further legal analysis. The CPRA definition of "local agency" very broadly includes all local public agencies, whether or not they are eligible to claim reimbursement under article XIII B, section 6. Government Code section 17518 defines "local agency" for purposes of mandate reimbursement to mean "any city, county, *special district*, authority, or other political subdivision of the state." The courts have made clear, however, that despite the broad definition of "local agency" in section 17518, reimbursement under article XIII B, section 6 is required only when the local agency is subject to the tax and spend limitations of articles XIII A and XIII B, and only when the costs in question can be recovered solely from "proceeds of taxes," or tax revenues.[12] Article XIII B, section 6 does not require reimbursement when the costs are for expenses that are recoverable from sources other than tax revenue; i.e., service charges, fees, or

[10] Government Code section 17521 defines "test claim" to mean the "first claim filed with the commission alleging that a particular statute or executive order imposes costs mandated by the state . . ."

[11] Statement of Decision on test claim for CPRA, page 10.

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assessments.[13] There are many special districts that receive their revenue solely from fees, or receive some of their funding through fees that can be applied to this program. Thus, not all special districts are eligible to claim reimbursement under article XIII B, section 6 and some eligible districts may also have fee authority that applies to this program.

Therefore, the only way to properly address the issue and to correct the identification of eligible claimants is through this request for reconsideration.

Conclusion

Staff recommends that the Commission grant the CSDA's request for reconsideration and direct staff to schedule a second hearing on the merits of the request to determine if the statement of decision on the parameters and guidelines adopted April 19, 2013, contains the error of law alleged and to correct any errors of law in the decision and the parameters and guidelines.

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California Public Records Act

02-TC-10 and 02-TC-51

California Special Districts Association, Requester

TABLE OF CONTENTS

EXHIBIT A

California Special
Districts Association
CSDA
Districts Stronger Together

May 2, 2013

Ms. Heather Halsey
Executive Director
Commission on State Mandates
980 9th Street, Suite 300
Sacramento, CA 95814

RE: Reconsideration Request for Parameters and Guidelines of *California Public Records Act* as Adopted April 13, 2013

Dear Ms. Halsey:

The California Special Districts Association (CSDA), representing over a 1,000 special districts and affiliated organizations, respectfully requests reconsideration of the recently adopted Parameters and Guidelines for the *California Public Records Act (CPRA)*, 02-TC-10 and 02-TC-51. In reviewing the Parameters and Guidelines, we noted that under Section II the "Eligible Claimants" are no longer identified as "local agencies" and regrettably, the new definition omits special districts from the list of eligible claimants.

The Parameters and Guidelines for the CPRA (dated February 13, 2013 and adopted April 13, 2013) provides that "Any city, county, and city and county, or any 'school district' as defined in Government Code section 17519, which incurs increased costs as a result of this mandate, is eligible to claim reimbursement." It appears that the term "local agencies" was replaced by "Any city, county, and city and county" for eligible claimants. This language is inconsistent with the eligible claimants identified in the following documents, in which all eligible claimants and affected entities are repeatedly identified as "local agencies":

- Test Claim filed by the County of Los Angeles (October 2002),
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California Government Code section 17518 defines "Local agency" to mean any city, county, special district, authority, or other political subdivision of the state. Thus, special districts have been incorrectly removed as eligible claimants. Therefore, we respectfully request that the Commission reconsiders this omission as allowed under Title 2, California Code of Regulations Section 1188.4 and includes special districts as eligible claimants to ensure they may continue to seek reimbursement for their adherence to the CPRA mandates.

Please do not hesitate to contact me if you or your staff should have any questions regarding the above referenced issue at (916) 442-7887. Thank you for your consideration of, and attention to, our request for reconsideration.

Sincerely,

Dorothy Holzem
Legislative Representative

California Special Districts Association
1112 I Street, Suite 200
Sacramento, CA 95814
toll-free: 877.924.2732
t: 916.442.7887
f: 916.442.7889
www.csda.net

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Government Code Sections 6252, 6253, 6253.1, 6253.5, 6253.9, 6254.3, 6255, and 6259 Statutes 1975, Chapters 678 and 1246; Statutes 1977, Chapter 556; Statutes 1980, Chapter 535; Statutes 1982, Chapter 163; Statutes 1984, Chapters 802 and 1657; Statutes 1985, Chapter 1053; Statutes 1990, Chapter 908; Statutes 1992, Chapters 463 and 970; Statutes 1993, Chapter 926; Statutes 1994, Chapter 923; Statutes 1998, Chapter 620; Statutes 1999, Chapter 83; Statutes 2000, Chapter 982; Statutes 2001, Chapter 355; and Statutes 2002, Chapters 945 and 1073 Filed on October 15, 2002 (02-TC-10), and June 26, 2003 (02-TC-51) By County of Los Angeles and Riverside Unified School District, Claimants.	Case No.: 02-TC-10 and 02-TC-51 *California Public Records Act* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5. ARTICLE 7 (Adopted May 26, 2011, Corrected December 17, 2012) (Served December 17, 2012)

NOTICE OF CORRECTED STATEMENT OF DECISION

The attached is a corrected statement of decision prepared in accordance with Title 2, California Code of Regulations section 1188.2(b). The corrections made to the statement of decision correct the following clerical errors:

> The statement of decision expressly states that Government Code section 6254.3 only applies to "state employees, school districts and county offices of education." However, the statement of decision inadvertently used "K-14 district" instead of "K-12 school district" when further addressing Government Code section 6254.3. As a result, "K-14 district" is replaced with "K-12 school district" on pages 3, 4, 5, 18, 19, and 28 of the corrected statement of decision.

HEATHER HALSEY

12/17/12
Date

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Government Code Sections 6252, 6253, 6253.1, 6253.5, 6253.9, 6254.3, 6255, and 6259 Statutes 1975, Chapters 678 and 1246; Statutes 1977, Chapter 556; Statutes 1980, Chapter 535; Statutes 1982, Chapter 163; Statutes 1984, Chapters 802 and 1657; Statutes 1985, Chapter 1053; Statutes 1990, Chapter 908; Statutes 1992, Chapters 463 and 970; Statutes 1993, Chapter 926; Statutes 1994, Chapter 923; Statutes 1998, Chapter 620; Statutes 1999, Chapter 83; Statutes 2000, Chapter 982; Statutes 2001, Chapter 355; and Statutes 2002, Chapters 945 and 1073 Filed on October 15, 2002 (02-TC-10), and June 26, 2003 (02-TC-51) By County of Los Angeles and Riverside Unified School District, Claimants.	Case No.: 02-TC-10 and 02-TC-51 *California Public Records Act* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5. ARTICLE 7 *(Adopted on May 26, 2011, Corrected on December 17, 2012)*

STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on May 26, 2011. Keith Petersen appeared on behalf of Riverside Unified School District. Leonard Kaye and Lieutenant Judy Gerhardt appeared on behalf of Los Angeles County and Los Angeles County Sheriff's Department. Donna Ferebee appeared on behalf of the Department of Finance.

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission adopted the staff analysis at the hearing by a vote of 6-0 to partially approve this test claim.

Summary of Findings

This consolidated test claim filed by County of Los Angeles and Riverside Unified School District addresses activities associated with the California Public Records Act (CPRA) (Gov. Code, § 6250 et seq.), which provides for the disclosure of public records kept by state, local agencies, kindergarten through 12th grade school districts and community college districts (K-14

districts), and county offices of education. These activities include: (1) providing copies of public records with portions exempted from disclosure redacted; (2) notifying a person making a public records request whether the requested records are disclosable; (3) assisting members of the public to identify records and information that are responsive to the request or the purpose of the request; (4) making disclosable public records in electronic formats available in electronic formats; and (5) removing an employee's home address and home telephone number from any mailing list maintained by the agency when requested by the employee.

In 2004, California voters approved Proposition 59, to incorporate the right of public access to information contained in the CPRA and other open meetings and public records laws, into the California Constitution.

The Commission makes the following findings regarding the test claim statutes:

Public records open to inspection (Gov. Code, §§ 6252, 6253, and 6253.9)

Section 6253 sets forth the right of every person to inspect any public record with exceptions, and the duties of public agencies that receive a request to inspect public records. Section 6253.9 addresses the form of disclosure of public records that are in an electronic format, and sets limits on the costs charged to the requester of information in an electronic format.

Some of the activities imposed by sections 6253 and 6253.9 are not new activities. However, sections 6253 and 6253.9 do impose state-mandated new programs or higher levels of service on local agencies and K-14 districts.

Assistance to members of the public (Gov. Code, § 6253.1)

Section 6253.1 addresses the duty of a public agency to assist members of the public that request to inspect a public record. Section 6253.1 imposes a state-mandated new program or higher level of service on local agencies and K-14 districts.

Initiative, referendum, recall petitions, and petitions for reorganization of K-14 districts (Gov. Code, § 6253.5)

Section 6253.5 excludes initiatives, referenda, recall petitions, petitions for reorganization of K-14 districts, and any memoranda prepared by the county elections officials in the examination of the petitions indicating which registered voters have signed particular petitions from being deemed public records and provides that such records shall not be open to inspection. Section 6253.5 also provides exceptions to the exclusion, in which specified individuals are permitted to examine such records.

The plain language of section 6253.5 does not impose any activities on K-14 districts. In addition, K-14 districts are not required to seek permission to examine the documents addressed in section 6253.5, and as a result, section 6253.5 does not impose a state-mandated new program or higher level of service.

Disclosure of home addresses and phone numbers of school district and county office of education employees (Gov. Code, § 6254.3)

Section 6254.3 provides that the home addresses and home telephone numbers of state employees and employees of a school district or county office of education shall not be deemed to be public records and prohibits such records from being open to public inspection.

Section 6254.3 authorizes the state, school districts, and county offices of education, to make such information open to public inspection in limited circumstances.

Section 6254.3 imposes a state-mandated new program or higher level of service on ~~K-14~~K-12 school districts and county offices of education to remove the home address and telephone number of an employee from any mailing lists that the ~~K-14~~K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-14 district or county office of education to contact the employee.

Justification for withholding of records (Gov. Code, § 6255)

Section 6255 requires local agencies and K-14 districts to provide a justification for withholding records for which a public records request was made, but providing a justification for withholding records is not a new requirement.

Section 6255 imposes a state-mandated new program or higher level of service to respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part.

Court costs and attorney fees (Gov. Code § 6259)

Section 6259 addresses the orders of the court in proceedings brought by a person seeking to enforce his or her right to inspect or to receive a copy of any public record or class of public records that a public agency has refused to disclose. Section 6259 requires the court to award court costs and attorney fees to a plaintiff that prevails in litigation alleging the improper withholding of public records by a public agency.

The payment of court costs and attorney fees is not a service to the public. Instead it is a consequence for failing to provide a service to the public when required by law, and as a result, does not constitute a program within the meaning of article XIII B, section 6 of the California Constitution.

Also, the language of section 6259 does not require local agencies or K-14 districts to engage in litigation. Even if the requirement were read into section 6259, section 6259 has not changed, as relevant to this discussion, since 1968. As a result, engaging in litigation is not a state-mandated new program or higher level of service imposed by section 6259.

Costs mandated by the state

Government Code section 17556, subdivision (f), prohibits the Commission from finding costs mandated by the state for duties that are necessary to implement or expressly included in a ballot measure approved by the voters in a state-wide or local election. In addition, Government Code section 17556, subdivision (d), prohibits the Commission from finding costs mandated by the state where a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

Neither subdivision (f) or (d), preclude the Commission from finding costs mandated by the state because there is no evidence in the law or in the record that the state-mandated activities are necessary to implement Proposition 59, and there is insufficient fee authority to cover the costs of all state-mandated activities. The fee authority applies only to the direct costs of providing an electronic copy to a person pursuant to Government Code section 6254.3, or the direct cost plus the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record if: (1) the public agency would be required to produce a copy of an

electronic record and the record is one that is produced only at otherwise regularly scheduled intervals; or (2) the request would require data compilation, extraction, or programming to produce the record. Under article XIII B, section 6, all costs mandated by the state, including direct and indirect costs, are reimbursable. However, the fee authority provided by the CPRA constitutes offsetting revenue that will be identified in the parameters and guidelines.

For the reasons discussed above, the Commission finds that Government Code sections 6253, 6253.1, 6253.9, 6254.3, and 6255 impose reimbursable state-mandated programs on local agencies and K-14 districts within the meaning of article XIII B, section 6 of the California Constitution, and Government Code section 17514, for the following specific new activities:

1. If requested by a person making a public records request for a public record kept in an electronic format, provide a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. (Gov. Code, § 6253.9, subd. (a)(2) (Stats. 2000, ch. 982).)
2. Within 10 days from receipt of a request for a copy of records determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the local agency or K-14 district and notify the person making the request of the determination and the reasons for the determination. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)
3. If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 district due to "unusual circumstances" as defined by Government Code section 6253, subdivision (c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)
4. When a member of the public requests to inspect a public record or obtain a copy of a public record:
    a. assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated;
    b. describe the information technology and physical location in which the records exist; and
    c. provide suggestions for overcoming any practical basis for denying access to the records or information sought.

    These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1, subds. (a) and (d) (Stats. 2001, ch. 355).)
5. For ~~K-14~~K-12 school districts and county offices of education only, redact or withhold the home address and telephone number of employees of ~~K-14~~K-12 school districts and county offices of education from records that contain disclosable information.

This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to ~~K-14~~K-12 school district and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents. (Gov. Code, § 6254.3, subd. (a) (Stats. 1992, ch. 463).)

6. For ~~K-14~~K-12 school districts and county offices of education only, remove the home address and telephone number of an employee from any mailing lists that the ~~K-14~~K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the ~~K-14~~K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3, subd. (b) (Stats. 1992, ch. 463).)
7. If a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255, subd. (b) (Stats. 2000, ch. 982).)

In addition, the Commission concludes that the fee authority set forth in Government Code section 6253.9, subdivisions (a)(2) and (b), as added by Statutes 2000, chapter 982, is offsetting revenue and shall be deducted from the costs of providing a copy of a disclosable electronic record in the electronic format requested.

Finally, the Commission finds that any other test claim statutes and allegations not specifically approved above, do not impose a reimbursable state mandated program subject to article XIII B, section 6 of the California Constitution.

BACKGROUND

This test claim addresses activities associated with the California Public Records Act (CPRA) (Gov. Code, § 6250 et seq.), which provides individuals in California access to information concerning the conduct of the people's business. Prior to the adoption of the CPRA in 1968, the law governing disclosure of public records consisted of a "hodgepodge of statutes and court decisions."[1] The CPRA was adopted in order to more clearly define what constitutes a "public record" open to inspection and what information can be or is required to be withheld from disclosure. Since the 1968 adoption of the CPRA there have been numerous amendments to the CPRA; some of these amendments are the subject of this test claim.

On October 15, 2002 the County of Los Angeles filed the *California Public Records Act: Disclosure Procedures* (02-TC-10) test claim seeking reimbursement for costs associated with the procedures used by counties for responding to public records requests. The County of Los Angeles alleges reimbursable costs for activities such as: (1) assisting members of the

[1] *Los Angeles Unified School Dist. v. Superior Court* (2007) 151 Cal.App.4th 759, 765.

public to identify records and information that are responsive to the request or the purpose of the request; (2) estimate a date and time when the disclosable records will be made available; (3) respond in writing to a written request for inspection or copies of public records when the request is denied in whole or in part; (3) make information that constitutes an identifiable public record kept in electronic format available in the electronic format which it is held; and (4) include as a writing that can constitute a "public record" any photocopy, transmission by electronic mail or facsimile, and any record thereby created, regardless of the manner in which the record has been stored.[2]

On June 26, 2003, Riverside Unified School District filed the *California Public Records Act* (02-TC-51) test claim, which similarly seeks reimbursement for costs associated with complying with the CPRA. Riverside Unified School District alleges reimbursable state-mandated costs for K-14 districts and county offices of education to engage in activities including: (1) providing redacted copies of requested documents deleting portions exempted by law; (2) providing copies of public records to the public, including the determination and collection of the fee; (3) promptly notifying a person making a request for a copy of records, within 10 days from receipt of the request, of the determination of whether the requested records are disclosable records; and (4) removing an employee's home address and home telephone number from any mailing list maintained by the agency when requested by that employee.[3]

In 2004, California voters approved Proposition 59, which amended article I, section 3 of the California Constitution to include the right of public access to writings of government officials. In light of Proposition 59, it was determined that the *California Public Records Act: Disclosure Procedures* (02-TC-10) test claim and the *California Public Records Act (K-14)* (02-TC-51) test claim would require consideration of Government Code section 17556, subdivision (f), which provided that the Commission shall not find costs mandated by the state if the Commission finds:

> The statute or executive order imposes duties that are necessary to implement, reasonably within the scope of, or expressly included in, a ballot measure approved by voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.[4]

However, on March 13, 2007, Government Code section 17556, subdivision (f), was found unconstitutional by the superior court in *California School Boards Association (CSBA), et al. v. Commission on State Mandates, et al.* [No. 06CS01335*]*. The court's judgment enjoined the Commission from taking any action to implement Government Code section 17556, subdivision (f). This decision was appealed, and as a result, on August 2, 2007 the test claims were removed from the Commission's hearing calendar until a final court decision in *California School Boards Association, et al. v. Commission on State Mandates, et al*.

On March 9, 2009, the Court of Appeal found Government Code section 17556, subdivision (f), constitutional except for the language "reasonably within the scope of." As a result of the

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[2] 02-TC-10 test claim, *supra*, pgs. 1-9.

[3] 02-TC-51 test claim, *supra*, pgs. 26-28.

[4] Government Code section 17556, subdivision (f), as amended by Statutes 2006, chapter 538.

court's decision, Government Code section 17556, subdivision (f) provides that the Commission shall not find costs mandated by the state if the Commission finds:

> The statute or executive order imposes duties that are necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.[5]

On November 2, 2010 the Commission consolidated the *California Public Records Act: Disclosure Procedures* (02-TC-10) and *California Public Records Act (K-14)* (02-TC-51) test claims to form the consolidated *California Public Records Act* (02-TC-10 and 02-TC-51) test claim.

A. Claimants' Position

The claimants allege that the test claim statutes impose reimbursable state-mandated activities. Activities which are alleged to have resulted in reimbursable costs include: assisting members of the public in making an effective public records request, disclosing records in an electronic format, redacting information exempt from disclosure, limiting disclosure of K-14 district employees' home address and telephone numbers, removing a K-14 district employee's home address and telephone numbers when requested by the employee, and paying attorney fees to a prevailing plaintiff that brought suit against a K-14 district for improperly withholding public records.[6]

On March 25, 2004, the California Community Colleges Chancellor's Office (Chancellor's Office) indicated that it would defer to the analysis of the Department of Finance (Finance) regarding the test claim, because the CPRA applies equally to all government entities, and as a result, there is nothing unique to the college districts that requires a response from the Chancellor's Office. Interpreting this as a comment that districts are not entitled to reimbursement, the school district claimant, Riverside Unified School District, argues that the Chancellor's Office comments must be disregarded. The claimant states:

> The comment that the statute in question applies equally to all government entities is not one of the valid exceptions to mandate reimbursement set forth in Government Code section 17556. Therefore, it must be disregarded.
>
> If, by chance, CCC intended to object to the test claim on the grounds that the statute in question is a law of general application, that too must fail. [¶] . . . . [A] law of general application must make local agencies indistinguishable from private employers. The test claim statutes apply only to school districts, county offices of education and community college districts and not to private employers.[7]

On January 18, 2011 the County of Los Angeles submitted comments in response to the Commission's request for comments regarding the effect of Proposition 59 on the consolidated

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[5] Government Code section 17556, subdivision (f), as amended by Statutes 2010, chapter 719.

[6] 02-TC-10 Test Claim, *supra*, 02-TC-51 Test Claim Filing, *supra*.

[7] Claimant response to the Chancellor's Office Comments, dated April 30, 2004.

California Public Records Act (02-TC-10 and 02-TC-25) test claim. The County of Los Angeles argues:

> [T]he public records act requirements included in the test claim legislation were in addition to those found in prior law and were not available or necessary in implementing the . . . declaration of fundamental rights in the California Public Records Act of 1968 and Proposition 59. In addition, the test claim legislation was not expressly included in Proposition 59.
>
> Accordingly, the County finds that the test claim legislation did not impose duties that are necessary to implement, or are expressly included in, the Proposition 59 ballot measure approved by the voters. Consequently, the ballot initiative funding disclaimer cannot be applied to disqualify reimbursement of the County's costs . . . .[8] (Original underline.)

On April 18, 2011 both claimants submitted comments in response to the draft staff analysis, which will be addressed in the discussion below.[9]

B. Department of Finance's Position (Finance)

On November 20, 2002, Finance submitted comments in response to the unconsolidated *California Public Records Act: Disclosure Procedures* (02-TC-10) test claim. Finance found that a portion of the test claim may be a state mandate. Finance states:

> The test claim legislation specifies the type of response that the claimant must give to the requestor and the timelines that must be met which could potentially result in a greater number of staff hours spent researching and helping requestors. Anything above and beyond staff time dedicated to expediting and or [*sic*] researching requests would not be considered state-mandated activities, and additional activities and equipment noted by the claimant are considered discretionary and therefore not reimbursable.[10]

On January 14, 2011, Finance submitted comments in response to the Commission's request for comments regarding the effect of Proposition 59 on the consolidated *California Public Records Act* (02-TC-10 and 02-TC-51) test claim. Finance argues that the Commission should find that there are no costs mandated by the state because the test claim statutes are necessary to implement Proposition 59.

On April 19, 2011, Finance submitted comments in response to the draft staff analysis, which echo the arguments made in Finance's January 14, 2011 comments.[11]

C. Chancellor's Office Position

[8] Claimant comments in response to request for comments, dated January 18, 2011.

[9] Claimants' responses to draft staff analysis, *supra*.

[10] Finance comments on 02-TC-10, *supra*.

[11] Finance comments on draft staff analysis, *supra*.

On March 25, 2010, the Chancellor's Office submitted comments in response to the unconsolidated *California Public Records Act (K-14)* (02-TC-51) test claim. The Chancellor's Office states in relevant part:

> The Chancellor's Office chooses not to respond to this test claim. We don't have anything to add to this issue, because the statute in question applies equally to all government entities and there's nothing unique to college districts that requires a response. Therefore, we defer to whatever analysis is provided to you by the Department of Finance.[12]

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution[13] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[14] "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[15] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.[16] In addition, the required activity or task must be new, constituting a "new program," and it must create a "higher level of service" over the previously required level of service.[17]

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state

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[12] Chancellor's Office comments on 02-TC-51 test claim, dated March 25, 2004.

[13] California Constitution, article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

[14] *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th727, 735 (*Kern High School Dist*.).

[15] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

[16] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

[17] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist*.); *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

policy, but does not apply generally to all residents and entities in the state.[18] To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.[19] A "higher level of service" occurs when there is "an increase in the actual level or quality of governmental services provided."[20] Finally, the newly required activity or increased level of service must impose costs mandated by the state.[21]

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[22] In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[23]

A. Some of the test claim statutes impose state-mandated new programs or higher levels of service subject to article XIII B, section 6 of the California Constitution

The following discussion will introduce each test claim statute or groups of test claim statutes with a header that describes the content of the statutes. The discussion will then analyze whether each statute or groups of statutes under the header impose state-mandated new programs or higher levels of service.

Public records open to inspection (Gov. Code, §§ 6252, 6253, and 6253.9)

Section 6252 sets forth the definitions of terms used in the CPRA. Section 6253 sets forth the right of every person to inspect any public record, with exceptions, and the duties of public agencies, state and local, and K-14 districts that receive a request to inspect public records. Section 6253.9 addresses the form of disclosure of public records that are in an electronic format, and sets limits on the costs charged to the requester of information in an electronic format.

Interpreting statutes begins with examining the statutory language, giving the words their ordinary meaning, and if the words are unambiguous the plain meaning of the language

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[18] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 (*Los Angeles I*); *Lucia Mar, supra,* 44 Cal.3d 830, 835).

[19] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra,* 44 Cal.3d 830, 835.

[20] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 877.

[21] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

[22] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

[23] *County of Sonoma, supra,* 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

governs.[24] The plain language of Government Code sections 6253 and 6253.9 require local agencies and K-14 districts to engage in the following activities:

1. Make public records open to inspection at all times during the office hours of the local agency or K-14 district, by every person, except for public records exempted from disclosure or prohibited from disclosure. (Gov. Code, § 6253, subd. (a) (Stats. 2001, ch. 982); and Gov. Code, § 6253.9, subd. (a)(1) (Stats. 2000, ch. 982).)
2. Make any reasonably segregable portion of a record available for inspection after the deletion of the portions that are exempted by law. (Gov. Code, § 6253, subd. (a) (Stats. 2001, ch. 982).)
3. Provide a copy, or exact copy unless impractical, of disclosable records, upon request for a copy or exact copy of records that reasonably describes an identifiable record or records. (Gov. Code, § 6253, subd. (b) (Stats. 2001, ch. 982).)
4. If requested by a person making a public records request for a public record kept in an electronic format, provide a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. (Gov. Code, § 6253.9, subd. (a)(2) (Stats. 2000, ch. 982).)
5. Within 10 days from receipt of a request for a copy of records determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the local agency or K-14 district and notify the person making the request of the determination and the reasons for the determination. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)
6. If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 district, due to "unusual circumstances" as defined by Government Code section 6253, subdivision (c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

The Commission finds that the above activities are mandated by the state.

In addition, the claimants argue that the provision of a copy of disclosable records pursuant to Government Code section 6253, subdivision (b), includes "the determination and collection of the fee" that local agencies and K-14 districts are authorized to charge for duplication of public records.[25] Subdivision (b) provides in relevant part:

> Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon a payment of fees covering direct costs of duplication, or a statutory fee if applicable.

[24] *Estate of Griswold* (2001) 25 Cal.4th 904, 910-911.

[25] 02-TC-51 test claim, *supra*, p. 26.

The claimants argue, "The unambiguous plain meaning of this Section is that collection of the fee is a condition precedent to providing the records, so it is a necessary activity to comply with the mandate to provide the records. Furthermore, to collect the fee, the amount must be determined." However, the plain language of subdivision (b) does not require public agencies to determine or collect a fee. Instead, it speaks to the timing of the mandated activity of providing a copy of a public record. In addition, under Government Code section 6253, subdivision (e), which allows local agencies and K-14 districts to adopt requirements that provide greater access to records, local agencies and K-14 districts can waive fees, and thus, the collection and determination of a fee is not a necessary activity to comply with the mandate to provide public records.[26] As a result, the Commission finds that local agencies and K-14 districts are not mandated to determine or collect fees for the duplication of public records.

The Commission further finds that the above state-mandated activities carry out the governmental function of providing a service to the public by providing access to information regarding the business of the public, and as a result, constitute a program within the meaning of article XIII B, section 6 of the California Constitution. Although the above activities constitute "programs" it is necessary to determine whether they are new in comparison with the legal requirements in effect immediately before the enactment of the test claim legislation. The following discussion will address each activity in the order listed above.

Since 1968, local agencies and K-14 districts were required to make public records open to inspection at all times during the office hours of the local agencies and K-14 districts, by every person, except for public records exempted from disclosure or prohibited from disclosure.[27] However, the claimants argue that "public records" that are required to be open for inspection did not include records made by "photocopying, transmitting by electronic mail or facsimile [or]. . . . any record thereby created, regardless of the manner in which the record has been stored," until the definition of "writing" as used in the CPRA was amended in 2002 to specifically include these methods of keeping information.[28] Thus, the claimants assert that publicly disclosing information kept in these formats is a new activity.

However, in 1970 the Legislature defined "public records" to include:

> [A]ny writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency *regardless of physical form or characteristics*.[29] (Italics added.)

"Writing" as used in the CPRA was defined to include:

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[26] *North County Parents Organization v. Dept. of Education* (4th. Dist. 1994) 23 Cal.App.4th 144, 148. The court, in discussing former Government Code section 6253.1 (currently Government Code section 6253, subdivision (e)) found that, "This section gives an agency power to 'adopt requirements for itself which allow greater access to records than prescribed by the minimum standards set forth in this chapter.' The trial court apparently concluded that this provision permits an agency to waive or reduce its fees. We agree. A reduction in copy fee permits 'greater access' to records."

[27] Former Government Code section 6253 (Stats. 1968, ch.1473).

[28] 02-TC-10 test claim, *supra*, p. 8, citing to Statutes, 2002, chapter 945.

[29] Former Government Code section 6252, subdivision (d).

> [H]andwriting, typewriting, printing, photostating, photographing, and *every other means of recording* upon *any form of communication or representation*, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and *other documents*.[30] (Italics added.)

The above language indicates that the Legislature intended public records to include every conceivable kind of record that is involved in the governmental process. To find otherwise would conflict with the purpose and focus of the CPRA, which is to make disclosable *information* open to the public, not simply the documents prepared, owned, used, or retained by a public agency.[31] This interpretation is consistent with the court's discussion of what constitutes a public record in *San Gabriel Tribune v. Superior Court*, which included in its discussion the following description by the Assembly Committee on Statewide Information Policy:

> This definition [of what constitutes a public record] is intended to cover every conceivable kind of record that is involved in the governmental process and will pertain to any new form of record-keeping instrument as it is developed.[32]

As a result, the Commission finds that making public records open to inspection by every person at all times during the office hours of the local agency and K-14 district does not constitute a new program or higher level of service regardless of the form which the public records are kept.

The claimants also argue that prior to 1981 state and local agencies and K-14 districts were not required to provide redacted copies of requested documents.[33] In 1981, the CPRA was specifically amended to provide, "Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt by law."[34] However, this amendment only codified the interpretation of the CPRA accorded to it by case law. Prior to the 1981 amendment courts already held that the CPRA requires segregation of exempt materials from nonexempt materials contained in a single document and to make the nonexempt materials open for inspection and copying.[35] In 1979, after noting that the focus of the CPRA is information and not documents the court in *Nor. Cal. Police Practices Project v. Craig* concluded:

> [W]here nonexempt materials are not inextricably intertwined with exempt materials and are otherwise reasonably segregable therefrom, segregation is

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[30] Former Government Code section 6252, subdivision (e).

[31] *Nor Cal. Police Practices* (1979) 90 Cal.App.3d 116, p. 123-124.

[32] *San Gabriel Tribune v. Superior Court* (1983) 143 Cal.App.3d 762, 774, citing to Volume 58 Opinions of the Attorney General 629, 633-634 (1975), which cites to Assembly Committee on Statewide Information Policy California Public Records Act of 1968 (1 Appendix to Journal of Assembly 7, Reg. Sess. (1970), See also AG opinion 53 Ops.Cal.Atty.Gen. 136, 140-143).

[33] 02-TC-51, *supra*, pgs. 11 and 26, citing to Statutes 1981, chapter 968.

[34] Former Government Code section 6257 (Stats. 1981, ch. 968).

[35] *Nor Cal. Police Practices* (1979) 90 Cal.App.3d 116, p. 123-124.

> required to serve the objective of the [CPRA] to make public records available for public inspection and copying unless a particular statute makes them exempt.[36]

As a result, the Commission finds that the general duty to make any reasonably segregable portion of a record available for inspection after the deletion of the portions that are exempted by law does not constitute a new program or higher level of service subject to articles XIII B, section 6 of the California Constitution.

In regard to providing copies or exact copies of public records upon a request that reasonably describes an identifiable record, public agencies have been required to engage in this activity since the 1968 enactment of the CPRA. Former Government Code sections 6256 and 6257 provided:

> 6256. Any person may receive a copy of any identifiable public record or shall be provided with a copy of all information contained therein. Computer data shall be provided in a form determined by the agency.
>
> 6257. A request for a copy of an identifiable public record or information produced therefrom, or certified copy of such record, shall be accompanied by payment of a reasonable fee or deposit established by the state or local agency, or the prescribed statutory fee, where applicable.[37]

A "certified copy" is a duplicate of an original document, certified as an exact reproduction of the original.[38] Thus, since 1968 public agencies were required to provide copies or exact copies of public records upon a request of identifiable public records. As a result, the Commission finds that providing a copy, or exact copy unless impractical, of disclosable records, upon request for a copy or exact copy of records that reasonably describes an identifiable record, does not constitute a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

Although the Commission has found that making public records, including records in an electronic format, *open to inspection* at all times does not constitute a new program or higher level of service, *providing an electronic copy* of a public record kept in an electronic format does constitute a new program or higher level of service. Prior to 2000, public agencies were not required to provide the public with an *electronic* copy of a public record kept in an electronic format. Instead, public agencies were given discretion to provide "[c]omputer data . . . in a form determined by the agency."[39] One of the purposes for enacting section 6253.9, and requiring public agencies to provide an electronic copy, was to substantially increase the availability of public records to the public and to reduce the cost and inconvenience to the public associated

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[36] *Ibid*. This interpretation of the CPRA is retroactive to the initial enactment of the CPRA in 1968 as it involves no novel or unforeseeable judicial expansion of the statutory language in question. For retroactivity of judicial statutory interpretation see *County of San Diego v. State Bd. of Control* (1984) 161 Cal.App.3d 868, 870.

[37] Former Government Code sections 6256 and 6257 (Stats. 1968, ch. 1473).

[38] Black's Law Dictionary (Seventh Ed. 1999) p. 337.

[39] Former Government Code section 6253, subdivision (b) (Stats. 1998, ch. 620).

with large volumes of paper records.[40] In essence, the intent was to provide a higher level of the service of providing public records to the public. As a result, the Commission finds that the requirement to provide an electronic copy of a public record kept in an electronic format constitutes a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

The claimants have pled the activities mandated by Government Code section 6253, subdivision (c), relating to providing a person making a public records request notice of the determination of whether records are disclosable and whether an extension is needed by the public agency to make a determination, as added in 1981.[41] Immediately prior to 1981, public agencies were not required to engage in these activities. As a result, the Commission finds that the activities mandated by Government Code section 6253 constitute a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

In summary, the Commission finds the following activities constitute state-mandated new programs or higher levels of service subject to article XIII B, section 6 of the California Constitution.

1. If requested by a person making a public records request for a public record kept in an electronic format, provide a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. (Gov. Code, § 6253.9, subd. (a)(2) (Stats. 2000, ch. 982).)
2. Within 10 days from receipt of a request for a copy of records determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the local agency or K-14 district, and notify the person making the request of the determination and the reasons for the determination. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)
3. If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 district due to "unusual circumstances" as defined by Government Code section 6253, subdivision (c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

Assistance to members of the public (Gov. Code, § 6253.1)

Section 6253.1 addresses the duty of a public agency to assist members of the public that request to inspect a public record. The Commission finds that section 6253.1 mandates local agencies and K-14 districts to engage in the following activities:

[40] Assembly Committee on Governmental Organization, third reading analysis of AB 2799 (1999-2000 Regular Session) as amended July 6, 2000. See also, Senate Rules Committee, Office of Senate Floor Analyses, third reading analysis of AB 2799 (1999-2000 Regular Session) as amended July 6, 2000.

[41] 02-TC-51 test claim, *supra*, pgs. 11 and 26-27. Statutes 1981, chapter 968.

When a member of the public requests to inspect a public record or obtain a copy of a public record:

a. assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated;

b. describe the information technology and physical location in which the records exist; and

c. provide suggestions for overcoming any practical basis for denying access to the records or information sought.

This duty is not triggered if: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1, subds. (a) and (d) (Stats. 2001, ch. 355).)

The claimants pled Government Code section 6253.1 as added in 2001.[42] Immediately before 2001, local agencies and K-14 districts were not required to engage in the activities mandated by section 6253.1. In addition, the above activities are unique to public agencies and implement the state policy of increasing access to information regarding the people's business.[43] As a result, the Commission finds that the activities mandated by Government Code 6253.1 constitute a new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

Initiative, referenda, recall petitions, and petitions for reorganization of K-14 districts (Gov. Code, § 6253.5)

Section 6253.5 excludes initiatives, referenda, recall petitions, petitions for reorganization of K-14 districts, and any memoranda prepared by the county elections officials in the examination of the petitions indicating which registered voters have signed particular petitions from being deemed public records and provides that such records shall not be open to inspection. Section 6253.5 also provides exceptions to the exclusion, in which specified individuals are permitted to examine such records.

The claimants assert that section 6253.5 requires K-14 districts to engage in the following activity:

> [W]hen necessary, [examine] petitions for the district when petitions are filed to fill vacancies on the governing board and petitions for recall, after obtaining approval of the appropriate superior court.[44]

However, section 6253.5 does not impose any requirements on K-14 districts. As described above, section 6253.5 prohibits disclosure of petitions, and provides exceptions to this

[42] Statutes 2001, chapter 355.

[43] Government Code section 6250, which states that access to information concerning the people's business is a fundamental and necessary right of every person in this state.

[44] 02-TC-51 test claim, *supra*, p. 28.

prohibition. One of the exceptions allows a K-14 district attorney to review a petition upon the approval of the appropriate superior court. This exception does not require K-14 districts to seek this approval. As a result, the Commission finds that Government Code section 6253.5 does not impose any state-mandated new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

Disclosure of home addresses and phone numbers of school district and county office of education employees (Gov. Code, § 6254.3)

Section 6254.3 only applies to state employees, school districts, and county offices of education. Section 6254.3 provides that the home addresses and home telephone numbers of state employees and employees of a school district or county office of education shall not be deemed to be public records and prohibits such records from being open to public inspection. Section 6254.3 authorizes the state, school districts, and county offices of education, to make such information open to public inspection in limited circumstances.

Specifically, section 6254.3 provides:

> (a) The home addresses and home telephone numbers of state employees and employees of a school district or county office of education shall not be deemed to be public records and shall not be open to public inspection, except that disclosure of that information may be made as follows:
>
> (1) To an agent, or a family member of the individual to whom the information pertains.
>
> (2) To an officer or employee of another state agency, school district, or county office of education when necessary for the performance of its official duties.
>
> (3) To an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed.
>
> (4) To an agent or employee of a health benefit plan providing health services or administering claims for health services to state, school districts, and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents.
>
> (b) Upon written request of any employee, a state agency, school district, or county office of education shall not disclose the employee's home address or home telephone number pursuant to paragraph (3) of subdivision (a) and an agency shall remove the employee's home address and home telephone number from any mailing list maintained by the agency, except if the list is used exclusively by the agency to contact the employee.

Although, the language of subdivision (a) is prohibitory in nature, section 6254.3 must be read in the context of the whole statutory scheme and not as individual parts or words standing alone.[45] As discussed above, section 6253 of the CPRA requires the redaction of information that is

[45] *Fontana Unified School Dist. v. Burman* (1988) 45 Cal.3d 208, 218.

exempted or prohibited from disclosure from records that contain disclosable information. Section 6254.3 prohibits the disclosure of the home address and telephone number of employees of K-14 school districts and county offices of education. Thus, if a record that contains disclosable information also contains the addresses and telephone numbers of employees of K-14 school districts and county offices of education, the addresses and telephone numbers must be redacted from the record, except in the limited circumstances listed in section 6254.3, subdivisions (a)(1)-(4), in which ~~K-14~~K-12 school districts and county offices of education have the discretion to release this information.

Pursuant to the plain language of the statute read in light of the whole CPRA, the Commission finds that section 6254.3 requires ~~K-14~~K-12 school districts and county offices of education to engage in the following activities:

1. Redact or withhold the home address and telephone number of employees of ~~K-14~~K-12 school districts and county offices of education from records that contain disclosable information.

   This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to ~~K-14~~K-12 school district and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents.

2. Remove the home address and telephone number of an employee from any mailing list maintained by the ~~K-14~~K-12 school district or county office of education if requested by the employee, except for lists used exclusively by the ~~K-14~~K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3, subd. (b) (Stats. 1992, ch. 463).)

In order to determine whether the activity required by section 6254.3 constitutes a state-mandated activity it is necessary to look at the underlying program to determine if the claimant's participation in the underlying program is voluntary or legally compelled.[46] Here, ~~K-14~~K-12 school districts and county offices of education are required to remove the home address and telephone number of an employee from *any* mailing list maintained by the ~~K-14~~K-12 school districts or county offices of education if requested by the employee. "Any mailing list" includes mailing lists that ~~K-14~~K-12 school districts and county offices of education are legally required to maintain and those voluntarily maintained by the ~~K-14~~K-12 school districts or county offices of education. In regard to mailing lists that ~~K-14~~K-12 school districts and county offices of education voluntarily maintain, the requirement to remove from the mailing list the home address and telephone number of an employee that requests the removal is triggered by the decision by ~~K-14~~K-12 school districts and county offices of education to voluntarily maintain a mailing list.

[46] *Kern High School Dist., supra*, 30 Cal.4th 727, 743.

As a result, the Commission finds in regard to voluntarily maintained mailing lists, the activity required by section 6254.3 is not a state-mandated activity. However, the Commission finds that the following requirements do constitute state-mandated activities:

1. For ~~K-14~~K-12 school districts and county offices of education only, redact or withhold the home address and telephone number of employees of ~~K-14~~K-12 school districts and county offices of education from records that contain disclosable information.

   This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to ~~K-14~~K-12 school district and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents. (Gov. Code, § 6254.3, subd. (a) (Stats. 1992, ch. 463).)

2. For ~~K-14~~K-12 school districts and county offices of education only, remove the home address and telephone number of an employee from any mailing lists that the ~~K-14~~K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the ~~K-14~~K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3, subd. (b) (Stats. 1992, ch. 463).)

The claimants have pled section 6254.3 as last amended in 1992.[47] Immediately prior to the 1992 amendment, section 6254.3 only applied to state employers and state employees.[48] In addition, although the general duty to redact information that is exempt or prohibited from disclosure existed prior to the adoption of section 6254.3, the specific duty to redact the home address and telephone number of an employee of a ~~K-14~~K-12 school district or county office of education did not exist. Thus, the scope of what must be withheld from disclosure, and as a result, redacted from records containing disclosable information increased. As a result, the state-mandated activities imposed by section 6254.3 are new.

In addition, these mandates impose requirements that are unique to public agencies and implement the state policy of increasing access to information regarding the people's business while being mindful of the right of individuals to privacy.[49] As a result, the Commission finds

[47] Statutes 1992, chapter 463.

[48] Government Code section 6254.3 as added by Statutes 1984, chapter 1657.

[49] Government Code section 6250, which states, "In enacting [the CPRA], the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state."

that Government Code section 6254.3 imposes state-mandated new programs or higher levels of service subject to article XIII B, section 6 of the California Constitution:

Justification for withholding of records (Gov. Code, § 6255)

Section 6255 addresses the provision of a justification for withholding records for which a public records request was made. The Commission finds that section 6255 mandates local agencies and K-14 districts to engage in the following activities:

1. Justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. (Gov. Code, § 6255, subd. (a).)
2. If a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255, subd. (b).)

The claimants pled section 6255 as last amended in 2000.[50] Since 1968, section 6255 required the justification of withholding records by demonstrating that the record in question is exempt or that the public interest served by not disclosing the record outweighs the public interest served by disclosing the record. As a result, that state-mandated activity does not constitute a new program or higher level of service.

However, immediately prior to the amendment of section 6255 in 2000, districts were not required to respond to written requests *in writing* that includes a determination that the request is denied. In addition, this mandate imposes requirements that are unique to public agencies and implement the state policy of increasing access to information regarding the people's business.[51] As a result, the Commission finds that Government Code section 6255, subdivision (b), imposes the following state-mandated new program or higher level of service subject to article XIII B, section 6 of the California Constitution:

> If a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255, subd. (b) (Stats. 2000, ch. 982).)

Court costs and attorney fees (Gov. Code § 6259)

In 1968 Government Code section 6259 was enacted as part of the CPRA.[52] Since its original enactment in 1968, section 6259 has addressed the orders of the court in proceedings brought by a person seeking to enforce his or her right to inspect or to receive a copy of any public record or class of public records that a public agency has refused to disclose. Specifically, since 1968 the court has been required to order the officer or person charged with withholding the requested records to disclose the public record or show cause why he or she should not disclose the

[50] Statutes 2000, chapter 982.

[51] Government Code section 6250, which states that access to information concerning the people's business is a fundamental and necessary right of every person in this state.

[52] Statutes 1968, chapter 1473.

record.[53] If the court determines that the public official was not justified in refusing to disclose the record, the court is required to order the public official to make the record public.[54]

In 1975, section 6259 was amended to add the provisions that a court is required to award court costs and reasonable attorney fees to the plaintiff if public records are disclosed as a result of the plaintiff filing suit.[55] In addition, if the court finds that the plaintiff's case is clearly frivolous, the court is required to award court costs and reasonable attorney fees to the public agency.[56] In 1984 section 6259 was amended to add the procedure for appealing a decision by a court.[57]

The K-14 district claimant argues that section 6259 imposes the following reimbursable state-mandated new program or higher level of service:

> [W]hen ordered by a court, [pay] to a prevailing plaintiff his or her court costs and reasonable attorney fees.[58]

Thus, the K-14 district claimant alleges that payment of court costs and reasonable attorney fees is a reimbursable state-mandated new program or higher level of service. However, the payment of court costs and reasonable attorney fees is not a program or service provided to the public. Instead, it is a consequence of failing to provide a legally required program or service, specifically the service of making disclosable public records open for inspection by the public or providing copies of the disclosable public records to the public.

The K-14 district claimant disagrees with this characterization and argue that the "court's determination is not a finding of a failure to implement the mandate to disclose or not to disclose the records, but instead, it is a conclusion as to whether the justification for the action was reasonable."[59] However, if a court finds that a local agency or K-14 district was unjustified in its

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[53] Former Government Code section 6259, as amended by Statutes 1968, chapter 1473. Currently Government Code section 6259, subdivision (a), as amended by Statutes 1993, chapter 926.

[54] Former Government Code section 6259, as amended by Statutes 1968, chapter 1473. Currently Government Code section 6259, subdivision (b), as amended by Statutes 1993, chapter 926.

[55] Former Government Code section 6259, as amended by Statutes 1975, chapter 1246. Currently, Government Code section 6259, subdivision (d), as amended by Statutes 1993, chapter 926. See also, *Los Angeles Times v. Alameda Corridor Transportation Authority* (2001) 88 Cal.App.4th 1381, 1390-1391, in which the court defines "prevail," as used in Government Code section 6259, as a situation when the plaintiff files an action which results in the defendant releasing a copy of a previously withheld document. The court further finds that an action results in the release of previously withheld document if the lawsuit motivated the defendants to produce the documents.

[56] *Ibid.*

[57] Government Code section 6259, subdivision (c).

[58] 02-TC-51 test claim, *supra*, p. 28.

[59] Claimant (Riverside Unified School District) response to draft staff analysis, dated April 18, 2011, p. 4-5.

decision not to disclose a public record, and thus failed to disclose public records as mandated by the CPRA, the consequence is the payment of court costs and attorney fees. Thus, the Commission finds that payment of court costs and attorney fees pursuant to Government Code section 6259 is not a state-mandated new program or higher level of service subject to article XIII B, section 6 of the California Constitution.[60]

In response to the draft staff analysis, the K-14 district claimant expands its allegation to provide that the various duties resulting from the CPRA (including those stemming from a statute that was not pled in this test claim), in conjunction with section 6259, mandate *litigation as a whole*, as opposed to only paying court costs and reasonable attorney fees pursuant to section 6259 as pled in the test claim.[61] Similarly, the county claimant expands its allegations to provide that litigation costs, including possible court costs and attorney fees, are reimbursable state-mandated costs.[62]

The claimants' responses to the draft staff analysis do not allege that Government Code section 6259 specifically requires local agencies or K-14 districts to engage in litigation. Rather, the claimants' responses provide that local agencies and K-14 districts are generally required to disclose public records by section 6253, local agencies and K-14 districts have an affirmative duty not to disclose information described in section 6254 (which was not pled), local agencies and K-14 districts are required to provide a written justification of why a public record is withheld pursuant to section 6255, that nondisclosure of a public record and justifications provided pursuant to sections 6254 and 6255 are heavily litigated, and section 6259 requires a court to award court costs and attorney fees to a plaintiff if a local agency or K-14 district unjustifiably refused to disclose a public record.[63] From this the claimants argue:

> The litigation costs incurred by the public agency are a necessary and reasonable consequence of its statutory duty to comply with Sections 62253 [*sic*], 6254, and 6255. Therefore, to the extent that the subject matter of the litigation pertains to information not to be disclosed pursuant to legislation enacted after December 31, 1974, the cost and fees incurred by the public agency to respond to

[60] The County of Los Angeles argues in its response to the draft staff analysis that attorney costs associated with any legal analyses needed to determine whether to release a public record is a reimbursable state-mandated cost (See Claimant (County of Los Angeles) response to draft staff analysis, dated April 18, 2011, pgs. 4-6). However, the findings made in this section of the analysis *only* address court costs and attorney fees as awarded by a court pursuant to Government Code section 6259. They do not address attorney costs associated with any state-mandated new program or higher level of service found to be imposed by the CPRA in this test claim.

[61] Claimant (Riverside Unified School District) response to draft staff analysis, dated April 18, 2011, pgs. 4-5. In the claimant's response, the claimant cites to Government Code section 6254, which was not pled in this test claim, as being a source of the requirement to engage in litigation.

[62] Claimant (County of Los Angeles) response to draft staff analysis, *supra*, pgs. 4-6.

[63] Claimant (Riverside Unified School District) response to draft staff analysis, *supra*, pgs. 4-5. Claimant (County of Los Angeles) response to draft staff analysis, *supra*, pgs. 4-6.

the writ and the court are reimbursable, as well as any award assessed against the public agency.[64]

Pursuant to the claimants' argument Government Code section 6254 is part of the basis upon which the activity of engaging in litigation arises from. As a result, the Commission would be required to make specific findings on section 6254. However, the claimants have not pled section 6254, and thus, the Commission does not have jurisdiction to make any findings on section 6254.[65]

In regard to Government Code sections 6255 and 6259, these sections, read together or separately, do not require local agencies and K-14 districts to engage in litigation. Instead, as described above, section 6255 requires local agencies and K-14 districts to provide a justification of why a public record is being withheld, and section 6259 sets forth the duties of a court when a lawsuit is brought under the CPRA. In addition, even if litigation were implied from the duties imposed on local agencies and K-14 districts to provide a justification for withholding a public record and a court's duties when litigation is initiated, these duties have been present since the original enactment of the CPRA in 1968, and as a result, the implied duty to engage in litigation would have been present since 1968.

Since 1968, section 6255 has required local agencies and K-14 districts to justify withholding any record.[66] The only substantive change that has occurred since 1968 was the addition of the requirement to provide the justification in writing when the public records request was made in writing. This additional requirement does not create a new duty to engage in litigation. Similarly, since 1968, section 6259 sets forth the duties of the court when litigation is initiated.[67] The only substantive changes to section 6259 are the addition of the requirement on the court to award court costs and attorney fees to a prevailing plaintiff, and the procedures to appeal a court's decision. Neither of these additions creates a new duty to engage in litigation. As a result, the Commission finds that Government Code sections 6255 and 6259 do not impose a state-mandated new program or higher level of service to engage in litigation.

B. The state-mandated new programs or higher levels of service impose costs mandated by the state on counties, K-14 districts, county offices of education within the meaning of article XIII B, section 6, and Government Code sections 17514 and 17556

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[64] Claimant (Riverside Unified School District) response to draft staff analysis, dated April 18, 2011, pgs. 4-5.

[65] Pursuant to former Government Code section 17557, subdivision (c), as amended by Statutes 1998, chapter 681, which was in effect at the time of the filing of this test claim, a claimant may amend a test claim at "any time prior to a commission hearing on the claim without affecting the original filing date as long as the amendment substantially relates to the original test claim."

[66] Former Government Code section 6255, as added by Statutes 1968, chapter 1473.

[67] Former Government Code section 6259, as added by Statutes 1968, chapter 1473.

In order for the test claim statutes to impose a reimbursable state-mandated program under the California Constitution, the test claim statutes must impose costs mandated by the state.[68] Government Code section 17514 defines "cost mandated by the state" as follows:

> [A]ny increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

"Any increased costs" for which claimants may seek reimbursement include both direct and indirect costs.[69]

The claimants estimated that they "incurred more than $1,000 in staffing and other costs, annually, in excess of any fees collected pursuant to Government Code Section 6253, subdivision (b) and funding provided to school districts and the state for the period from July 1, 2001 through June 30, 2002"[70] to implement all duties alleged by the claimants to be mandated by the state. Thus, the claimants have met the minimum burden of showing costs necessary to file a test claim pursuant to Government Code section 17564.

However, pursuant to Government Code section 17556, subdivision (f), Finance argues that the claimants are not entitled to reimbursement for the state-mandated new program or higher levels of service imposed by Government Code sections 6253, 6253.9, 6253.1, 6254.3, and 6255, because the activities mandated by the code sections are necessary to implement a ballot measure approved by voters.[71] In addition, under Government Code section 6253.9, the claimants have fee authority for the costs of producing electronic copies of public records kept in an electronic format. Thus, it is also necessary to determine whether the claimants are precluded from reimbursement pursuant to the "ballot measure" and "fee authority" exceptions to reimbursement found in Government Code section 17556, subdivisions (f) and (d).

Ballot measure exception

Government Code section 17556, subdivision (f), prohibits a finding of costs mandated by the state for duties that are necessary to implement or expressly included in a ballot measure approved by the voters in a state-wide or local election.[72] The prohibition applies regardless of whether the statute was enacted before or after the date on which the ballot measure was approved by voters.

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[68] *Lucia Mar*, *supra*, 44 Cal.3d 830, 835; Government Code section 17514.

[69] Government Code section 17564.

[70] 02-TC-51 test claim, Exhibit 1 Declarations of Michael H. Fine, of Riverside Unified School District, and Cheryl Miller of Santa Monica Community College District.

[71] Finance Comments in Response to Request for Comments, dated January 14, 2011. Finance Response to Draft Staff Analysis, dated April 20, 2011.

[72] Government Code section 17556, subdivision (f). See *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, finding that the language, "reasonably within the scope of," to be violative of the California Constitution.

The claimants argue that the ballot measure exception to reimbursement in Government Code section 17556, subdivision (f), does not apply here because the test claim statutes were "enacted long after the advent of the declaration of rights in the 1968 California Public Records Act and [were] not available, let alone necessary, for the implementation of those rights, subsequently incorporated in Proposition 59."[73] In addition, the claimants note that Proposition 59 does not expressly include the activities mandated by the test claim statutes.

In 2004, California voters approved Proposition 59 to incorporate the right of access to information concerning the people's business that was already provided by various state laws, including the CPRA, into article I, section 3 of the California Constitution. The amendment to the Constitution provides in relevant part:

> The people have the right of access to information concerning the conduct of the people's business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

The purpose of Proposition 59 was to "create a constitutional right for the public to access government information. As a result, a government entity would have to demonstrate to a somewhat greater extent than under current law why information requested by the public should be kept private."[74]

None of the state-mandated new programs or higher levels of service imposed by the test claim statutes are expressly included in the Proposition 59. As a result, it is necessary to determine whether the state-mandated activities are "necessary to implement" Proposition 59.

The court in *California School Boards Association v. State of California*, found that duties imposed by a test claim statute or executive order that are not expressly included in a ballot measure approved by the voters in a statewide or local election are "necessary to implement" the ballot measure pursuant to Government Code section 17556, subdivision (f), when the additional requirements imposed by the state are intended to implement the ballot measure mandate, and the costs are, in context, de minimis such that the requirements are considered part and parcel of the underlying ballot measure mandate.[75] The court also makes a distinction between activities that are "necessary to implement" a ballot measure, and those that are "reasonably within the scope of" a ballot measure. In essence, for an activity to be necessary to implement a ballot measure, it must be more narrowly related to the ballot measure than an activity that simply has anything to do with the subject matter of the ballot measure.[76]

The court borrowed this analysis from the California Supreme Court's decision in *San Diego Unified School Dist*. which addressed whether state imposed procedural requirements that exceeded federal due process requirements constituted a federal mandate. The court found that the state requirements were designed to make the underlying federal due process right

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[73] Claimant Comments in Response to Request for Comments, dated January 18, 2011.

[74] Ballot Pamphlet, General Election (November 2, 2004) Proposition 59 at <http://library.uchastings.edu/cgi-bin/starfinder/26556/calprop.txt> [as of March 21, 2011].

[75] *California School Boards Association v. State of California, supra*, 171 Cal.App.4th at p. 1217.

[76] *Id*. at pgs. 1213-1216.

enforceable and to set forth procedural details that were not expressly articulated in the case law establishing the respective due process rights. Thus, the state requirements were merely incidental to fundamental federal due process requirements and viewed singly or cumulatively they did not significantly increase the costs of compliance with the federal mandate.[77]

Here, because Proposition 59 incorporated the fundamental right of access to information present in the CPRA into the constitution, and the provisions of the CPRA are intended to implement the right of access to public information set forth in the CPRA, it could be argued that the provisions of the CPRA also are intended to implement the ballot measure mandate (i.e. providing open access to information concerning the conduct of the people's business). However, unlike in *San Diego Unified School Dist*., the state-mandated activities imposed by the test claim statutes, such as providing electronic copies to the public, assisting members of the public to make a request, and providing a written denial to a written request for public records, are not merely incidental to the right of access to information concerning the conduct of the people's business. Instead they impose additional requirements unnecessary to enforce the general right to access information regarding the people's business, and are not narrowly tailored to fit the definition of "necessary to implement."

Finding that the state-mandated activities are necessary to implement Proposition 59 would suggest that any activity that has anything to do with open government would be necessary to implement Proposition 59. In addition, there is no concrete evidence in the law or in record that the costs of the state-mandated activities, singly or cumulatively, do not significantly increase the cost of complying with the ballot measure mandate.[78] [79] As a result, the Commission finds that the record supports the finding of costs mandated by the state and that the Government Code section 17556, subdivision (f), exception does not apply to deny these activities.

Fee authority exception

Government Code section 17556, subdivision (d), prohibits a finding of costs mandated by the state where a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service. In addition, the court in *Clovis Unified School Dist. v. Chiang* notes that to the extent that a local agency or school district has the authority to charge for the mandated program or increased level of service, that charge cannot be recovered as a state-mandated cost.[80]

In regard to providing electronic copies of disclosable public records kept in an electronic format, Government Code section 6253.9, subdivision (a)(2), gives fee authority to local agencies and K-14 districts for the "direct costs" of producing a record in an electronic format.

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[77] *San Diego School Dist*., *supra*, 33 Cal.4th at p. 889.

[78] *California School Boards Association v. State of California, supra*, 171 Cal.App.4th at p. 1217. See also, *Dept. of Finance v. Commission on State Mandates* (*POBRA*) (2009) 170 Cal.App.4th 1355, regarding a concrete showing of evidence.

[79] Pursuant to Government Code section 17564, the claimants estimated under the penalty of perjury that they "incurred more than $1,000 in staffing and other costs, annually," in order to meet the burden of showing costs necessary to file a test claim.

[80] *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 812, citing to *Connell v. Superior Court* (1997) 59 Cal.App.4th 382, 401.

The fee authority that public agencies have under subdivision (a)(2) is limited to the direct cost of producing an electronic copy. The fee authority does not attach to the indirect costs such as the inspection of and handling of the file. Under article XIII B, section 6, all costs mandated by the state, including direct and indirect costs, are reimbursable.[81] As a result this fee authority is insufficient to preclude a finding of costs mandated by the state pursuant to Government Code section 17556, subdivision (d).

Government Code section 6253.9, subdivision (b), expands a public agency's fee authority to include the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record if: (1) the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals; or (2) the request would require data compilation, extraction, or programming to produce the record. This increased fee authority, however, is not expanded to *all costs*, both direct *and indirect*. As a result, the Commission finds that the fee authority under Government Code section 6253.9, subdivision (b), is insufficient to preclude a finding of costs mandated by the state pursuant to Government Code section 17556, subdivision (d).

Government Code section 6253.9, subdivisions (a)(2) and (b), however, provides offsetting revenue for the mandated activity of providing an electronic copy of disclosable public records kept in an electronic format and will be identified in the parameters and guidelines.

Pursuant to the above discussion, the Commission finds that the state-mandated new programs or higher levels of service impose costs mandated by the state on local agencies and K-14 districts within the meaning of article XIII B, section 6, and Government Code sections 17514 and 17556.

CONCLUSION

The Commission concludes that Government Code sections 6253, 6253.1, 6253.9, 6254.3, and 6255 impose reimbursable state-mandated programs on local agencies and K-14 districts within the meaning of article XIII B, section 6 of the California Constitution, and Government Code section 17514, for the following specific new activities:

1. If requested by a person making a public records request for a public record kept in an electronic format, provide a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. (Gov. Code, § 6253.9, subd. (a)(2) (Stats. 2000, ch. 982).)
2. Within 10 days from receipt of a request for a copy of records determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the local agency or K-14 district and notify the person making the request of the determination and the reasons for the determination. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)
3. If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 district due to "unusual circumstances" as defined by Government Code section 6253, subdivision (c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the

[81] Government Code section 17564.

reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

4. When a member of the public requests to inspect a public record or obtain a copy of a public record:

    a. assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated;

    b. describe the information technology and physical location in which the records exist; and

    c. provide suggestions for overcoming any practical basis for denying access to the records or information sought.

    These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1, subds. (a) and (d) (Stats. 2001, ch. 355).)

5. For ~~K-14~~K-12 school districts and county offices of education only, redact or withhold the home address and telephone number of employees of ~~K-14~~K-12 school districts and county offices of education from records that contain disclosable information.

    This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to ~~K-14~~K-12 school district and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents. (Gov. Code, § 6254.3, subd. (a) (Stats. 1992, ch. 463).)

6. For ~~K-14~~K-12 school districts and county offices of education only, remove the home address and telephone number of an employee from any mailing lists that the ~~K-14~~K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the ~~K-14~~K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3, subd. (b) (Stats. 1992, ch. 463).)

7. If a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255, subd. (b) (Stats. 2000, ch. 982).)

In addition, the Commission concludes that the fee authority set forth in Government Code section 6253.9, subdivisions (a)(2) and (b), as added by Statutes 2000, chapter 982, is offsetting

revenue and shall be deducted from the costs of providing a copy of a disclosable electronic record in the electronic format requested.

Finally, the Commission finds that any other test claim statutes and allegations not specifically approved above, do not impose a reimbursable state mandated program subject to article XIII B, section 6 of the California Constitution.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES: Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255 Statutes 1992, Chapters 463 (AB 1040); Statutes 2000, Chapter 982 (AB 2799); and Statutes 2001, Chapter 355 (AB 1014) Period of reimbursement begins on July 1, 2001, or later for specified activities added by subsequent statutes.	Case No.: 02-TC-10 and 02-TC-51 *California Public Records Act* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7 (*Adopted April 19, 2013*) (*Served April 25, 2013*)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) adopted this statement of decision and parameters and guidelines on consent during a regularly scheduled hearing on April 19, 2013.

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

I. SUMMARY OF THE MANDATE

These proposed parameters and guidelines pertain to the consolidated *California Public Records Act* test claim (02-TC-10 and 02-TC-51), adopted May 26, 2011. Based on the filing date of the test claim, the period of reimbursement begins on July 1, 2001, or later for specified activities added by subsequent statutes.

The California Public Records Act (CPRA) provides for the disclosure of public records kept by the state, local agencies, school districts and community college districts, and county offices of education. The required activities include:

- Providing copies of public records with portions exempted from disclosure redacted;
- Notifying a person making a public records request whether the requested records are disclosable;
- Assisting members of the public to identify records and information that are responsive to the request or the purpose of the request;

- Making disclosable public records in electronic formats available in electronic formats; and
- Removing an employee's home address and home telephone number from any mailing list maintained by the agency when requested by the employee.

The CPRA was originally adopted in 1968 "to more clearly define what constitutes a "public record" open to inspection and what information can be or is required to be withheld from disclosure."[1] Prior to the adoption of the CPRA in 1968, the law governing disclosure of public records consisted of a "hodgepodge of statutes and court decisions."[2] These parameters and guidelines address the statutory amendments to the CPRA made after 1975.

The Commission found in the test claim statement of decision that the requirement for local agencies and school districts to make public records available for inspection during office hours, "except for public records exempted from disclosure or prohibited from disclosure" was required prior to 1975 and thus was not new.[3] The Commission also found that "the Legislature intended public records to include every conceivable kind of record that is involved in the governmental process," and that the purpose and intent of the CPRA is "to make disclosable *information* open to the public, not simply the documents prepared, owned, used, or retained by a public agency."[4] In addition, the Commission found that a 1981 amendment to CPRA codified the courts' interpretation, that "CPRA requires segregation of exempt materials from nonexempt materials contained in a single document and to make the nonexempt materials open for inspection and copying."[5] Finally, the Commission found that pursuant to Government Code sections 6256 and 6257, public agencies (both state and local government) have been required to provide "copies or exact copies of public records upon a request that reasonably describes an identifiable record" since the 1968 enactment of CPRA.[6] These activities, required by the CPRA under prior law, are not eligible for reimbursement.

However, the Commission found that Government Code sections 6253, 6253.1, 6253.9, 6254.3, and 6255, as amended by Statutes 1992, Chapters 463 (AB 1040), Statutes 2000, Chapter 982 (AB 2799), and Statutes 2001, Chapter 355 (AB 1014), impose reimbursable state-mandated programs on local agencies and K-14 school districts, within the meaning of article XIII B, section 6 of the California Constitution, and Government Code section 17514, as follows:

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[1] Exhibit A, Test Claim Statement of Decision, at p. 5.

[2] Exhibit A, Test Claim Statement of Decision, at p. 5 [citing *Los Angeles Unified School Dist. v. Superior Court* (2007) 151 Cal.App.4th 759, 765].

[3] *Id*, at p. 12.

[4] *Id*, at p. 13.

[5] *Ibid*.

[6] *Id*, at p. 14.

1. If requested by a person making a public records request for a public record kept in an electronic format, provide a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. (Gov. Code, § 6253.9(a)(2) (Stats. 2000, ch. 982).)
2. Within 10 days from receipt of a request for a copy of records determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the local agency or K-14 district and notify the person making the request of the determination and the reasons for the determination. (Gov. Code, § 6253(c) (Stats. 2001, ch. 982).)
3. If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 district due to "unusual circumstances" as defined by Government Code section 6253(c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253(c) (Stats. 2001, ch. 982).)
4. When a member of the public requests to inspect a public record or obtain a copy of a public record:

    a. assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated;

    b. describe the information technology and physical location in which the records exist; and

    c. provide suggestions for overcoming any practical basis for denying access to the records or information sought.

    These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1(a) and (d) (Stats. 2001, ch. 355).)
5. For K-12 school districts and county offices of education only, the following activities are eligible for reimbursement:

    a. Redact or withhold the home address and telephone number of employees of K-12 school districts and county offices of education from records that contain disclosable information.

This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to K-12 school district and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents. (Gov. Code, § 6254.3(a) (Stats. 1992, ch. 463).)

b. Remove the home address and telephone number of an employee from any mailing lists that the K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3(b) (Stats. 1992, ch. 463).)

6. If a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255(b) (Stats. 2000, ch. 982).)

In addition, the Commission concluded that the fee authority set forth in Government Code section 6253.9(a)(2) and (b), as added by Statutes 2000, chapter 982, is offsetting revenue and shall be deducted from the costs of providing a copy of a disclosable electronic record in the electronic format requested.[7]

II. PROCEDURAL HISTORY

The first test claim was filed by the County of Los Angeles (LA County) on October 15, 2002. A second test claim on the same statutes was filed by Riverside Unified School District (Riverside Unified) on June 26, 2003. Due to an ongoing dispute over the constitutionality of Government Code section 17556(f), and a ballot measure that would have triggered an analysis of the disputed issue, the two CPRA test claims were removed from the Commission's hearing calendar until the constitutionality of section 17556 was resolved in March of 2009.[8] On November 2, 2010, the two claims were consolidated by the executive director. The consolidated test claim was heard, and the statement of decision adopted, on May 26, 2011. A

[7] Exhibit A, Corrected Statement of Decision, at pp. 4-5.

[8] Exhibit A, Corrected Statement of Decision, at p. 6.

corrected statement of decision was issued on December 17, 2012, to correct a clerical error approving reimbursement for K-14 school districts, rather than K-12 school districts, for activities mandated by Government Code section 6254.3. That code section imposes requirements only on K-12 school districts.

On June 15, 2011, Riverside Unified submitted proposed parameters and guidelines. On June 23, 2011, LA County submitted proposed parameters and guidelines. On July 22, 2011, the State Controller's Office (SCO) submitted comments on the claimants' proposed parameters and guidelines. On July 25, 2011, the Department of Finance (DOF) submitted comments on the claimants' proposed parameters and guidelines. On August 30, 2011, LA County submitted rebuttal comments.

On February 13, 2013, Commission staff issued the draft proposed statement of decision and parameters and guidelines setting this matter for hearing on April 19, 2013. On February 21, 2013, Cost Recovery Systems, Inc. submitted written comments on the draft. On March 5, 2013, claimant LA County submitted written comments on the draft. On March 6, 2013, SCO and DOF each submitted written comments on the draft.

On March 15, 2013, the California State Association of Counties (CSAC), which is not a party to this matter and had not submitted any comments on this matter until this time, requested "an extension of the April 19, 2013 hearing date to file an amended set of parameters and guidelines…to include an RRM [reasonable reimbursement methodology]." The letter stated that "the local associations are committed to doing everything possible to reach an agreement with DOF."[9] The tentative timeline set out by CSAC would have postponed this item until the December 2013 hearing. The executive director denied the request for extension, stating "there is no authority for interested parties (such as CSAC) to request a postponement of a hearing."[10] None of the state or local agency parties to this matter requested an extension of time or postponement of the hearing on these parameters and guidelines.

III. POSITION OF THE PARTIES

A. Claimant, Riverside Unified's, Position and Proposed Parameters and Guidelines

Riverside Unified submitted proposed parameters and guidelines in which the claimant proposes reimbursement for exactly the activities approved in the test claim statement of decision, except that the claimant reorganizes the activities and re-numbers them.[11] Riverside Unified did not submit comments on the draft analysis.

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[9] Exhibit K, CSAC, Hearing Postponement Request.

[10] Exhibit K, Commission, Denial of Postponement Request.

[11] Exhibit B, Riverside Unified's Proposed Parameters and Guidelines.

B. Claimant, LA County's, Position and Proposed Parameters and Guidelines

LA County submitted proposed parameters and guidelines in which the claimant proposes reimbursement for the activities approved in the test claim statement of decision, but also proposes reimbursement for a number of proposed reasonably necessary activities. These proposed reasonably necessary activities will be described in the analysis below.[12] LA County submitted comments on the draft analysis, reiterating the need for certain reasonably necessary activities proposed, and generally disagreeing with staff's analysis of the scope of the mandate.[13]

C. State Controller's Office Position

SCO submitted comments on the claimants' proposed parameters and guidelines, in which SCO stated that "the reimbursable activities listed under the "Scope of Reimbursable Activities" were numbered incorrectly, included several duplications, and were incomplete." SCO continued, "[f]urthermore, the reimbursable activities listed were confusing, not specific, and needed clarification." SCO also suggested that activities should be designated "one-time" or "ongoing."[14] SCO's comments on the draft analysis recommended no changes.[15]

D. Department of Finance Position

DOF submitted comments on the claimants' proposed parameters and guidelines, in which DOF raises the following arguments:

- Claimants "appear to add to the activities found reimbursable by the Commission;"
- Many of the activities "appear to be outside the scope of the SOD as these were likely already required and utilized before this mandate and for purposes other than complying with this mandate;"
- Many activities are "duplicative and repetitious or are too vague and general and therefore lack sufficient specificity;"
- A number of activities "do not appear to be reasonably necessary to comply with the mandate, are inconsistent with the SOD, and additive in nature;" and
- Several of the activities "could be performed by lower-level staff than what is referenced in the [parameters and guidelines]."

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[12] Exhibit C, LA County's Proposed Parameters and Guidelines.

[13] Exhibit H, LA County's Comments on Draft Staff Analysis.

[14] Exhibit D, SCO Comments on Proposed Parameters and Guidelines.

[15] Exhibit J, SCO Comments on Draft Analysis.

The DOF recommends "that Commission staff apply the *Clovis Unified School District v. Chiang* (2010) 188 Cal.App.4th 794 case and offset any and all applicable costs for specified activities…to the extent of the fee authority provided by law."[16]

DOF's comments on the draft analysis focus on the offsetting revenue provisions of the parameters and guidelines, and are discussed below, as applicable.[17]

IV. COMMISSION FINDINGS

A. Period of Reimbursement (Section III. of Proposed Parameters and Guidelines)

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. LA County filed the first test claim on October 15, 2002, establishing eligibility for reimbursement for the 2001-2002 fiscal year. Therefore, costs incurred on or after July 1, 2001 are reimbursable under this consolidated test claim, for statutes in effect before July 1, 2001, or later, as specified, for statutes effective after July 1, 2001. The language of Section III. Period of Reimbursement, therefore reflects a reimbursement period beginning July 1, 2001, or later for specified activities added by subsequent statutes.

B. Reimbursable Activities (Section IV. of Proposed Parameters and Guidelines)

Government Code section 17557 provides that "[t]he proposed parameters and guidelines may include proposed reimbursable activities that are reasonably necessary for the performance of the state-mandated program."[18] The Commission's regulations provide that parameters and guidelines shall include "a description of the most reasonable methods of complying with the mandate." "'The most reasonable methods of complying with the mandate' are those methods not specified in statute or executive order that are necessary to carry out the mandated program."[19]

Government Code section 17559 provides that a claimant or the state may petition to set aside a Commission decision not supported by substantial evidence.[20] Substantial evidence has been defined in two ways: first, as evidence of ponderable legal significance...reasonable in nature,

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[16] Exhibit E, DOF Comments on Proposed Parameters and Guidelines.

[17] Exhibit I, DOF Comments on Draft Staff Analysis.

[18] Government Code section 17557 (as amended by Stats. 2010, ch. 719 § 32 (SB 856) effective October 19, 2010; Stats. 2011, ch. 144 (SB 112)).

[19] Code of Regulations, Title 2, section 1183.1(a)(4) (Register 96, No. 30; Register 2005, No. 36).

[20] Government Code section 17559(b) (Stats. 1984, ch. 1469, § 1; Stats. 1999, ch. 643 (AB 1679)).

credible, and of solid value;[21] and second, as relevant evidence that a reasonable mind might accept as adequate to support a conclusion.[22] The California Supreme Court has stated that "[o]bviously the word [substantial] cannot be deemed synonymous with 'any' evidence."[23] Moreover, substantial evidence is not submitted by a party; it is a standard of review, which requires a reviewing court to uphold the determinations of a lower court, or in this context, the Commission, if they are supported by substantial evidence. A court will not reweigh the evidence of a lower court, or of an agency exercising its adjudicative functions; rather a court is "obliged to consider the evidence in the light most favorable to the [agency], giving to it the benefit of every reasonable inference and resolving all conflicts in its favor."[24]

The Commission's regulations provide that hearings need not be conducted according to strict and technical rules of evidence, but that evidence must be "the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs," and that hearsay evidence will usually not be sufficient to support a finding unless admissible over objection in a civil action. The regulations also provide for admission of oral or written testimony, the introduction of exhibits, and taking official notice "in the manner and of such information as is described in Government Code section 11515."[25] Therefore, reasonably necessary activities, in order to be adopted by the Commission, must be supported by substantial evidence, and that evidence must include something other than hearsay evidence.

LA County has proposed reimbursement for a number of alleged reasonably necessary activities, in its Revised Proposed Parameters and Guidelines, attached as Exhibit C. These are analyzed below, incorporating SCO and DOF comments where appropriate. The claimant has ordered and categorized the proposed reasonably necessary activities under headings that approximate, but overstate, the language of the reimbursable activities expressly approved in the test claim statement of decision. The following analysis will determine that some of the activities that LA County proposes are reasonably necessary to implement the mandated activities approved in the test claim statement of decision, and others are beyond the scope of what was approved in the test claim statement of decision, or are not new.

1. Evidence Filed by LA County in Support of its Request

The draft staff analysis pointed out that the claimants had submitted scant evidence that the proposed activities are necessary to implement the mandate: four declarations were submitted,

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[21] *County of Mariposa v. Yosemite West Associates* (Cal. Ct. App. 5th Dist. 1998) 202 Cal.App.3d 791, at p. 805.

[22] *Desmond v. County of Contra Costa* (1993) 21 Cal.App.4th 330, 335.

[23] *People v. Bassett* (1968) 69 Cal.2d 122, at p. 139.

[24] *Martin v. State Personnel Board* (Cal. Ct. App. 3d Dist. 1972) 26 Cal.App.3d 573, at p. 577.

[25] Code of Regulations, title 2, section 1187.5.

each of which referred to an "Attachment A," prepared by LA County's representative on the test claim; but none of those four declarations directly endorsed the contents of "Attachment A," or stated directly why or how the activities referenced therein are necessary to comply with the mandate. Instead, the declarants stated that they had *reviewed* the attachment, and that the attachment "includes and summarizes" the department's statutory and reasonably necessary activities for the parameters and guidelines.[26]

LA County responded to the draft analysis by submitting new declarations, and a new Attachment A. LA County asserted that each of the new declarations "adds substantial evidence to the record supporting a Commission decision to adopt CPRA Ps&Gs which include the County's revisions."[27] As discussed above, "substantial evidence" is not a factor or element submitted by a party; it is the standard of review that either supports or fails to support the Commission's decision. And in no event is "substantial evidence" that which compels a particular result, as LA County's assertion suggests: the presence or absence of substantial evidence is considered in the light most favorable to the decision made; in this context, the decision whether to accept LA County's proposed revisions to the parameters and guidelines.

The prior declaration of Diane Reagan stated that "I have reviewed Attachment A which *includes and summarizes* County Counsel's statutory and reasonably necessary activities for inclusion in Los Angeles County's proposed parameters and guidelines as reimbursable service components." Ms. Reagan did not state on her own information and belief that the activities in Attachment A are necessary to implement the mandate, nor indicate any cognizance of what was mandated under prior law.[28] The new declaration submitted by the claimant states that Ms. Reagan has reviewed the draft staff analysis, and includes new Attachment A, proposing changes, including re-inserting one-time training of employees charged with implementing the CPRA activities. Reimbursement for annual training was previously requested, and staff recommended denial. Ms. Reagan's declaration states as follows:

> I declare on information and belief that the changes recommended to Commission staff's "reimbursable activities" are required because the provision of new CPRA services, including those to assist CPRA requestors in making a focused and effective search, must be tracked, processed, and provided to the requestor in a timely and cost-efficient manner.[29]

The same result obtains in the declarations of Rick Brouwer and Shaun Mathers, both of whom previously acknowledged having read Attachment A, but neither of whom expressly endorsed its

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[26] Exhibit C, LA County's Proposed Parameters and Guidelines, Exhibits 1-4.

[27] Exhibit H, LA County's Comments on Draft Staff Analysis, Exhibit 1, at pp. 2-4.

[28] Exhibit C, LA County's Proposed Parameters and Guidelines, Exhibit 1.

[29] Exhibit H, LA County's Comments on Draft Staff Analysis, Exhibit 1, at p. 2.

content.[30] New declarations submitted by Mr. Brouwer and Mr. Mathers suggest a greater degree of personal knowledge than was asserted before, and assert more emphatically an understanding of what activities are necessary to comply with the mandate.

However, none of the three new declarations provides any analysis or reasoning to explain why training is necessary to implement the higher level of service approved in the test claim statement of decision, nor why the requirement to assist requestors in making an effective public records request necessarily implies that such requests and searches must be tracked, processed, and provided to the requestor in a timely and efficient manner. As discussed at length below, the amendments to CPRA enacted by the test claim statutes were intended to remedy inadequacies in the provision of public records act services originally enacted in 1968. Even if tracking and processing of requests is necessary, there is no explanation why tracking and processing would not have been necessary under prior law. One-time training to implement the incremental changes is discussed below, but such training must be strictly limited to the increased level of service.

Finally, whatever the change in form and emphasis attempted by the amended declarations, the finding of reasonably necessary activities is still a finding of law, and declarations from claimants may inform that decision, but are not controlling, even in the absence of competing submissions. The self-serving statement that "substantial evidence has been provided by three County declarants supporting a Commission decision to adopt the [parameters and guidelines] as revised by the County" is not persuasive.[31] If it cannot be said as a matter of law that an activity is either reasonably necessary to implement the mandate, or within the scope of the mandate, that activity cannot be approved. More importantly, "substantial evidence" is a legal standard, which is defined by the contours of a court's review of the Commission's decision; substantial evidence is that which supports a legal finding, not a particular fact or item of evidence proferred by a party, or a quantum of evidence that necessitates or compels a particular result. Thus, "substantial evidence" is developed on the basis of the whole record.

The Commission finds that former Attachment A does not provide sufficient evidence of reasonably necessary activities because it lacks clear explanation why the proposed activities are *necessary* to implement the mandated increased levels of service. Rather, these declarations support the assertion that these are the practices of the respective agencies, which is not directly relevant to whether claimants have a legal duty to perform these activities, or whether they are reasonably necessary to implement the mandate.

The Commission finds also that the three additional declarations submitted do little to establish, as a matter of law, that the asserted activities are reasonably necessary to carry out the mandate. None of the three declarations illustrate how the practices of the county and its component

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[30] Exhibit C, LA County's Proposed Parameters and Guidelines, Exhibits 3-4.

[31] Exhibit H, LA County's Comments on Draft Staff Analysis, at p. 4.

agencies are reasonably necessary to implement the reimbursable activities approved by the Commission.

Additionally, the claimant cites to the declaration of Commander Castro, submitted in the County's 2002 test claim filing, in which the declarant states that it is his information and belief that "the new public record duties imposed on the County, *as detailed on the attached list*, are reasonably necessary in complying with the test claim legislation."[32] The attached list to which Commander Castro's declaration refers, without explanation or context, states that claimants should be reimbursed for:

> <u>One-time Activities</u>
>
> 1. Develop policies, protocols.
> 2. Conduct training on implementing test claim legislation.
> 3. Purchase computers to monitor and document public record service actions.
> 4. Purchase or develop data base software for tracking and processing Public Record Act requests.
> 5. Develop a Web Site for public record disclosure requests.
>
> <u>Continuing Activities</u>
>
> I. Staff time for:
> A. Station or branch personnel.
> 1. Assistance in defining telephone, walk-in or written requests.
> 2. Writing and logging request.
> 3. Station-level research.
> 4. If availability known, notify requestor.
> 5. Indicate date/time available.
> 6. If availability not known, forward request to central unit.
> B. Central Unit Personnel
> 1. Assistance in defining telephone, walk-in or written requests.
> 2. Writing and logging request.
> 3. Central Unit research.
> 4. If availability known, notify requestor.
> 5. Indicate date/time available.
> 6. If availability not known:
> a. consult with specialized personnel.
> b. document findings.
> c. notify requestor of results.

[32] Exhibit H, LA County's Comments on Draft Staff Analysis, at p. 4 [emphasis added].

C. County Counsel-legal services to implement and comply with the test claim legislation, including Govt Code 6253.1.[33]

LA County implies that this list should simply be accepted and approved by the Commission, but the submission is insufficiently detailed, and does not demonstrate any consideration of prior law requirements or specifically link the proposed activities to any requirement in law. Research, in particular, whether taking place at the "station-level" or the "Central Unit," is not meaningfully distinguished from the requirements to make a determination whether records requested are exempt from disclosure, as was required under prior law. More importantly, Commander Castro's declaration states only an opinion regarding the means by which his department implements CPRA, and that "the County's new State mandated duties and resulting costs in implementing the test claim legislation are, in my opinion, reimbursable 'costs mandated by the State,' as defined in Government Code section 17514."[34]

The Commission finds that LA County's submissions are not sufficient to support a finding by the Commission that the county's proposed reasonably necessary activities are reasonably necessary as a matter of law. However, to the extent that the activities described in Attachment A, and in LA County's proposed parameters and guidelines, and the newly-submitted exhibits here, are clarifying of the mandated activities approved in the test claim statement of decision, or reasonably define the scope of the approved activities, the suggested activities will be included in the proposed parameters and guidelines. The following analysis will address each proposed activity in turn, maintaining consistency with the test claim statement of decision and distinguishing activities which were required under prior law and are therefore not reimbursable.

2. <u>One-time Activities</u>

a. <u>Developing Policies and Procedures to Implement the Mandate</u>

LA County has proposed reimbursement for the following:

> To develop policies, protocols, manuals and procedures for implementing the following reimbursable California Public Record Act (CPRA) provisions:
>
> a. Determining whether electronic records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable. (Gov. Code,§ 6253.9, subd. (a)(2) (Stats. 2000, ch. 982)).
>
> b. Within 10 days, determining whether records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable; and, developing or reviewing language to notify the person making the request of the determination and the reasons for the determination. ((Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982)).

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[33] Exhibit H, LA County's Comments on Draft Staff Analysis, at pp. 4-5; Claimant's Exhibit 5.

[34] Exhibit H, LA County's Exhibit 5

c. When an extension of time is required in complying with the 10 day requirement, developing or reviewing language providing a legal basis for the extension. (Gov. Code,§ 6253, subd. (c) (Stats. 2001, ch. 982)).

d. Identifying litigation, claims, and related records which may be disclosable and may be responsive to the request or to the purpose of the request, if stated; and provide suggestions for overcoming any practical basis for denying access to the records or information sought. (Gov. Code,§ 6253.1, subds. (a) and (d) (Stats. 2001, ch. 355)).

e. If a request is denied, in whole or in part, preparing or reviewing a written response to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code,§ 6255, subd. (b) (Stats. 2000, ch. 982).[35]

The Commission has routinely approved reimbursement for the development of policies and procedures to address the implementation of mandated new programs or increased levels of service determined to be reimbursable. And it is easily imagined that changes to CPRA would necessitate an update of policies and procedures to implement the mandate. However, as will appear below to be a consistently recurring theme, what was approved in the test claim statement of decision was only an *incremental* increase in service: to provide records in *electronic form*; to provide a time frame for response, and to ensure that the response, when denying the request, is in writing; and to place the burden on agencies to assist the public in making effective public records requests.[36] As discussed in the test claim statement of decision, the duty of government agencies (both state and local) to make records available for inspection reaches back to the 1968 statute, and is therefore not new.[37] The test claim statement of decision also notes that public records, per the interpretation of the courts, included "every conceivable kind of record that is involved in the governmental process," and the spirit of the CPRA was "to make disclosable *information* open to the public, not simply the documents prepared, owned, used, or retained by a public agency."[38] Moreover, the Commission found that, "since 1968 public agencies were required to provide copies or exact copies of public records upon a request of identifiable public records."[39] The test claim statement of decision also found that the determination whether and to what extent a record is disclosable was not a new activity subject to reimbursement.

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[35] Exhibit C, LA County's Proposed Parameters and Guidelines, at p. 15.

[36] See Exhibit A, Test Claim Statement of Decision, at pp. 14-16.

[37] *Id*, at p. 12.

[38] *Id*, at p. 13 [citing *Nor. Cal. Police Practices Project v. Craig* (1979) 90 Cal.App.3d 116, p. 123-124].

[39] Id. at p.14. citing former Government Code sections 6256 and 6257as adopted by Statutes 1968, chapter 1473.

The Commission concluded in the test claim statement of decision that the purpose of amending the CPRA to provide for copies of electronic records was to "substantially increase the availability of public records to the public and to reduce the cost and inconvenience to the public associated with large volumes of paper records," and that therefore "the requirement to provide an electronic copy of a public record kept in an electronic format constitutes a new program or higher level of service subject to article XIII B, section 6 of the California Constitution."[40]

However, because the requirement to provide copies of disclosable public records upon request was an element of prior law,[41] the claimants cannot receive reimbursement for *making a determination whether a record is disclosable*, or for *providing records* upon request; those activities are not new and were required under prior law. Only the incremental increase in service of providing copies of records *in an electronic format*, and of providing written notice of the determination *within 10 days* whether a record is disclosable, can be reimbursed. And in this context, only the development or updating of policies and procedures to perform these incrementally increased levels of service are reimbursable.

Therefore item a., above, developing a policy or procedure for "Determining whether electronic records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable" is denied. The underlying requirement to determine whether records or parts thereof are disclosable is not new, and there is no meaningful difference between making that determination for physical records and making that determination for electronic records. Similarly, item b., above, developing policies or procedures for "Within 10 days, determining whether records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable; and, developing or reviewing language to notify the person making the request of the determination and the reasons for the determination," is only reimbursable for updating the existing policy or procedure to provide for the new deadline to provide notice of the determination within 10 days, and to provide for a written notice of the disclosure determination, as these activities are new.

LA County's proposed parameters and guidelines do not include any information about the activity of developing policies and procedures for implementing the activities that were approved only for schools and school districts. If policies and procedures are to be reimbursed as a one-time activity for counties, school districts should receive the same treatment since the mandate in this regard is the same for counties and school districts, and therefore receive reimbursement for developing policies and procedures to implement those new mandated activities also.

The Commission finds that the development of policies, protocols, manuals and procedures *to implement the newly mandated activities* identified in Section IV. B. is approved for all claimants, for *one-time reimbursement*, but not for policies and procedures for "[d]etermining

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[40] Exhibit A, Test Claim Statement of Decision, at pp. 14-15.

[41] Former Government Code sections 6256 and 6257 (Stats. 1968, ch. 1473).

whether electronic records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable," and not for policies and procedures for determining whether a record is disclosable, but only for the higher level of service of providing notice of the determination within 10 days. Section IV.A. of the parameters and guidelines authorizes reimbursement for this one-time activity as follows:

> *Developing policies, protocols, manuals, and procedures, to implement only the activities identified in section IV.B. of these parameters and guidelines. The activities in section IV.B. represent the incremental higher level of service approved by the Commission.*
>
> *This activity does not include, and reimbursement is not required for, developing policies and procedures to implement California Public Records Act requirements not specifically included in these parameters and guidelines. This activity specifically does not include making a determination whether a record is disclosable, or providing copies of disclosable records.*

b. <u>One-Time Training</u>

In the draft analysis, reimbursement for Annual Training was recommended for denial. In comments on the draft staff analysis, LA County answered with a request for reimbursement of one-time training, excluding training on existing requirements of CPRA and provided an explanation of why this was reasonably necessary to implement the mandated activities. The one-time activity proposed for reimbursement by the claimant is as follows:

> *One-time training of each employee assigned the duties of implementing the reimbursable activities identified in section "IV. REIMBURSABLE ACTIVITIES" of these parameters and guidelines. This training activity does not include and reimbursement is not required for implementing all of the California Public Records Act or instruction regarding making a determination whether a record is disclosable*.[42]

As discussed above, the test claim statutes impose only an incremental higher level of service, but that incremental increase includes providing copies of public records in an electronic format, as specified; providing a disclosure determination within 10 days, or explaining why a disclosure determination cannot be provided within that time; providing assistance to the public in making effective public records requests; and providing a written response when a record is determined not to be disclosable. To the extent that these incremental increases in service may require training, one-time training may be approved for each employee whose duties include responding to CPRA requests consistently with the test claim statute.

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[42] Exhibit H, LA County's Comments on Draft Staff Analysis, at p. 7.

The Commission finds that one-time training of employees is reasonably necessary to comply with the mandated activities. The parameters and guidelines include the one-time activity of training employees, as follows:

> *One-time training of each employee assigned the duties of implementing the reimbursable activities identified in section IV.B. of these parameters and guidelines.*
>
> *This activity does not include, and reimbursement is not required for, instruction on California Public Records Act requirements not specifically included in these parameters and guidelines. This activity specifically does not include instruction on making a determination whether a record is disclosable, or providing copies of disclosable records.*

3. <u>On-Going Activity: Acquiring or Developing Technology and Equipment to Track and Process Public Records Requests</u>

LA County has proposed reimbursement for the following activities relating to acquiring or developing technology and equipment:

> *To develop data base software or manual system(s) for tracking and processing public records request actions to implement reimbursable test claim provisions (as stated above).*
>
> *To purchase or lease computers to monitor and document public records request actions to implement reimbursable test claim provisions (as stated above). (Use for other purposes is not reimbursable).*
>
> *To develop or update web site(s) for public record act requests to implement reimbursable test claim provisions (as stated above).*[43]

These activities are not established as being reasonably necessary on the basis of the record. As discussed above, none of the four declarations submitted directly supports a finding that the activities proposed are reasonably necessary to comply with the mandated activities. Moreover, none of the four declarations refers to any technological difficulties that could be ameliorated by tracking software or documentation. Neither do any of the four declarants specifically cite the tracking of requests as a necessary activity. Finally, none of the other exhibits that LA County has submitted speaks to the necessity of technological methods to "track and process" or "monitor and document" public records requests. The need to "track and process" public record requests is not new, in any event, since the CPRA has been law since 1968 and public record requests have required processing for nearly 35 years.

DOF argues, in its comments on the claimants' proposed parameters and guidelines, that many of the activities, "including, but not limited to, developing data base software for tracking and

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[43] Exhibit C, LA County's Proposed Parameters and Guidelines, at p. 6.

processing public records requests appear to be outside the scope of the [statement of decision] as these were likely already required and utilized before this mandate and for purposes other than complying with this mandate."[44] LA County does not directly answer that argument in its rebuttal comments, instead arguing that the CPRA amendments giving rise to the test claim were intended to prevent public agencies from ignoring public records requests. LA County argues that "tracking and processing public records act requests to ensure timely compliance of CPRA provisions" is necessary, and should be reimbursable, because without "such systems, the status of requests would be left to memory – easily ignored as in the past."[45]

Even accepting LA County's argument that a "system" for tracking and processing of records is essential to comply with the mandate, nothing submitted in the record amounts to substantial evidence that acquiring or developing a data base or purchasing or leasing computers is necessary to comply with the mandated activities approved by the Commission in the test claim statement of decision. Nor does LA County answer DOF's charge that such methods "were likely already required and utilized before this mandate and for purposes other than complying with this mandate." Furthermore, the claimants ignore the fact that whatever difficulties in tracking and responding to public records requests might have obtained prior to the enactment of the test claim statutes, the fundamental and existing requirement to make records available and provide copies upon request has not changed; a lost or ignored records request was no more permitted under prior law than it can be permitted now.[46] The state is not required to provide reimbursement to local government for increased costs of complying with an existing requirement merely because local government did not comply prior law. Compliance with existing law is presumed.

As discussed above, the changes implicated here are incremental. The requirement to respond to a public records request is not new. The bill analysis attached to LA County's rebuttal comments describes an audit in which it was found that local agencies rejected or ignored public records requests 77% of the time.[47] LA County cites this as evidence of the need for tracking software and other technology, but it is also evidence that the test claim statute was meant to remedy an inadequacy; that the Legislature was not satisfied that local governments were fully and properly implementing the CPRA, and the Legislature chose to make the requirements more stringent in order to encourage more consistent compliance. To the extent that local governments must implement processes to track records requests to avoid losing them or

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[44] Exhibit E, DOF Comments on Proposed Parameters and Guidelines

[45] Exhibit F, LA County's Rebuttal Comments, at p. 4.

[46] See Government Code sections 6256 and 6257 [public agencies (both state and local government) have been required to provide "copies or exact copies of public records upon a request that reasonably describes an identifiable record" since the 1968 enactment of CPRA].

[47] Exhibit F, LA County's Rebuttal Comments, at p. 4.

ignoring them, those requirements are not new; the prior law was not being implemented properly and completely. Moreover, to the extent that existing equipment is inadequate to implement the mandate, replacing such outmoded equipment is not reimbursable because the underlying mandate to receive and respond to public records requests is not new.

LA County's comments on the draft staff analysis continue to assert the need for computers and other technology to implement the mandate. The county requests reimbursement for "the pro rata costs of purchasing and installing software systems permitting key word searches for those requests requiring assistance to the requestor in making a focused and effective search." But LA County still fails to provide any explanation why new technology or equipment is needed, or why new technology or equipment should be reimbursable under this mandate, where, as discussed above, this mandate was meant, at least in part, to be remedial; to correct the failings of local government under prior law to properly receive and respond to public records act requests in a timely manner.

Therefore, the Commission finds that the request for reimbursement for acquiring or developing new technology and equipment is denied, because there is no evidence that these activities are reasonably necessary to implement the limited approved activities in this claim.

4. <u>On-Going Activity: Providing a Copy of a Disclosable Electronic Record</u>

The test claim statement of decision approved reimbursement for *providing a copy of an electronic record* as follows:

> *If requested by a person making a public records request for a public record kept in an electronic format, provide a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies.*[48]

LA County has proposed reimbursement for the following, citing the same code section as authority, as was relied upon in the test claim statement of decision:

> *Determining whether electronic records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable. (Gov. Code, § 6253.9, subd. (a)(2) (Stats. 2000, ch. 982)).*
>
> a. *Receiving, logging and tracking oral (in-person or telephone), written, e-mail and fax requests for electronic public records.*
>
> b. *Determining whether the electronic public records request falls within the agency's jurisdiction.*

[48] Exhibit A, Test Claim Statement of Decision, at p. 27 [citing Government Code section 6253.9, as amended by Statutes 2000, chapter 982].

c. *Determining whether the request reasonably describes any identifiable electronic records(s) and conferring with the requestor if clarification is needed.*

d. *Meeting and/or conferring with specialized systems and/or other local agency staff to identify access to pertinent electronic records. If external public entities have oversight and/or ownership of the requested electronic data or information, meeting and/or conferring with those entities to provide the requested electronic data or information.*

e. *Conducting legal reviews, research and analysis of the requested electronic record(s) to determine if the requested electronic record(s) or parts thereof are subject to statutory and case law disclaimers, i.e. are disclosable. Reimbursement includes, but is not limited to, legal staff and/or legal contract services costs and the associated costs of legal data base services.*

f. *Processing the requested electronic record(s) or parts thereof that are disclosable.*

g. *Reviewing the electronic record(s) to be sent to the requestor to ensure compliance with statutory and case law exemptions.*

h. *Preparing, and obtaining supervisory approval and signature of, correspondence accompanying the requested electronic record(s).*

i. *Copying or saving electronic record(s) and accompanying correspondence.*

j. *Sending or transmitting the electronic records to the requestor.*

k. *Tracking the shipment of requested CPRA electronic records.*[49]

LA County's proposed reimbursable activities under this heading suggest that "provid[ing] a copy of a disclosable electronic record," as was approved in the test claim statement of decision, necessarily implies making a determination as to whether the record is disclosable. As the test claim statement of decision explored at length, the making of a determination whether a record or part thereof is disclosable is not new. The test claim statement of decision makes clear that local government claimants would have been required under prior law to determine whether a record is disclosable under statutory and case law exemptions, in order to make a record "open to inspection by every person at all times during the office hours of the local agency and [school district]."[50] The activity of making that determination is no different whether the determination

[49] Exhibit C, LA County's Proposed Parameters and Guidelines, at pp. 6-7.

[50] Exhibit A, Test Claim Statement of Decision, at p. 12, [citing former Government Code section 6253 (Stats. 1968, ch. 1473)].

applies to electronic records or physical records. Therefore the activities proposed above are not new. Furthermore, the Commission found in the test claim statement of decision that the process of determining that a portion of a record is exempt from disclosure and redacting the document was not new. The Commission found that "[p]rior to the 1981 amendment courts already held that the CPRA requires segregation of exempt materials from nonexempt materials contained in a single document and to make the nonexempt materials open for inspection and copying."[51]

The activity that was approved, read in context of the test claim analysis, includes only the marginal increase in service to *provide a copy* of a disclosable *electronic record, in an electronic format requested,* as specified; the activity does not include the determination of whether a record is disclosable, and does not include the provision of a copy of a public record. Any of the activities described above that relate to the making of a determination *whether a record is disclosable* are denied, because that determination was required under prior law, in order to make records available for inspection and to provide copies upon request. In fact, even the 1968 statute required disclosure of electronic data: "[c]omputer data shall be provided in a form determined by the agency."[52] The inclusion of "computer data," though vague, expresses the Legislature's intent that electronic records should receive differential treatment only insofar as the form in which they would be provided, and further reinforces the view, as found in the test claim statement of decision, that determining whether records are disclosable is not new, and therefore not reimbursable, even where the records are in electronic form. Additionally, any of the above activities related to receiving, logging, tracking of requests, or copying, saving, sending, or transmitting the records requested are not new. These activities are either within the scope of providing access to and copies of physical records under the 1968 statute, or they are not within the scope of the amended statute.

In comments submitted in response to the draft staff analysis, Cost Recovery Systems, Inc. (CRS) objects to this view, and argues that the approved activity in the test claim statement of decision includes sending the records, as part of the new program or higher level of service approved. CRS claims that the above analysis contradicts the test claim statement of decision. But CRS' view can only be supported if the phrase "provide a copy of a disclosable electronic record" is read in isolation, and the remainder of the same sentence, "*in the electronic format requested* if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies," is ignored, and the analysis of prior law in the test claim statement of decision is forgotten. The finding made in the test claim statement of decision was that providing a copy of a disclosable electronic record in the format requested, as specified, was a new activity. The higher level of service is imposed by expressly requiring disclosure of public records in electronic format, in addition to the physical format, which was

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[51] Exhibit A, Test Claim Statement of Decision, at p. 13[citing former Government Code section 6257 and *Nor Cal. Police Practices* (1979) 90 Cal.App.3d 116, p. 123-124].

[52] Former Government Code section 6256 (Stats. 1968, ch. 1473).

required under prior law and so is not reimbursable. The test claim statement of decision analyzed at length what was required under prior law, and in fact makes very plain that the provision of copies or exact copies of identifiable disclosable public records has been required since 1968:

> Former Government Code sections 6256 and 6257 provided:
>
> 6256. Any person may receive a copy of any identifiable public record or shall be provided with a copy of all information contained therein. Computer data shall be provided in a form determined by the agency.
>
> 6257. A request for a copy of an identifiable public record or information produced therefrom, or certified copy of such record, shall be accompanied by payment of a reasonable fee or deposit established by the state or local agency, or the prescribed statutory fee, where applicable.[53]

As articulated throughout this analysis, the test claim statement of decision approved only an incremental increase in service: where an electronic format requested is one that the agency has used, the agency must provide the requested records in that format. Provision of the records is not a new activity. Accordingly, "sending" the records, in the electronic format, is not a higher level of service, because physical records too would have to be sent.

The activities requested for reimbursement above, under this heading, are therefore denied. The activity of providing a copy of a disclosable electronic record, in an electronic format requested, exactly as approved in the test claim statement of decision, is included in the parameters and guidelines.

However, the test claim statutes, as interpreted by the courts, imply that the activity of "providing a copy of a disclosable electronic record" may at times be more involved than simply copying, redacting, and emailing a document. Section 6253.9(b) provides, in pertinent part:

> [T]he requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record when either of the following applies:
>
> (1) In order to comply with the provisions of subdivision (a), the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals.
>
> (2) The request would require data compilation, extraction, or programming to produce the record.

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[53] Exhibit A, Test Claim Statement of Decision, at p. 14 [citing Former Government Code sections 6256 and 6257 (Stats. 1968, ch. 1473)].

This section does not impose an explicit mandate to conduct activities related to data compilation, extraction, or programming, or a mandate to provide a copy of a record that is produced only at otherwise regularly scheduled intervals. But the section implies that such activities might from time to time be required. However, the section also provides new fee authority to cover those activities. Furthermore, the Attorney General of California assumes, in a published opinion analyzing section 6253.9, that a request for electronic records might "require data compilation, extraction, or programming to produce the record;" and that in that event the fee authorized under section 6253.9 "may additionally include 'the cost to construct [the] record, and the cost of programming and computer services necessary to produce a copy of the record.'"[54] This comports with the broad definition of "public records," and the emphasis on the disclosure of "information," rather than individual documents.[55]

The same interpretation is accorded in *County of Santa Clara v. Superior Court* (Cal. Ct. App. 6th Dist. 2009) 170 Cal.App.4th 1301. In that case the court found that section 6253.9 permitted the county to charge the requestor fees in excess of the direct cost of duplicating the records, where the county was being asked to produce electronic records "at an unscheduled interval." The court remanded the case to resolve a factual dispute but first recognized that, if excess costs were shown, the agency may charge "the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record..." pursuant to section 6253.9(b).[56]

The Commission therefore finds that providing a copy of an electronic record may include compiling information from disparate sources, extracting information from larger data sets, or writing computer programs or code to cull information, in order to generate an electronic record. However, the Commission also finds that the test claim statutes provide fee authority to offset the requirement to "provide a copy of a disclosable electronic record in the electronic format requested," as discussed below, including fee authority to offset the costs of compiling, extracting, or otherwise generating an electronic record. The SCO is authorized to reduce reimbursement for these activities accordingly, as discussed below. The parameters and guidelines contain the following approved activity:

> *Provide a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to*

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[54] Exhibit X, 88 Ops. Cal. Atty. Gen. 153 (2005).

[55] Exhibit A, Test Claim Statement of Decision, at p. 5; Government Code section 6250 (Stats. 1968, ch. 1473) ["access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state"].

[56] *County of Santa Clara v. Superior Court* (Cal. Ct. App. 6th Dist. 2009) 170 Cal.App.4th 1301, at p. 1337.

create copies for its own use or for provision to other agencies. (Gov. Code, § 6253.9(a)(2), Stats. 2000, ch. 982).

This activity includes:

a. Computer programming, extraction, or compiling necessary to produce disclosable records.

b. Producing a copy of an electronic record that is otherwise produced only at regularly scheduled intervals.

Reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency's jurisdiction, determining whether the request describes reasonably identifiable records, identifying access to records, conducting legal review to determine whether the records are disclosable, processing the records, sending the records, or tracking the records.

Fee authority discussed in section VII. of these parameters and guidelines is available to be applied to the costs of this activity. The Controller is authorized to reduce reimbursement for this activity to the extent of fee authority, as described in section VII.

LA County has proposed a number of changes to the above activity, including re-inserting language providing for reimbursement of technology and equipment costs, and eliminating the above limitation that reimbursement is not required for the costs of determining whether a request describes reasonably identifiable records and identifying access to those records. The "pro rata costs of purchasing and installing software systems permitting keyword searches" is not supported on the record here; the requirement to provide electronic records in a format requested only applies if the format is one that has been used by the agency to create copies for its own use. There is no requirement that all records be made available electronically. The test claim statute does now require an agency to assist a member of the public in making an effective request, but that still fails to justify a complete overhaul of local government's recordkeeping, as implied by LA County's request. The pro rata costs of software systems requested are denied. Each of the remaining changes proposed is discussed in other sections of this analysis, and needs no further explanation here. The proposed changes are not incorporated in the parameters and guidelines.

5. <u>On-Going Activities: Responding to a Public Records Act Request Within 10 Days With Either a Notice of Disclosure Determination or Notice of Extension; and, Where a Request is Denied, Responding to the Requestor in Writing.</u>

In the test claim statement of decision the Commission approved reimbursement for three separate activities conducted in response to a public records request, as follows:

Within 10 days from receipt of a request for a copy of records determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the local agency or K-14 district and notify the person making the

request of the determination and the reasons for the determination. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 district due to "unusual circumstances" as defined by Government Code section 6253, subdivision (c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982).)

¶…¶

If a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255, subd. (b) (Stats. 2000, ch. 982).)

These three activities are analyzed together for purposes of these parameters and guidelines, and listed together in section IV.B., because, in practice, they impact one another. Note also that the response made within 10 days need not be in writing. Only a notice of extension of the 10 day time limit, or a determination that the records are exempt from disclosure must be made in writing. Therefore oral or telephone notice must be included as a reimbursable means of compliance for the initial notice of the disclosure determination.

a. Within 10 days, provide notice of the disclosure determination.

With respect to the first activity approved under section 6253, LA County has proposed reimbursement for the following:

Within 10 days, determining whether records or parts thereof are not subject to statutory and case law exemptions in order to determine if such records are disclosable; and, developing or reviewing language to notify the person making the request of the determination and the reasons for the determination. ((Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982)).

a. Receiving, logging and tracking oral (in-person or telephone), written, e-mail and fax requests to comply with the 10 day time limit to notify the requestor if the requested record(s) or parts thereof are disclosable and the reason for the determination.

b. Determining whether the public record(s) request falls within the agency's jurisdiction.

c. Determining whether the request reasonably describes any identifiable records(s) and conferring with the requestor if clarification is needed.

d. Meeting and/or conferring with local agency staff to identify access to pertinent records. If external public entities have oversight and/or

ownership of the requested data or information, meeting and/or conferring with those entities to provide the requested data or information.

e. *Conducting legal reviews, research and analysis of the requested records to determine if the requested electronic record(s) or parts thereof are subject to statutory and case law disclaimers, i.e. are disclosable. Reimbursement includes, but is not limited to, legal staff and/or legal contract services costs and the costs of legal data base services.*

f. *Within 10 days of receipt of the public record(s) request, developing and reviewing language to notify the requestor of the disclosure determination and the reasons for the determination.*

g. *Processing and reviewing the record(s) to be sent to the requestor to ensure compliance with statutory and case law exemptions.*

h. *Preparing, and obtaining supervisory approval and signature of, correspondence accompanying the requested record(s).*

i. *Copying or saving record(s) and accompanying correspondence.*

j. *Sending or transmitting the records to the requestor.*

k. *Tracking the shipment of requested CPRA records.*[57]

As discussed above, the determination whether a record is disclosable and the provision of copies upon request, are not new activities and so are not reimbursable. The approved newly-mandated activity is to provide notice to the requestor of the determination within 10 days. This is an *incremental* increase in service, and the focus is not *whether the records are disclosable*, as implied by the claimant's proposed activities, but providing notice to the requestor within 10 days. The plain language of the statute does not impose a requirement to provide the records within 10 days, only to *provide notice* (verbal or written) to the requestor of the determination on the request.

As discussed throughout this analysis, and in the test claim statement of decision, prior law provided for "the right of every person to inspect any public record, with exceptions."[58] The Commission found, in the test claim statement of decision, that "[s]ince 1968, local agencies and K-14 districts were required to make public records open to inspection at all times during the office hours of the local agencies and K-14 districts, by every person, except for public records exempted from disclosure or prohibited from disclosure."[59] The Commission also found that "the general duty to make any reasonably segregable portion of a record available for inspection"

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[57] Exhibit C, LA County's Proposed Parameters and Guidelines, at pp. 8-9.

[58] Exhibit A, Test Claim Statement of Decision, at p. 10

[59] Exhibit A, Test Claim Statement of Decision, at p. 12.

was not a new program or higher level of service as compared with prior law.[60] Moreover, the Commission found that, "since 1968 public agencies were required to provide copies or exact copies of public records upon a request of identifiable public records."[61] The test claim statement of decision also found that the determination whether and to what extent a record is disclosable was not a new activity subject to reimbursement. Therefore, the duty to make a determination as to what records or parts of records were exempt from disclosure or prohibited from disclosure is not a new program or higher level of service. Only the requirement to notify the requestor *within 10 days* is new.

Receiving, logging, and tracking public records requests, as well as determining whether the agency has jurisdiction over the request, and whether the request describes reasonably identifiable records, are all requirements of the public records act under prior law. Similarly, identifying access to pertinent records and conducting legal review would have been required under prior law. Processing and reviewing the records for compliance, as well as preparing supervisory approval and signature of correspondence, copying or saving records and correspondence, sending the records, and tracking shipment are all activities that were required, at least in analog, with respect to physical records subject to disclosure under prior law. Therefore, items (a.) through (e.), and (g.) through (k.), above, are either duplicative or not *new* mandated activities, and must be denied.

The Commission finds that item (f.) - Within 10 days of receipt of the public record(s) request, *developing and reviewing language to notify the requestor of the disclosure determination and the reasons for the determination* - reasonably defines the mandate to provide notice to the requestor within 10 days, and this activity is therefore approved.

In its comments submitted in response to the draft staff analysis, CRS proposed altering the approved activity, on the ground that "developing and reviewing language to notify" was ambiguous. CRS suggested applying the same phrasing as the activity of *notifying a requestor when a determination cannot be made within 10 days*, as discussed below.[62] The Commission agrees that the phrase "drafting, editing, and reviewing a written notice," as applied in that context, is more specific and clear, and the parameters and guidelines will therefore adjust the phrasing suggested by LA County. CRS also proposed allowing for an oral notification, and reimbursing staff time to make that notification. The Commission finds that orally notifying the requestor is within the scope of the approved activity. Finally, CRS proposed reimbursement for obtaining supervisory review and sending the notice to the requestor, as those activities are approved in a similar context below, where the determination cannot be made within 10 days.

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[60] Exhibit A, Test Claim Statement of Decision, at pp. 13-14.

[61] Id. at p.14. citing former Government Code sections 6256 and 6257as adopted by Statutes 1968, chapter 1473.

[62] Exhibit G, CRS Comments on Draft Staff Analysis, at p. 2.

The Commission finds that obtaining supervisory review and sending the required notice to the requestor are reasonably within the scope of the approved activity, and are not requirements of prior law. The parameters and guidelines reflect this analysis.

Finally, the activity approved for reimbursement in the conclusion of the test claim statement of decision is written vaguely enough to be interpreted as encompassing activities beyond those approved in the body of the analysis, if not read in the context of the analysis, which are beyond the higher level of service imposed by the test claim statute. For this reason, the Commission defines the scope of the approved activity in the parameters and guidelines to appropriately limit reimbursement to the scope of the test claim statement of decision and the higher level of service imposed by the test claim statutes and to exclude reimbursement for requirements of prior law.

The parameters and guidelines authorize reimbursement for the following activity:

> *Beginning January 1, 2002, within 10 days from receipt of a request for a copy of records, provide verbal or written notice to the person making the request of the disclosure determination and the reasons for the determination. (Gov. Code, § 6253(c), Stats. 2001, ch. 982).*
>
> *This activity includes, where applicable:*
>
> 1) *Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the determination.*
> 2) *Obtaining agency head, or his or her designee, approval and signature of a written notice of determination.*
> 3) *Sending or transmitting the notice to the requestor*.
>
> b. <u>When the 10 day time limit cannot be met due to unusual circumstances, providing notice to the requestor setting forth the reasons for the extension</u>

With respect to the second activity approved under section 6253, providing a reason for an extension of time, LA County has proposed reimbursement for the following:

> *If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 district due to "unusual circumstances" as defined by Government Code section 6253, subdivision (c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253, subd. (c) (Stats. 2001, ch. 982)).*
>
> a. *Reviewing the following "unusual circumstances" (in Government Code section 6253, subdivision (c)(l)-(4)) to determine which are relevant in justifying an extension of the 10 day time limit in providing the requested document(s).*

i. *The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.*

ii. *The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.*

iii. *The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.*

iv. *The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.*

b. *Meeting and/or conferring with local agency staff, including legal staff, to determine the date on which a determination is expected to be dispatched to the person making the request. If other establishments have oversight and/or ownership of the requested data or information, meeting and/or conferring with those staff to ascertain an expected determination date.*

c. *Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched.*

d. *Preparing, and obtaining agency head, or his or her designee, approval and signature of, the extension notice and accompanying correspondence.*

e. *Copying or saving the extension notice and accompanying correspondence.*

f. *Sending or transmitting the notice and accompanying correspondence to the requestor.*

g. *Tracking delivery of the notice and accompanying correspondence to the requestor.*[63]

The Commission approved, in the test claim statement of decision, reimbursement for "providing written notice" to a requestor when the 10-day time limit must be extended due to unusual circumstances. Based on the intent of the amendments made to CPRA that are the subject of this test claim, this activity should be read as narrowly as possible. The intent and purpose of the

[63] Exhibit C, LA County's Proposed Parameters and Guidelines, at pp. 9-10.

amendments to CPRA was to promote access to public records and accountability to the public, and to remedy existing failures in the administration of the CPRA, by providing more specific guidelines for agencies and school districts to respond promptly to public records requests.

Item a. above, restates the "unusual circumstances" that are provided in the test claim statute to justify an extension of time beyond the 10-day time limit, and provides reimbursement for the decisionmaking process of selecting an appropriate justification. The activity approved in the statement of decision is to prepare and send written notice to the requestor when the 10-day time limit cannot be met due to unusual circumstances. The circumstances are enumerated in the code and need not be repeated. Item a. and its sub-parts are therefore denied.

Item b. above is not sufficiently specific. As discussed above, the claimants have not submitted substantial evidence to defend the reasonably necessary activities proposed, and the activity of meeting or conferring with other staff to determine the date on which the determination can be expected is not sufficiently distinguished from item c., "drafting, editing, and reviewing..." Item b. is therefore denied.

Items c. and d. are reasonably within the scope of the mandate. As discussed above, the 10-day time limit is new, and was approved, as was the requirement to inform a requestor when the 10-day time limit must be extended. In the case an extension is necessary, a written notice is due the requestor, identifying the reasons for the extension and the date on which a determination is expected. Items c. and d. include drafting and reviewing that notice, and obtaining the signature of the agency head or his or her designee. These activities are consistent with the mandated activity, are reasonably necessary to comply with the mandated activity, and are therefore approved.

Item e. is denied: there is no requirement to copy or save the notice prepared for the requestor, only to "provide written notice to the person." It may be a policy of the agencies to save the notice prepared for the requestor, but that activity is not necessary to perform the mandated activity of "providing" written notice.

Item f., to send or transmit the notice, is approved. As discussed above, the requirement to inform the requestor if the 10-day time limit cannot be met is new, and in order to inform the requestor, a written notice must be sent or transmitted. This activity is reasonably within the scope of the approved activity.

Item g. is denied: there is no requirement to track delivery of the written notice or accompanying correspondence.

Items c., d., and f. reasonably describe and explain the process of providing notice to a requestor that the 10-day time limit must be extended, consistently with the activities approved in the test claim statement of decision. These activities are reasonably within the scope of the mandate and are therefore approved.

Thus, the parameters and guidelines authorize reimbursement for the following activity:

> *Beginning January 1, 2002, if the 10-day time limit to notify the person making the records request of the disclosure determination is extended due to "unusual*

circumstances" as defined by Government Code section 6253(c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253(c), Stats. 2001, ch. 982).

This activity includes, where applicable:

1) *Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the extension of time.*
2) *Obtaining agency head, or his or her designee, approval and signature of, the notice of determination or notice of extension.*
3) *Sending or transmitting the notice to the requestor.*

c. <u>When a written request is denied, respond in writing</u>.

With respect to the activity approved under section 6255, providing a written response to a written request for inspection or copies of records when the request is denied, LA County has proposed reimbursement for the following:

If a request is denied, in whole or in part, preparing or reviewing a written response to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code § 6255, subd. (b) (Stats. 2000, ch. 982)).

a. Meeting and/or conferring with staff, including but not limited to legal staff, to review and finalize the analysis, findings and conclusions providing the basis for the denial determination.

b. Drafting and editing a written response that includes a determination that the request is denied.

c. Preparing, and obtaining agency head, or his or her designee, approval and signature of, the denial response and accompanying correspondence.

d. Copying or saving the written denial response and accompanying correspondence.

e. Copying or saving the denial response and accompanying correspondence.

f. Sending the denial response and accompanying correspondence to the requestor.

g. *Tracking delivery of the denial response and accompanying correspondence to the requestor.*[64]

The requirement to provide a written response is new, and was expressly approved in the test claim statement of decision, as provided above. The incremental increase in service here is to *provide the determination in writing*, and not to make the determination, as repeated throughout this analysis. LA County, in its comments filed in response to the draft staff analysis, argues that staff inappropriately denied reimbursement for "all legal services," and that "the Commission's [test claim statement of] decision does not deny reimbursement for all legal services." LA County argues that the test claim statement of decision "only denies reimbursement for legal service when performed to determine whether the requested records are disclosable."[65] The Commission agrees that the test claim statement of decision denied legal research and review to determine whether a record is disclosable, and throughout this analysis the same approach is adopted. LA County cites to the Commission's hearing on the test claim, in which Commissioner Alex stated, "…the idea that you need some legal advice on how to proceed initially is pretty clear."[66] It is not clear, from the county's reliance on this off-hand remark, or from the comments on the draft staff analysis, exactly what sort of legal services the county proposes for reimbursement. If the "legal advice on how to proceed initially" is encompassed in the training of existing employees and the development of policies and procedures with respect to the activities approved by the Commission, those activities are approved above. If the county proposes any other legal services or advice for reimbursement, those activities must be distinguished from legal review regarding disclosure. It is not the Commission's purview to assume or otherwise guess the activities for which claimants might wish to claim reimbursement; a successful claimant must describe the activities for which reimbursement is sought with some particularity. The Commission holds to the test claim analysis, finding that legal review for purposes of determining whether requested records are disclosable is not reimbursable. However, the Commission does recognize that a denial of a request under CPRA may lead to litigation. Therefore review of the language in the written notice by an agency's legal staff may be necessary, and is reasonably within the scope of providing a written notice when a request is denied.

Additionally, as discussed above in similar context, drafting and editing a response, obtaining approval and signature of the denial response, and sending the response are also within the scope of the approved activity.

Item d. is not required: there is no requirement to copy or save the denial response, and no consequence for failure to do so; it may be a policy of the agencies to save denial responses, but

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[64] Exhibit C, LA County's Proposed Parameters and Guidelines, at p. 12.

[65] Exhibit H, LA County Comments on Draft Staff Analysis.

[66] Exhibit H, LA County's Comments on Draft Staff Analysis, at p. 1.

it is not required by the statute. Item e. is duplicative, and is not required, and is therefore denied. Item g. is not established as necessary; there would seem to be no consequence in the test claim statute for failing to track delivery of a denial response.

The parameters and guidelines identify the following activities for reimbursement:

> *Beginning July 1, 2001, if a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255(b) (Stats. 2000, ch. 982)).*
>
> *This activity includes, where applicable:*
>
> 1) *Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the determination. This may include legal review of the written language in the notice. However, legal research and review of the law and facts that form the basis of the denial are not reimbursable.*
> 2) *Obtaining agency head, or his or her designee, approval and signature of, the notice of determination.*
> 3) *Sending or transmitting the notice to the requestor.*
>
> d. Limiting language applicable to these three activities.

The three activities described under section 4., above, providing notice of the disclosure determination in response to a public records act request within 10 days; providing notice of an extension when the 10-day time limit cannot be met; and, where a request is denied, responding to the requestor in writing; are all limited by the same prior law requirements. Prior law required a determination regarding whether records were disclosable; prior law required receiving and processing public records requests; prior law required determining whether records were within the jurisdiction and possession of the agency; and prior law required sending or transmitting the records, if the request was granted. Therefore, the following limits on reimbursement are included in the parameters and guidelines after activity c.:

> *Reimbursement* for activities 2a., 2b., and 2c.*is not required for making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency's jurisdiction, determining whether the request describes reasonably identifiable records, identifying access to records, conducting legal review to determine whether the records are disclosable, processing the records, sending the records, or tracking the records.*

6. On-Going Activity: Assisting the Public in Making Effective Records Requests

The test claim statement of decision approved reimbursement for the following:

When a member of the public requests to inspect a public record or obtain a copy of a public record:

a. Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated;

b. Describe the information technology and physical location in which the records exist; and

c. Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

These activities are not reimbursable when:

- *The public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253;*
- *The public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or*
- *The public agency makes available an index of its records. (Gov. Code, § 6253.1(a) and (d) (Stats. 2001, ch. 355)).*[67]

LA County has proposed reimbursement for the following:

When a member of the public requests to inspect a public record or obtain a copy of a public record:

a. assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated;

b. describe the information technology and physical location in which the records exist; and

c. provide suggestions for overcoming any practical basis for denying access to the records or information sought.

To implement Sections (9) a., b., c. (above):

(i) Receiving, logging and tracking oral (in-person or telephone), written, e-mail and fax requests to comply with public requests to inspect a public record or obtain a copy of a public record.

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[67] Exhibit A, Test Claim Statement of Decision, at p. 28.

(ii) Determining whether the public record(s) request falls within the agency's jurisdiction.

(iii) Determining whether the request reasonably describes any identifiable records(s) and conferring with the requestor if clarification is needed.

(iv) Meeting and/or conferring with local agency staff to identify access to pertinent records. If external public entities have oversight and/or ownership of the requested data or information, meeting and/or conferring with those entities to provide the requested data or information.

(v) Conducting legal reviews, research and analysis of the requested records to determine if the requested record(s) or parts thereof are subject to statutory and case law disclaimers, i.e. are disclosable. Reimbursement includes, but is not limited to, legal staff and/or legal contract services costs and the costs of legal data base services.

(vi) Identifying litigation, claims, and related record(s) which may be disclosable and may be responsive to the request or to the purpose of the request, if stated; and provide suggestions for overcoming any practical basis for denying access to the records or information sought.

(vii) Developing and reviewing language to notify the requestor of the disclosure determination and the reasons for the determination.

(viii) Processing and reviewing the record(s) to be sent to the requestor to ensure compliance with statutory and case law exemptions.

(ix) Preparing, and obtaining supervisory approval and signature of, correspondence accompanying the requested record(s).

(x) Copying or saving record(s) and accompanying correspondence.

(xi) Sending or transmitting the records to the requestor.

These activities are not reimbursable when:

1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253;

2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or

3) *the public agency makes available an index of its records. (Gov. Code,§ 6253.1, subds. (a) and (d) (Stats. 2001, ch. 355)).*[68]

In its comments on the draft staff analysis, LA County proposed isolating public records requests that require assistance to the requestor, and treating them differently from all other requests, ensuring that such requests are fully reimbursable, including activities specifically denied in the test claim decision if assistance to the requestor is involved. For example, where staff recommended approving reimbursement for *providing a copy of a disclosable electronic record in an electronic format*, as discussed above, staff also recommended the following limitation:

> *This activity does not include, and reimbursement is not required for the costs of determining whether the record is disclosable; receiving public records act requests; tracking requests; processing requests; determining whether a request describes reasonably identifiable records and identifying access to those records; retrieving records, or sending the records to the requestor.*

LA County proposed to add, and to strike, the following language:

> This activity does not include, and reimbursement is not required for the costs of determining whether the record is disclosable; receiving public records act requests *not requiring assistance to the requestor in making a focused and effective search*; tracking requests *not requiring assistance to the requestor in making a focused and effective search*; processing requests *not requiring assistance to the requestor in making a focused and effective search*; ~~determining whether a request describes reasonably identifiable records and identifying access to those records; retrieving records, or sending the records to the requestor~~.

Similar language, if not identical, is proposed for a number of other activities in the proposed parameters and guidelines, including the activity of providing assistance to the public in making effective public records act requests, as discussed in this section.[69] Other than the three declarations discussed above, which contain nothing more than bare assertion, LA County has submitted no evidence or explanation that would justify reimbursement for receipt of a records request that requires assistance to the requestor; or for tracking and processing such a request. The higher level of service approved is *to provide assistance to the public in making an effective records request*; there is no implication that handling the records request, once made, is a new program or higher level of service. The underlying prior law requirements to provide access to disclosable records, and to provide copies or exact copies, as discussed above, apply with equal force to public records act requests that require assistance to the requestor.[70] There is no evidence that tracking or processing a request is necessary, or if necessary, that tracking and

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[68] Exhibit C, LA County's Proposed Parameters and Guidelines, at pp. 10-12.

[69] See e.g., Exhibit H, LA County's Comments on Draft Staff Analysis, at pp. 8; 9; 11.

[70] Former Government Code sections 6253; 6256; 6257 (Stats. 1968, ch. 1473).

processing are not requirements of prior law; and, receipt of records requests is clearly not new, as discussed throughout this analysis. The declarations submitted state that these activities are necessary to provide the records in a timely and cost-efficient manner, but there is nothing in the language of the statute, or implied by the test claim statute or any of the test claim findings that would justify reimbursement for activities that are either not new, or not required. Providing the records in a timely manner was always a requirement;[71] it was simply not adequately implemented. Moreover, cost-efficiency is not a requirement of CPRA; there is no suggestion that cost should be a factor in refusing disclosure, or that the state has any interest in making the CPRA requirements inexpensive for local government; the focus has always been on the public's right to access information.[72] The language that LA County proposes to add must be denied. The language that LA County proposes to strike is addressed below.

Proposed reimbursable activities (i) and (ii) above – receiving public records requests and determining whether the request is within the agency's jurisdiction – are not new. As discussed throughout this analysis, agencies had a duty under prior law to receive public records requests; and the duty to determine whether the request is within the agency's jurisdiction is implied from the duty to determine whether a record is disclosable.[73] Similarly, activities (iv), (v), (vii), and (viii), above, restate the legal review that would be required under prior law pursuant to the requirement to make all public records available, subject to exemptions. Items (iv) and (v) describe the process of identifying access to requested records and reviewing for disclosable material (i.e., reviewing for exemptions from disclosure), and items (vii) and (viii) describe the making of the disclosure determination and the review of that determination. All four of these activities were required under prior law, and none relate to or explain the activity of assisting the public with an effective records request. Item (ix) is duplicative, and does not relate to or explain the activity of assisting the public in making an effective request. Items (ix) and (x) are not required activities, where public records are to be disclosed: an agency head is only required to sign a determination that records will not be disclosed, or a notice of extension of the time limit. And there is no requirement to copy or save records and accompanying correspondence; the requirement is merely to send the records. Thus, the activity to copy or save records is not reasonably necessary to implement the mandate to "send" the records. Item (xi) is required, but is not new: disclosable records would have to be sent or transmitted under prior law as well.

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[71] Former Government Code section 6253 required records to be open to inspection during regular business hours; this implies that records should be made available on demand.

[72] See Former Government Code section 6250 (Stats. 1968, ch. 1473) ["In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every citizen of this state."].

[73] See Exhibit X, Government Code 6253 (Stats. 1968, ch. 1473).

The requirement that local agencies and school districts must assist members of the public in making an effective public records act request is new, as approved in the test claim statement of decision, but is only an incremental increase in service, as discussed in similar context above. Therefore, items (i), (ii), (iv), (v), (vii), (viii), (ix), (x), and (xi) are not reasonably necessary to comply with the incremental increase in service.

Activity (vi) "Identifying litigation, claims, and related record(s)" is narrower than the requirement the test claim statute (which requires "identifying records and information which may be disclosable and may be responsive…")[74] and is redundant. Therefore, it is denied as written. The intent of placing the burden on the agency to assist the public in making an effective records request necessarily includes identifying records and information which "may be disclosable and may be responsive to the request or to the purpose of the request." The intent of the statutory change, and the activity approved in the test claim statement of decision, is to require an agency to interpret a request generously, with a bias toward identifying all relevant information. However, this activity not does not include determining whether such relevant information is disclosable, since that activity is not new and was specifically denied in the test claim statement of decision,

Thus, of the above activities, only a portion of activity (iii), "[d]etermining whether the request reasonably describes any identifiable records(s) and conferring with the requestor if clarification is needed," is reasonably within the scope of the approved activity of assisting the public. Activity (iii), is therefore partially approved: "conferring with the requestor" for clarification is implied by the statutory change and the activity as approved in the test claim statement of decision. But "[d]etermining whether the request reasonably describes any identifiable records(s)" is not new; this is an essential part of providing access to or copies of disclosable public records, as required under provisions of CPRA dating back to 1968.[75] In light of this long-standing requirement of prior law, in many of the approved activities in the draft proposed parameters and guidelines, staff recommended including the following limiting language:

> *Reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency's jurisdiction, determining whether the request describes reasonably identifiable records, identifying access to records…*

In each activity to which this limiting language was applied, LA County proposed striking the phrase "determining whether the request describes reasonably identifiable records, [and]

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[74] Government Code section 6253.1 (Stats. 2001, ch. 355 (AB 1014)).

[75] Former Government Code section 6256 (Stats. 1968, ch. 1473) ["Any person may receive a copy of any identifiable public record or shall be provided with a copy of all information contained therein."].

identifying access to records…" LA County did not explain this proposed change, other than to reiterate, in each of the three *new declarations*, that "I declare on information and belief that the Commission staff fairly state the activities reasonably necessary in implementing new CPRA services *except for the changes I recommend which are found (highlighted) in Attachment A.*"[76] As discussed in this section, determining whether a request describes reasonably identifiable records is not new. And, as discussed above, the declarations indicate no consideration of prior law, and therefore cannot be relied upon in conducting a mandates analysis. The limitation on reimbursement is left intact in the proposed parameters and guidelines, including the approved activity of assisting the public; LA County's proposed changes are denied.

The Commission finds that activity (iii), above, is partially approved. The parameters and guidelines authorize reimbursement for the following activities:

> *When a member of the public requests to inspect a public record or obtain a copy of a public record, the local agency or K-14 school district shall (1) assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated; (2) describe the information technology and physical location in which the records exist; and (3) provide suggestions for overcoming any practical basis for denying access to the records or information sought.*
>
> *This activity includes:*
>
> *i. Conferring with the requestor if clarification is needed to identify records requested.*
>
> *ii. Identifying record(s)and information which may be disclosable and may be responsive to the request or to the purpose of the request, if stated.*
>
> *iii. Providing suggestions for overcoming any practical basis for denying access to the records or information sought.*
>
> *These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1(a) and (d) (Stats. 2001, ch. 355)).*
>
> *In addition, reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency's jurisdiction, conducting*

[76] Exhibit H, LA County's Comments on Draft Staff Analysis, at pp. 2-4.

legal review, processing the records, obtaining supervisory review, sending the records, or tracking the records.

7. <u>On-Going Activity: Redaction and Removal of Home Addresses and Telephone Numbers Upon Request, for K-12 School Districts Only.</u>

The remaining activities approved in the parameters and guidelines for Government Code section 6254.3 are those affecting only school districts, and are approved as written in the test claim statement of decision, with only slight reorganization. Those activities are, in summary, to "redact or withhold the home address and telephone number of employees of K-12 school districts and county offices of education from records that contain disclosable information," and to "remove the home address and telephone number of an employee from any mailing lists that the K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-12 school district or county office of education to contact the employee."[77] The Commission approves these activities, as stated in the test claim statement of decision, without substantial analysis.

8. <u>Time Studies</u>

In the revised proposed parameters and guidelines LA County proposed allowing actual cost claiming by way of time studies. Staff did not include this language in the draft parameters and guidelines because it was not addressed in the claimant's narrative, and the Commission's boilerplate language does not normally include provision for time studies.

In its comments on the draft staff analysis, LA County has requested inclusion of language in the parameters and guidelines authorizing claiming through time studies.[78] The language requested by LA County is not justified on the record, but the following is inserted in the parameters and guidelines, recognizing that time studies are a claiming tool that has been approved in prior test claims:

Claimants may use time studies to support salary, benefit, and associated indirect costs when an activity is task-repetitive. Activities that require varying levels of effort are not appropriate for time studies. Time study usage is subject to the review and audit conducted by the State Controller's Office.

C. Offsetting Revenues (Section VII. of Parameters and Guidelines)

In adopting parameters and guidelines, the Commission is required by Government Code section 17557 to determine the "amount to be subvened" under the Constitution. Specifically, the Commission's regulations require parameters and guidelines to identify offsetting revenues that may apply to the program as follows:

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[77] Exhibit A, Test Claim Statement of Decision, at p. 27.

[78] Exhibit H, LA County's Comments on Draft Staff Analysis, at pp. 12-13.

i. Dedicated state and federal funds appropriated for this program

ii. Non-local agency funds dedicated for this program.

iii. Local agency's general purpose funds for this program.

iv. Fee authority to offset partial costs of this program.[79]

The SCO has the authority to reduce reimbursement to an eligible claimant, to the extent of fee authority created by the test claim statute (or another provision), which must in turn be identified in the parameters and guidelines. A reduction in this manner is consistent with Article XIII B, section 6, which requires subvention only when the costs in question can be recovered solely from tax revenues.[80]

Thus, fee authority given to local government agencies and school districts that *can* be used for costs of a mandated program is required to be identified as a source of offsetting revenues in the parameters and guidelines, and required to be offset against costs claimed, to the extent of the authority. Fee authority granted by the Legislature provides a mechanism by which funds other than local tax revenues can be used for costs of the program. A claimant is not in need of the protection offered by article XIII B, section 6, to the extent of the revenues that can be raised by authorized fees, and cannot show increased costs mandated by the state, consistently with sections 17556(d) and 17514, to the extent of the fee authority granted.

Here, the fee authority found in Government Code sections 6253 and 6253.9 must be identified in the parameters and guidelines, and the SCO may reduce reimbursement to the extent of direct costs that are permissible subjects of the fees.

Government Code section 6253 provides, in pertinent part:

> Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person *upon payment of fees covering direct costs of duplication*, or a statutory fee if applicable.[81]

Section 6253.9 provides, in pertinent part:

> (a) Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record not exempt from disclosure pursuant to

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[79] Code of Regulations, Title 2, section 1183.1 (Register 2005, No. 36).

[80] *County of Fresno*, *supra*, 53 Cal.3d at p. 487.

[81] Government Code section 6253 (Stats. 1998, ch. 620 (SB 143); Stats. 1999, ch. 83 (SB 966); Stats. 2000, ch. 982 (AB 2799); Stats. 2001, ch. 355 (AB 1014)) [derived from former Government Code section 6257 (Stats. 1981, ch. 968)].

this chapter that is in an electronic format shall make that information available in an electronic format when requested by any person and, when applicable, shall comply with the following:

(1) The agency shall make the information available in any electronic format in which it holds the information.

(2) Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. *The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format.*

(b) Notwithstanding paragraph (2) of subdivision (a), *the requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy* of the record when either of the following applies:

(1) In order to comply with the provisions of subdivision (a), the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals.

(2) The request would require data compilation, extraction, or programming to produce the record.[82]

Section 6253, above, provides that agencies shall make disclosable records "promptly available to any person upon payment of fees covering *direct costs of duplication,"* or statutorily defined fees, where applicable. Section 6253.9(a)(2), above states that the costs of duplication generally must be limited to direct costs of producing copies. This would include, for example, the cost of a flash drive. Subdivision (b) provides that "the requester shall bear the cost of producing a copy of the record," if the agency is compelled to produce the record other than at the regularly scheduled time, or if the request requires data compilation, extraction, or programming.

In the context of paper records, the courts have held that "[t]he direct cost of duplication is the cost of running the copy machine, and conceivably also the expense of the person operating it." The courts contend that direct cost "does not include the ancillary tasks necessarily associated with the retrieval, inspection and handling of the file from which the copy is extracted."[83] In the context of electronic records, "the statute allows an agency to recover specified ancillary costs in either of two cases: (1) when it must 'produce a copy of an electronic record' between 'regularly scheduled intervals' of production, or (2) when compliance with the request for an electronic

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[82] Government Code section 6253.9 (added by Stats. 2000, ch. 982 (AB 2799)).

[83] Exhibit X, *North County Parents Organization v. Department of Education* (*North County*) (Cal. Ct. App. 4th Dist. 1994) 23 Cal.App.4th 144, at p. 148.

record 'would require data compilation, extraction, or programming to produce the record.'" The court in *County of Santa Clara* held that pursuant to section 6253.9, "[u]nder those circumstances, the agency may charge 'the cost [of staff] to construct a record, and the cost of programming and computer services necessary to produce a copy of the record ....'"[84]

In this test claim, reimbursement is required for the increased level of service mandated by providing a copy of an electronic record, which the court in *Santa Clara* recognizes may at times require "data compilation, extraction, or programming." The fee authority under sections 6253 and 6253.9(a), as discussed, extends to the *direct costs* of providing copies of disclosable public records, and may not be applied to cover the costs of retrieving records to comply with a request,. And the fee authority found in section 6253.9(b) also extends to the costs of programming, extraction, and compiling required to construct a record.

Based on the courts' interpretation of sections 6253 and 6253.9, the Commission finds that the test claim statutes provide fee authority to offset the direct costs of "provid[ing] a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies."[85] The Commission also finds fee authority for the costs of staff "construct[ing] a record, and the cost of programming and computer services necessary to produce a copy of the record," when "the record is one that is produced only at otherwise regularly scheduled intervals…[or]… would require data compilation, extraction, or programming to produce the record."[86]

The remaining activities required under the test claim statutes, including responding in writing to public records requests within 10 days, assisting the public in making effective public records requests, and redacting employees' home addresses and phone numbers, are not permissible subjects of the identified fee authority. The parameters and guidelines reflect this analysis.

In comments on the draft staff analysis, DOF suggested a small, non-substantive change to the language recommended by staff regarding fee authority. Rather than focusing on the records requested, as was the case in the test claim statement of decision and the case law on point, DOF's version focuses on the request, and what is required to satisfy the request. The Commission finds that DOF's proposed language has the same substantive effect as the language recommended in the draft proposed parameters and guidelines, and focuses more clearly on the request, rather than the records requested.[87] DOF's proposed language is therefore incorporated in the parameters and guidelines, as follows:

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[84] Exhibit X, *County of Santa Clara v. Superior Court* (Cal. Ct. App. 6th Dist. 2009) 170 Cal.App.4th 1301, at p. 1336.

[85] Exhibit A, Test Claim Statement of Decision, at p. 27.

[86] Government Code section 6253.9 (Stats. 2000, ch. 982 (AB 2799)).

[87] Exhibit I, DOF Comments on Draft Staff Analysis.

Revenue from the fee authority authorized in Government Code sections 6253 and 6253.9(a)(2) and (b), as added by Statutes 2000, chapter 982, shall be identified and deducted from the following costs claimed:

1. The direct costs of providing a copy of a disclosable electronic record in the electronic format requested; and

2. If the request requires data compilation, extraction, or programming to produce the record, or if the record is one that is otherwise produced only at regularly scheduled intervals, the cost of producing the record including the cost to construct it, and the cost of programming and computer services necessary to produce the copy of the electronic record.

V. CONCLUSION

For the foregoing reasons the Commission hereby adopts the attached proposed parameters and guidelines, providing for actual cost reimbursement of the activities approved in the test claim statement of decision and the reasonably necessary activities approved, as analyzed above.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES: Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255 Statutes 1992, Chapters 463 (AB 1040); Statutes 2000, Chapter 982 (AB 2799); and Statutes 2001, Chapter 355 (AB 1014) Period of reimbursement begins on July 1, 2001, or later for specified activities added by subsequent statutes.	Case No.: 02-TC-10 and 02-TC-51 *California Public Records Act* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted April 19, 2013*) (*Served April 25, 2013*)

PARAMETERS AND GUIDELINES

The Commission on State Mandates adopted the attached parameters and guidelines on April 19, 2013.

Heather Halsey, Executive Director

Adopted: April 19, 2013

PARAMETERS AND GUIDELINES

Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255

Statutes 1992, Chapters 463 (AB 1040); Statutes 2000, Chapter 982 (AB 2799); and Statutes 2001, Chapter 355 (AB 1014)

California Public Records Act

02-TC-10 and 02-TC-51

Period of reimbursement begins on July 1, 2001, or later for specified activities added by subsequent statutes

I. SUMMARY OF THE MANDATE

The California Public Records Act (CPRA) provides for the disclosure of public records kept by the state, local agencies, school districts and community college districts, and county offices of education. On May 26, 2011, the Commission on State Mandates (Commission) adopted a statement of decision finding that the test claim statutes impose a partially reimbursable state-mandated program upon local agencies and K-14 school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved this test claim for the following reimbursable activities which impose an incremental increase in the level of service required under prior law:

1. If requested by a person making a public records request for a public record kept in an electronic format, provide a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. (Gov. Code, § 6253.9(a)(2) (Stats. 2000, ch. 982)).
2. Within 10 days from receipt of a request for a copy of records, notify the person making the request of the determination regarding whether the records are disclosable and the reasons for the determination. (Gov. Code, § 6253(c) (Stats. 2001, ch. 982)).
3. If the 10-day time limit of Government Code section 6253 is extended by a local agency or K-14 district due to "unusual circumstances" as defined by Government Code section 6253(c)(1)-(4) (Stats. 2001, ch. 982), provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253(c) (Stats. 2001, ch. 982)).
4. If a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255(b) (Stats. 2000, ch. 982).)
5. When a member of the public requests to inspect a public record or obtain a copy of a public record:
    a. Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated;

b. Describe the information technology and physical location in which the records exist; and

c. Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

These activities are not reimbursable when:

- The public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253;
- The public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or
- The public agency makes available an index of its records. (Gov. Code, § 6253.1(a) and (d) (Stats. 2001, ch. 355)).

6. For K-12 school districts and county offices of education only, the following activities are eligible for reimbursement:

   a. Redact or withhold the home address and telephone number of employees of K-12 school districts and county offices of education from records that contain disclosable information.

      This activity is not reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to K-12 school district and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents. (Gov. Code, § 6254.3(a) (Stats. 1992, ch. 463).)

   b. Remove the home address and telephone number of an employee from any mailing lists that the K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3(b) (Stats. 1992, ch. 463).)

II. ELIGIBLE CLAIMANTS

Any city, county, and city and county, or any "school district" as defined in Government Code section 17519 which incurs increased costs as a result of this mandate, is eligible to claim reimbursement.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557(e), states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The County of Los Angeles filed the first test claim on October 15, 2002, establishing eligibility for reimbursement for the 2001-2002 fiscal year. Therefore, costs incurred pursuant to the test claim statutes are reimbursable on or after July 1, 2001.

Reimbursement for state-mandated costs may be claimed as follows:

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.
3. Pursuant to Government Code section 17560(a), a local agency or school district may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Gov. Code § 17560(b)).
5. If the total costs for a given fiscal year do not exceed $1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a).
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

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 to 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, training packets, 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.

Claimants may use time studies to support salary, benefit, and associated indirect costs when an activity is task-repetitive. Activities that require varying levels of effort are not appropriate for

time studies. Time study usage is subject to the review and audit conducted by the State Controller's Office.

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 that incurs increased costs, the following activities are reimbursable:

A. <u>One Time Activities: Development of Policies and Procedures, and Training Employees to Implement the Mandate</u>

1. Developing policies, protocols, manuals, and procedures, to implement only the activities identified in section IV.B. of these parameters and guidelines. The activities in section IV.B. represent the incremental higher level of service approved by the Commission.

   This activity does not include, and reimbursement is not required for, developing policies and procedures to implement California Public Records Act requirements not specifically included in these parameters and guidelines. This activity specifically does not include making a determination whether a record is disclosable, or providing copies of disclosable records.

2. One-time training of each employee assigned the duties of implementing the reimbursable activities identified in section IV.B. of these parameters and guidelines.

   This activity does not include, and reimbursement is not required for, instruction on California Public Records Act requirements not specifically included in these parameters and guidelines. This activity specifically does not include instruction on making a determination whether a record is disclosable, or providing copies of disclosable records.

B. <u>Ongoing Activities</u>

1. Provide a copy of a disclosable electronic record in the electronic format requested if the requested format is one that has been used by the agency to create copies for its own use or for provision to other agencies. (Gov. Code, § 6253.9(a)(2) (Stats. 2000, ch. 982)).

   This activity includes:

   a. Computer programming, extraction, or compiling necessary to produce disclosable records.

   b. Producing a copy of an electronic record that is otherwise produced only at regularly scheduled intervals.

   Reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency's jurisdiction, determining whether the request describes reasonably identifiable records, identifying access to records, conducting legal review to determine whether the records are disclosable, processing the records, sending the records, or tracking the records.

   Fee authority discussed in section VII. of these parameters and guidelines is available to be applied to the costs of this activity. The Controller is authorized to reduce reimbursement for this activity to the extent of fee authority, as described in section VII.

2. Upon receipt of a request for a copy of records, a local agency or K-14 school district must perform the activities in a., b., or c. as follows:

    a. Beginning January 1, 2002, within 10 days from receipt of a request for a copy of records, provide verbal or written notice to the person making the request of the disclosure determination and the reasons for the determination. (Gov. Code, § 6253(c), Stats. 2001, ch. 982);

        This activity includes, where applicable:

        1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the determination.

        2) Obtaining agency head, or his or her designee, approval and signature of a written notice of determination.

        3) Sending or transmitting the notice to the requestor.

    b. Beginning January 1, 2002, if the 10-day time limit to notify the person making the records request of the disclosure determination is extended due to "unusual circumstances" as defined by Government Code section 6253(c)(1)-(4) (Stats. 2001, ch. 982), the agency head, or his or her designee, shall provide written notice to the person making the request, setting forth the reasons of the extension and the date on which a determination is expected to be dispatched. (Gov. Code, § 6253(c), Stats. 2001, ch. 982).

        This activity includes, where applicable:

        1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the extension of time.

        2) Obtaining agency head, or his or her designee, approval and signature of, the notice of determination or notice of extension.

        3) Sending or transmitting the notice to the requestor.

    c. Beginning July 1, 2001, if a request is denied, in whole or in part, respond in writing to a written request for inspection or copies of public records that includes a determination that the request is denied. (Gov. Code, § 6255(b), Stats. 2000, ch. 982).

        This activity includes, where applicable:

        1) Drafting, editing and reviewing a written notice to the person making the request, setting forth the reasons for the determination. This may include legal review of the written language in the notice. However, legal research and review of the law and facts that form the basis of the determination to deny the request are not reimbursable.

        2) Obtaining agency head, or his or her designee, approval and signature of, the notice of determination.

        3) Sending or transmitting the notice to the requestor.

Reimbursement for activities 2a., 2b., and 2c. is not required for making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency's jurisdiction, determining whether the request describes reasonably identifiable records, identifying access to records, conducting legal review to determine whether the records are disclosable, processing the records, sending the records, or tracking the records.

3. When a member of the public requests to inspect a public record or obtain a copy of a public record, the local agency or K-14 school district shall (1) assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated; (2) describe the information technology and physical location in which the records exist; and (3) provide suggestions for overcoming any practical basis for denying access to the records or information sought.

   This activity includes:

   a. Conferring with the requestor if clarification is needed to identify records requested.

   b. Identifying record(s) and information which may be disclosable and may be responsive to the request or to the purpose of the request, if stated.

   c. Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

   These activities are not reimbursable when: (1) the public records requested are made available to the member of the public through the procedures set forth in Government Code section 6253; (2) the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Government Code section 6254; or (3) the public agency makes available an index of its records. (Gov. Code, § 6253.1(a) and (d), Stats. 2001, ch. 355).

   In addition, reimbursement is not required for the activities of making the determination whether a record is disclosable, receiving the request for records, determining whether the request falls within the agency's jurisdiction, conducting legal review to determine whether the requested records are disclosable, processing the records, sending the records, or tracking the records.

4. For K-12 school districts and county offices of education only, the following activities are eligible for reimbursement:

   a. Redact or withhold the home address and telephone number of employees of K-12 school districts and county offices of education from records that contain disclosable information.

      This activity is <u>not</u> reimbursable when the information is requested by: (1) an agent, or a family member of the individual to whom the information pertains; (2) an officer or employee of another school district, or county office of education when necessary for the performance of its official duties; (3) an employee organization pursuant to regulations and decisions of the Public Employment

Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed (and thus must always be redacted or withheld); (4) an agent or employee of a health benefit plan providing health services or administering claims for health services to K-12 school district and county office of education employees and their enrolled dependents, for the purpose of providing the health services or administering claims for employees and their enrolled dependents. (Gov. Code, § 6254.3(a), Stats. 1992, ch. 463.)

b. Remove the home address and telephone number of an employee from any mailing lists that the K-12 school district or county office of education is legally required to maintain, if requested by the employee, except for lists used exclusively by the K-12 school district or county office of education to contact the employee. (Gov. Code, § 6254.3(b), Stats. 1992, ch. 463.)

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. 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. Attach a copy of the contract to the claim. 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 and itemize all costs for those services. 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

Report the purchase price paid for fixed assets (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset 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, 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

The cost of training each employee to perform the mandated activities is eligible for reimbursement as a one time cost. Identify the employee(s) by name and job classification. Provide the title and subject of the training session, the date(s) attended, and the location. Reimbursable costs may include salaries and benefits, registration fees, transportation, and per diem.

B. Indirect Cost Rates

Indirect costs are costs that have been 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. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

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.

For local agency claimants:

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in 2 CFR Part 225 (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 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B).

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 of 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 of allowable indirect costs bears to the base selected.

For school district claimants:

School districts must use the California Department of Education approved indirect cost rate for the year that funds are expended.

Community colleges have the option of using: (1) a federally approved rate, utilizing the cost accounting principles from the Office of Management and Budget Circular A-21, "Cost Principles of Educational Institutions"; (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5 (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter[1] 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 REVENUES AND REIMBURSEMENTS

Any offsetting revenue 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

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

claimed. In addition, reimbursement for this mandate 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.

Revenue from the fee authority authorized in Government Code sections 6253 and 6253.9(a)(2) and (b), as added by Statutes 2000, chapter 982, shall be identified and deducted from the following costs claimed:

1. The direct costs of providing a copy of a disclosable electronic record in the electronic format requested; and

2. If the request requires data compilation, extraction, or programming to produce the record, or if the record is one that is otherwise produced only at regularly scheduled intervals, the cost of producing the record including the cost to construct it, and the cost of programming and computer services necessary to produce the copy of the electronic record.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 90 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(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(d), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The statements of decision adopted for the test claim and parameters and guidelines are legally binding on all parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record. The administrative record is on file with the Commission.