



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

February 26, 2015

The Honorable Charles E. Grassley
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds to your letter to Assistant Attorney General Karol V. Mason, of the Department of Justice's (the Department) Office of Justice Programs (OJP), dated January 12, 2015, regarding the Public Safety Officers' Benefits (PSOB) Program and pending claims. The Department's Inspector General (IG) is conducting an audit of PSOB to assess the process used by PSOB to make determinations for death and disability claims, particularly with regard to those for which no initial determination is made within one year. The Department is looking forward to the IG's recommendations to improve the timeliness of the PSOB process. While we await those findings, however, OJP has provided the following information in response to your letter.

Enacted in 1976, the PSOB Act allows the Department to pay a death benefit to the survivors of public safety officers who have died (or become totally and permanent disabled) as the direct and proximate result of an injury sustained in the line of duty. See 42 U.S.C. §§3796 - 3796c-2; 28 C.F.R. part 32. OJP's Bureau of Justice Assistance (BJA) administers the Death, Disability, and Educational Assistance Programs. A primary requirement of the statute is that the claimant must establish, and BJA must determine, the core elements of the claim, including that the individual was a "public safety officer," and that he or she sustained "an injury" in the "line of duty," all within the meaning of the statute. The claimant also must establish, and BJA must determine, that the injury or death was "a direct and proximate result" of harm sustained by the officer in the line of duty. While some claims are straightforward and clearly meet the statutory criteria, others present significant factual and evidentiary complexities that must be resolved before a determination can be made about entitlement to benefits. The Department recognizes the importance of its responsibility to administer the PSOB Act in accordance with the law, as well as the importance of these benefits to families in the aftermath of tragedy.

We also recognize the need to improve the timeliness of the process for reaching PSOB claims determinations. In 2013, BJA made changes that were intended to streamline the process and to shorten the time period for reaching determinations. While those changes have improved some aspects of the claims determination process, they have not shortened the overall time

period from the filing of claims to their determinations. In January 2015, OJP's Assistant Attorney General (AAG) directed OJP's Office of Audit, Assessment, and Management (OAAM) to conduct a business process improvement review of all the PSOB Office's tasks, including the claims process and the legal review process. OAAM is expected to provide recommendations for process improvements to the AAG later this year.

Our responses to the numbered questions in your letter are set forth below.

1. What is the status of PSOB applications filed on behalf of the following officers?

The requested claim status updates are provided in the enclosure.

2. Why is it taking so long to process these applications?

OJP recognizes that every PSOB death claim is tragic for the survivors, the agency the public safety officer served, and the community. Nonetheless, each claim requires that BJA receive the evidence necessary to substantiate the claim, prepare a determination that accurately reflects the evidence and current law, and conduct a legal review to ensure that benefits are paid only when legally permissible. Similarly, we need to ensure that all denials are legally sufficient. Claims often present significant complexities that lead to delays. These complexities may include:

- Difficulty in obtaining all the basic required documents from the agency's point of contact or survivors (claimants) to move the case to the next stage of review.
- Conflicting evidence, including investigation reports, medical records, and opinions, that requires additional investigation or medical evidence.
- Complex fact patterns with key facts missing, or unknown facts that require follow-up investigation by BJA in order for the claims to be compensable.
- "Hometown Heroes/Dale Long Act" claims involving heart attacks, strokes, and vascular ruptures, which may be found legally eligible for payment only based upon evidence that the public safety officer was engaged in specific line-of-duty activities during the 24 hours prior to suffering the vascular event.
- Evaluating evidence to determine whether a public safety officer's death or disability was the direct and proximate result of an injury sustained in the line of duty, as required by law. This encompasses consideration of whether a pre-existing condition was in fact the cause of the injury or death.
- Conflicting medical evidence as to whether an injury is permanent and whether the claimant can perform "any work."
- Questions regarding whether any of the statutory prohibitions to payment apply to the claim, including whether the officer's injury or death involved intentional misconduct, gross negligence, or voluntary intoxication.

3. How many PSOB death benefit applications have been filed in each fiscal year since FY 2009?

	FY 2009¹	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Total Death Claims Filed	326	285	345	258	294	319
Average number of days to assign a PSOB Outreach Specialist.	-----	18	21	17	13	13
Average number of days to receive basic required documents.	-----	116	160	135	114	68
Average number of days to determine claim.	-----	256	251	255	182	184

a. Average number of days to assign an Outreach Specialist.

The average time from the date that a death claim number is assigned until the date that the claim is assigned to an Outreach Specialist is 18.52 days. This average timeframe includes an initial review of the documents filed (via hand delivery, mail, fax, email, or the online claim system), the scanning of documents to a unique claim folder, the entry of data in the Master List, and the review of the new claims with Outreach Specialists prior to assignment.

Data Set: The 862 death claims filed in FYs 2010-2014² that: were assigned to Outreach Specialists during the course of the PSOB Office review; *and* which have been determined at the PSOB Office level to date.

b. Average number of days to receive basic required documents.

The average time from the date that an Outreach Specialist is assigned to a death claim until the date that outreach for basic required documents is completed is

¹ Because PSOB Outreach Specialists were hired beginning in January 2010, the Data Set does not include claims filed in FY 2009 or FY 2010 prior to the Outreach Specialist positions. For consistency, the same Data Set is used for all responses to Question 3.

² Ibid.

132.51 days. PSOB Outreach Specialists currently conduct proactive outreach until 1) they receive confirmation that neither the agency point of contact nor the claimant will provide additional documents to support the claim, or 2) all basic required documents are received. The Outreach Specialists positions were created in response to the 2009 GAO review, in which agencies indicated that they would have submitted required documents had the PSOB Office told, or reminded, them of the missing documents.

Data Set: The 862 death claims filed in FYs 2010-2014 that: were assigned to Outreach Specialists during the course of the PSOB Office review; *and* which have been determined at the PSOB Office level to date.

c. Average number of days to determine claim.

The average time from the date that outreach for basic required documents is completed until the date that the death claim is determined is 237.63 days.

Data Set: The 862 death claims filed in FYs 2010-2014 that: were assigned to Outreach Specialists during the course of the PSOB Office review; *and* which have been determined at the PSOB Office level to date.

d. Average number of days consumed in each stage of the PSOB review process for a death claim (i.e., Benefits Specialist review, Supervisory review, PSOB director review, OGC review).

The data requested for each requested stage of the PSOB review are not currently collected. The average number of days for the completion of the “Benefits Specialist review/medical review/PSOB Director review,” until the date that a legal advisor is assigned to review the death claim is 229.30 days. This number also includes any days spent obtaining additional documents requested after initial legal review or revising draft determinations, before a final determination is issued.

The average number of days for legal review, meaning the time from the date that the legal advisor is assigned until the date that the death claim is determined, for the 128 death claims determined since April 2014³ is 132.23 days.

e. Average number of days before approved claimants received payment.

The PSOB Office does not receive notification or data from the Treasury Department as to when claimants receive their PSOB payments.

³ The 128 death claims is a subset of the 862 death claims filed in FYs 2010-2014, and reflects the number of cases determined since late April 2014, when BJA began tracking the length of time for legal reviews separately from the length of time for PSOB Office reviews.

f. Total number of appeals filed.

The numbers below reflect the total number of death claim appeals filed at the Hearing Officer and BJA Director levels from January 1, 2009, to January 20, 2015.

Hearing Officer death claim appeals filed since 2009: 197

Approved:	31
Denied:	84
Withdrawn:	16
Remand:	20
Pending ⁴ :	46

BJA Director death claim appeals filed since 2009: 100

Approved:	43
Denied:	29
Pending:	28

g. Total number of appeals granted and denied.

All death claim appeals filed since 2009: 297

Approved:	74
Denied:	113
Withdrawn:	16
Remand:	20
Pending Appeals:	74

⁴ Pending at PSOB Office level, per remand of claim to PSOB Office for re-evaluation under provisions of Dale Long Act.

4. Why is OJP not complying with the 2004 Attorney General Memorandum?

Despite continuous efforts to improve the timeliness of the process, BJA has not been able to consistently make determinations within the 90-day goal identified in Attorney General Ashcroft's 2004 Memorandum. The range of factors noted in the response to question two, continue to adversely affect the timeliness of claims processing. Responding to concerns about efficiency and timeliness of the PSOB Program, in May 2013, Attorney General Holder directed

that the claims process be streamlined through consolidation of legal and other claims functions within BJA.⁵ As mentioned above, because the anticipated improvements in claims processing have not been achieved, in January 2015, the AAG directed OAAM to conduct a business process improvement review of all the PSOB Office's tasks, including the claims process and the legal review process. OAAM is expected to provide recommendations for process improvements to AAG Mason later this year.

5. Please describe the steps that OJP has taken, since 2009, to implement GAO's 2009 recommendations to improve timeliness of processing PSOB claims, including OJP efforts to implement claims processing timelines, set strategic goals and measures, monitor performance, and report results.

Since the GAO review, BJA has implemented a number of changes to improve the PSOB Program. Examples of these improvements include:

PSOB Personnel: As a direct result of the GAO Report, BJA put into place a contract for three new categories of PSOB Program personnel: Call Center Specialists; Outreach Specialists; and Paralegals. Two Call Center Specialists are available Monday through Friday from 7:00 a.m. to 5:00 p.m., so that survivors and agencies can speak with a PSOB representative when they call the PSOB Office. Six Outreach Specialists work with claimants and agency points of contact to request, on a bi-weekly basis, required documents that remain outstanding on death and disability cases (the GAO Report noted that agencies shared that they would have filed documents had they only known the documents were needed). Three Paralegals assist with researching legal issues early in the review process, and follow up on the medical and legal issues in claims involving heart attacks, strokes, and vascular ruptures, and appeals.

PSOB Counsel: In March 2014, BJA hired a PSOB Legal Counsel who reports to the BJA Director. In October 2014, BJA hired another PSOB attorney. Every claim determination or finding decided under the Program continues to receive independent legal review by an attorney. Counsel serves an essential role in ensuring that claims are paid only when legally warranted or denied only when not legally payable. Consistent with the amount and non-recurring nature of the PSOB payment, BJA is committed to maintaining a rigorous factual and legal review process that is central to the integrity of the PSOB claims process.

⁵ See <https://www.psob.gov/files/AG-PSOB-PR-051513.pdf>.

Claim Documents: On June 28, 2013, the BJA Director issued a directive outlining that certain non-critical documents would not be required as part of the initial application process, but would be requested only on an as-needed basis.⁶ All documents required by law continue to be requested, absent a waiver for good cause where applicable, prior to the determination and payment of a claim. This change streamlines the PSOB process and reduces the documents required to *initiate* a PSOB case review.

Resolving Disputed Medical Evidence: One of the factors contributing to delays is difficulty resolving conflicting medical evidence in claims in which a claimant must establish that a particular injury caused death or permanent and total disability. Although the burden of establishing eligibility is on the claimant, because of the remedial nature and purpose of the PSOB Program, BJA has rejected an approach of summarily denying claims at the onset when the evidentiary threshold has not been met if it appears that additional medical evidence may in fact substantiate the claim. In the last year, BJA has taken steps to obtain the higher quality medical evidence needed to determine claims more expeditiously. These include using specialized independent medical examiners with the skills needed to resolve particularly complex issues, sending disability claimants for functional capacity evaluations to obtain more reliable evidence about the extent of their injuries, and sending follow up questions drafted by legal counsel to treating physician(s) and to BJA's independent medical examiners early on in the process to obtain medical opinions on those factors which must be determined to a high degree of medical certainty for benefits to be awarded. These common sense approaches are helping to resolve conflicting medical evidence earlier in the claims process and are enabling the PSOB Program to resolve long-standing medical issues in cases that have been pending for a long time.

PSOB Stakeholder Collaboration: BJA continues to work closely with the Concerns of Police Survivors, the National Fallen Firefighters Foundation, and other public safety organizations to improve transparency of the PSOB Program by providing regular Program updates and seeking stakeholder input regarding key issues involving the Program.

PSOB Regulations: BJA is currently reviewing all PSOB implementing regulations (Title 28, Code of Federal Regulations, Part 32) to determine where unnecessarily complex regulations can be revised to streamline the review process while ensuring Program integrity.

Goals and Measures: In 2013, BJA created a multiyear Strategic Plan, which provides that "BJA will enhance its ability to provide Public Safety Officers' Benefits (PSOB) and services to survivors of public safety officers killed, and to officers catastrophically injured, in the line of duty."⁷ BJA has sought to implement this goal with three strategies: (1) "provide efficient, timely, and survivor-centered benefits services to PSOB claimants," (2) "raise awareness of PSOB's death, disability, and educational assistance programs," and (3) "establish an advisory group with PSOB stakeholders, including survivors, to guide PSOB activities."

⁶ See <https://www.psob.gov/files/PSOB-Directive-Documentation-Requirements.pdf>

⁷ See <https://www.bja.gov/about/bjastrategicplan>

BJA's Strategic Plan provides that "BJA will set goals and measure progress through metrics posted on the PSOB web site that report: (1) the average number of days required to process PSOB claims and (2) the percentage of PSOB claims determined within 1 year of submission." In February 2015, updated FY 2013 and 2014 data was posted to the PSOB web site at www.psob.gov. BJA recognizes that the need to implement additional performance measures to improve the timeliness of claims processing. With the integration

of PSOB Legal Counsel into the PSOB processes, BJA will establish additional performance measures for the PSOB Office and PSOB Legal Counsel by the end of 2015.

6. Has OJP hired contractors to help conduct legal reviews of PSOB applications? If so, please provide the following for each contract:

OJP and BJA employ contractors to conduct the legal reviews of all PSOB claims. Our research indicates that there have been three contracts since 2009. Most recently, a contract expired in September 2014, and a new contract was entered into in October 2014. Under this new contract, BJA may hire up to seven contract attorneys and a paralegal to assist the PSOB Legal Counsel. As of January 15, 2015, four contract attorneys and a paralegal support the legal review of claims at the PSOB Office, Hearing Officer, and BJA Director levels. BJA anticipates that two additional contract attorneys will be retained by April 1, 2015. As the new legal advisors complete training and achieve full proficiency, BJA projects that the timeliness of claims reviews will improve.

Contract One

- a. Name of contractor,**
Proxy Personnel, LLC
1100 H Street, NW, Suite 260
Washington, DC 20005-5491
- b. Dollar-amount of the contract,**
- c. Length of the contract, and**

Contract# 2008C080009

Total for Base and all 3 Option years \$639,765.60

Task: PSOB Only

Base Year- 07/25/2008-07/24/2009 \$150,660.00

Option 1 -07/25/2009-07/24/2010 \$156,686.40

Option 2 -07/25/2010-07/24/2011 \$162,954.60

Option 3 -07/25/2011-07/24/2012 \$169,464.60

Labor Categories:

Attorney III 1860 hours/per year

- d. Proportion of the work that is supposed to be conducted by contractors versus OJP employees under the contract.**

As a general rule, a contract attorney conducts an initial legal review of a claim, and a government attorney reviews the contract attorney's recommendation. Only government attorneys may approve and concur in a payment, finding, determination, affirmance, reversal, judgment, or other substantive ruling made under the PSOB Program.

Contract Two

- a. Name of contractor,**
Proxy Personnel, LLC
1100 H Street, NW, Suite 260
Washington, DC 20005-5491
- b. Dollar-amount of the contract,**
- c. Length of the contract, and**

IDIQ# DJOGCV12001

Total NTE Ceiling for Base and 1 Option year \$3,806,259.26

Base Year- 09/30/2012-09/29/2013 \$2,056,638.46

Option 1 -09/30/2013-09/29/2014 \$1,749,620.80

Labor Categories:

Attorney I, Support Services 5625 hours/per year

Attorney II, Support Services 5625 hours/per year

Attorney III, Support Services 1875 hours/per year

Law Clerk III, Support Services 1880 hours/per year

Task Order# DJOGCV12001 DJOGCI12005 Total NTE Ceiling for Base and 1 Option year \$2,687,063.70.

Task: PSOB Only

Base Year- 09/30/2012-09/29/2013

Labor Categories:

Attorney I, Support Services 1875 hours/per year

Attorney II, Support Services 5625 hours/per year

Law Clerk III, Support Services 1880 hours/per year

- d. Proportion of the work that is supposed to be conducted by contractors versus OJP employees under the contract.**

As a general rule, a contract attorney conducts an initial legal review of a claim, and a government attorney reviews the contract attorney's recommendation. Only government attorneys may approve and concur in a payment, finding, determination, affirmance, reversal, judgment, or other substantive ruling made under the PSOB Program.

Contract Three

a. Name of contractor,

STS Systems Integration
1077 Central Pkwy S
San Antonio, TX 782325079

b. Dollar-amount of the contract,

c. Length of the contract, and

IDIQ# DJO-BJA-14-V-0134

Total NTE Ceiling for Base and 4 Option years \$10,821,254.90

Base Year- 08/25/2014-08/24/2015 \$2,050,459.20

Option 1 -08/25/2015-08/24/2016 \$2,105,865.60

Option 2 -08/25/2016-08/24/2017 \$2,162,707.70

Option 3 -08/25/2017-08/24/2018 \$2,221,137.60

Option 4 -08/25/2018-08/24/2019 \$2,281,084.80

Labor Categories:

Program Manager 160 hours/per year

Attorney I, 3840 hours/per year

Attorney II, 3840 hours/per year

Attorney III, 5760 hours/per year

Paralegal/Law Clerk 1920 hours/per year

Task Order# DJO-BJA-14-V-0134 DJO-BJA-14-I-0160

Total NTE Ceiling for Base and 4 Option year \$6,987,865.60.

Task: PSOB Only

Base Year- 09/11/2014-09/10/2015 \$1,324,075.20

Option 1 -09/11/2015-09/10/2016 \$1,359,862.40

Option 2 -09/11/2016-09/10/2017 \$1,396,582.40

Option 3 -09/11/2017-09/10/2018 \$1,434,312.00

Option 4 -09/11/2018-09/10/2019 \$1,473,033.60

Labor Categories:

Program Manager 160 hours/per year

Attorney I, 1920 hours/per year

Attorney II, 3840 hours/per year

Attorney III, 5760 hours/per year

Paralegal/Law Clerk 1920 hours/per year

d. Proportion of the work that is supposed to be conducted by contractors versus OJP employees under the contract.

As a general rule, a contract attorney conducts an initial legal review of a claim, and a government attorney reviews the contract attorney's recommendation. As noted above, only government attorneys may approve and concur in a payment, finding, determination, affirmance, reversal, judgment, or other substantive ruling made under the PSOB Program

We appreciate your concerns and OJP wants to assure you of its commitment to improving the processing time for PSOB claims. We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,



Peter J. Kadzik
Assistant Attorney General

Enclosure

cc: The Honorable Patrick J. Leahy
Ranking Member

1. What is the status of PSOB applications filed on behalf of the following officers?

a. Officer Mark Toney, E.O.W. 9/20/2011.

Claim Filed: Initial death claim documents for fallen Trooper Mark Toney were received in the PSOB Office on December 14, 2011.

Status: The case was returned to the PSOB Office from legal review in late December 2014, requesting clarification from the Department regarding the events surrounding Trooper Toney's death. The PSOB Office has e-mailed questions to the Iowa Department of Public Safety to obtain additional information.

b. Chief Robert Smith, E.O.W. 3/13/2010.

Claim Filed: Initial death claim documents for fallen Police Chief Robert Smith were received in the PSOB Office on September 26, 2011.

Status: The case, which involves complex medical records and medical/legal issues, is currently under legal review.

c. Chief Lyle N. Rusk, E.O.W. 11/23/2008.

Claim Filed: Initial death claim documents for fallen Police Chief Lyle Rusk were received in the PSOB Office on November 22, 2011.

Status: The case, which involves complex medical/legal issues, is currently under legal review.

d. Lieutenant Patrick A. Richardson, E.O.W. 9/1/2013.

Claim Filed: Initial death claim documents for fallen Lieutenant Patrick Richardson were received in the PSOB Office on October 25, 2013.

Status: The case was determined (nonapproval) on February 5, 2015.