

**ITEM 6**  
**PROPOSED PARAMETERS AND GUIDELINES**  
**FINAL STAFF ANALYSIS**

Penal Code Section 530.6(a)

Statutes 2000, Chapter 956

*Identity Theft*

03-TC-08

City of Newport Beach, Claimant

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**EXECUTIVE SUMMARY**

The test claim statute requires local law enforcement agencies to take a police report and begin an investigation when a complainant residing within their jurisdiction reports suspected identity theft. A claimant representative proposes activities in addition to the activities adopted in the statement of decision. The State Controller's Office proposes nonsubstantive revisions to the parameters and guidelines. Staff finds that pursuant to section 1183.1 of the Commission on State Mandates' (Commission) regulations, there is evidence in the record to show that the additional activities proposed by the claimant representative are the most reasonable methods of complying with the mandate, and included the proposed activities. Staff also included the revisions proposed by the State Controller. Finally, staff made further revisions to the parameters and guidelines to address instances when identity theft victims complete on-line police reports.

Staff recommends the Commission adopt the proposed parameters and guidelines, as modified by staff, and authorize staff to make any necessary technical corrections following the hearing.

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**STAFF ANALYSIS**

**Claimant**

City of Newport Beach

**Chronology**

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| 09/25/2003 | Claimant files test claim with the Commission on State Mandates (Commission)  |
| 03/27/2009 | Commission adopts statement of decision   |
| 04/17/2009 | California State Association of Counties (CSAC) submits intent to develop joint reasonable reimbursement methodology (RRM)  |
| 05/07/2009 | Department of Finance submits intent to develop joint RRM   |
| 02/16/2011 | Commission issues letter indicating that parties have not met deadlines for submitting a joint RRM and therefore, Commission is setting the parameters and guidelines for hearing |

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| 02/16/2011 | Commission issues proposed parameters and guidelines for comment  |
| 02/23/2011 | Cost Recovery Systems submits comments  |
| 03/15/2011 | State Controller's Office submits comments  |
| 04/05/2011 | Department of Finance notifies CSAC that it no longer intends to pursue RRM                               |
| 06/09/2011 | Commission staff issues draft staff analysis  |
| 06/28/2011 | State Controller's Office submits comments on draft staff analysis and proposed parameters and guidelines |
| 06/30/2011 | Department of Finance submits comments on draft staff analysis and proposed parameters and guidelines     |

## **I. Background and Summary of the Mandate**

The test claim statute requires local law enforcement agencies to take a police report and begin an investigation when a complainant residing within their jurisdiction reports suspected identity theft.

On March 27, 2009, the Commission found that Penal Code section 530.6(a), as added by Statutes 2000, chapter 956, mandates a new program or higher level of service for local law enforcement agencies within the meaning of article XIII B, section 6 of the California Constitution, and imposes costs mandated by the state pursuant to Government Code section 17514 for the following activities only:

- take a police report supporting a violation of Penal Code section 530.5 which includes information regarding the personal identifying information involved and any uses of that personal identifying information that were non-consensual and for an unlawful purpose, including, if available, information surrounding the suspected identity theft, places where the crime(s) occurred, and how and where the suspect obtained and used the personal identifying information; and
- begin an investigation of the facts, including the gathering of facts sufficient to determine where the crime(s) occurred and what pieces of personal identifying information were used for an unlawful purpose.

## **II. Commission's Responsibility for Adopting Parameters and Guidelines**

If the Commission approves a test claim, the Commission is required by Government Code section 17557 to adopt parameters and guidelines for the reimbursement of any claims. The successful test claimant is required to submit proposed parameters and guidelines to the Commission for review. The parameters and guidelines shall include the following information: a summary of the mandate; a description of the eligible claimants; a description of the period of reimbursement; a description of the specific costs and types of costs that are reimbursable, including activities that are not specified in the test claim statute or executive order, but are determined to be reasonably necessary for the performance of the state-mandated program; instructions on claim preparation, including instructions for the direct or indirect reporting of the actual costs of the program or the application of an RRM; and any offsetting revenue or savings that may apply.<sup>1</sup>

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<sup>1</sup> Government Code section 17557; California Code of Regulations, Title 2, section 1183.1.

As of January 1, 2011, Commission hearings on the adoption of proposed parameters and guidelines are conducted under Article 7 of the Commission's regulations.<sup>2</sup> Article 7 hearings are quasi-judicial hearings. The Commission is required to adopt a decision that is based on substantial evidence in the record, and oral or written testimony is offered under oath or affirmation.<sup>3</sup> Each party has the right to present witnesses, introduce exhibits, and submit declarations. However, the hearing is not conducted according to the technical rules of evidence. Any relevant non-repetitive evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Irrelevant and unduly repetitious evidence shall be excluded. Hearsay evidence may be used to supplement or explain, but is not sufficient in itself to support a finding unless the hearsay evidence would be admissible in civil actions.<sup>4</sup>

Should the Commission adopt this analysis and proposed parameters and guidelines, a cover sheet would be attached indicating that the Commission adopted the analysis as its decision. The decision and adopted parameters and guidelines are then submitted to the State Controller's Office to issue claiming instructions to local governments, and to pay and audit reimbursement claims. Issuance of the claiming instructions constitutes the notice of the right of local governments to file reimbursement claims with the State Controller's Office based on the parameters and guidelines.

### **III. Discussion**

Government Code section 17557.1 authorizes claimants, statewide associations representing claimants, and the Department of Finance to jointly develop a reasonable reimbursement methodology (RRM) in lieu of adopting parameters and guidelines. In 2009, the California State Association of Counties (CSAC) and the Department of Finance each submitted notices of their intent to develop an RRM for this program. Under Government Code section 17557.1, a notice of intent to develop a joint RRM must include the date the claimant or statewide association and Finance will submit a plan for the RRM, including the date the RRM will be submitted to the Commission. The date the RRM is submitted must be no later than 180 days after the notice of intent is filed. Upon request of the parties, the Commission may provide up to four extensions of this 180-day period.

This process was not followed by the parties. The parties indicated a plan would be submitted on May 31, 2009, but no plan was submitted. The proposed RRM was not submitted to the Commission within 180 days, and no requests for extensions were requested. In fact, no RRM was ever submitted, and the Commission did not notify plaintiffs that the time to submit a plan had run.

On February 16, 2011, Commission staff issued a letter indicating that the parties have not met deadlines for submitting a joint RRM and therefore, the Commission is setting the parameters and guidelines for hearing.

Section 1183.12 of the Commission's regulations authorizes Commission staff, within 10 days after adoption of a statement of decision, to expedite parameters and guidelines by drafting proposed parameters and guidelines to assist the claimant. Government Code section 17554 authorizes the Commission to waive procedural requirements, upon the agreement of parties.

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<sup>2</sup> California Code of Regulations, Title 2, section 1187.

<sup>3</sup> Government Code section 17559(b); California Code of Regulations, Title 2, section 1187.5.

<sup>4</sup> California Code of Regulations, Title 2, section 1187.5.

With the parties' agreement, staff drafted and issued the proposed parameters and guidelines for comment.<sup>5</sup>

A. Comments Filed by Cost Recovery Systems

Comments were received by Annette Chinn of Cost Recovery Systems, representing claimants in the mandates process.<sup>6</sup> Ms. Chinn requested that more detailed clarifying language regarding eligible activities be included in the proposed parameters and guidelines. Specifically, she requested that the language to "draft, review and edit" the identity theft report be eligible for reimbursement. Ms. Chinn also pointed out that the Commission recently approved the same clarifying language in the parameters and guidelines for the *Crime Statistic Reports for Department of Justice* (02-TC-04, 02-TC-11, 07-TC-10).

B. Comments Filed by the State Controller's Office

The State Controller's Office filed comments on the initial proposed parameters and guidelines and the draft staff analysis, and requested that non-substantive, technical changes be made to the proposed parameters and guidelines for purposes of clarification, consistency with language in recently adopted parameters and guidelines, and conformity to the statement of decision and statutory language.<sup>7</sup> Staff accepted the revisions proposed by the State Controller's Office.

C. Comments Filed by the Department of Finance

The Department of Finance filed comments on the draft staff analysis stating that it had no concerns with the proposed parameters and guidelines, but encouraged claimants to implement the program in "a reasonable, non-excessive amount of time."<sup>8</sup>

D. Staff Analysis

Staff reviewed the statement of decision, draft parameters and guidelines, and the comments received, and made nonsubstantive technical changes that conform these parameters and guidelines with parameters and guidelines previously adopted by the Commission, and to address the Controller's request for technical revisions.

Staff made substantive changes to the following section:

Section IV. Reimbursable Activities

Cost Recovery Systems proposed additional activities in order to provide further clarification to the parameters and guidelines. (The activities approved in the statement of decision are listed below. Cost Recovery System's proposed clarifying language is also listed below in italics.)

- A. Take a police report supporting a violation of Penal Code section 530.5 which includes information regarding the personal identifying information involved and any uses of that personal identifying information that were non-consensual and for an unlawful purpose, including, if available, information surrounding the suspected identity theft, places where the crime(s) occurred, and how and where the suspect obtained and used the personal identifying information. *This activity includes drafting, reviewing, and editing the identity theft police report.*

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<sup>5</sup> Exhibit A.

<sup>6</sup> Exhibit B.

<sup>7</sup> Exhibits C and D.

<sup>8</sup> Exhibit E.

- B. Begin an investigation of the facts, including the gathering of facts sufficient to determine where the crime(s) occurred and what pieces of personal identifying information were used for an unlawful purpose. The purpose of the investigation is to assist the victims in clearing their names. Reimbursement is not required to complete the investigation for purposes of criminal prosecution.

Section 1183.1(a)(4) of the Commission’s regulations authorizes the Commission to include the “most reasonable methods of complying with the mandate” in the parameters and guidelines. 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.” (Emphasis added.)

In order to comply with the legislative intent of the test claim statute to assist victims of identity theft in clearing their names, identity theft police reports must be completed. Staff finds that drafting, reviewing, and editing are standard procedures for completing reports, and are reasonably necessary to implement this program. Therefore, staff included the language requested by Cost Recovery Systems.

Staff made further revisions after the draft staff analysis was issued. After reviewing the websites for the police departments for Redwood City, the City of Hayward, and the City of Newport Beach, staff learned that Redwood City and Hayward allow identity theft victims to complete the police reports on-line.<sup>9</sup> In contrast, the City of Newport Beach only allows the police reports to be completed by peace officers. Therefore, staff revised the parameters and guidelines to clarify that when the victim completes the report on-line, the police departments are only reimbursed for reviewing the report prior to beginning an investigation of the facts.

### **Staff Recommendation**

Staff recommends that the Commission adopt the proposed parameters and guidelines, as modified by staff, beginning on page 6.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

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<sup>9</sup> Exhibit F, website instructions for completing on-line police reports for Redwood City and the City of Hayward, and City of Newport Beach instructions for completing police reports in person.