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Draft Staff Analysis
Proposed Statewide Cost Estimate

$67,703,120

Penal Code Section 530.6(a)

Statutes 2000, Chapter 956

Identity Theft
(03-TC-08)

City of Newport Beach, Claimant

STAFF ANALYSIS

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.

The claimant filed the test claim on September 25, 2003. The Commission on State Mandates (Commission) adopted a statement of decision on March 27, 2009, and parameters and guidelines on July 28, 2011.[1] The Commission found that the test claim statute imposes a reimbursable state-mandated program on local law enforcement agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

Eligible claimants were required to file initial reimbursement claims (for costs incurred between July 1, 2002, and June 30, 2011) with the State Controller's Office (SCO) by January 30, 2012. Reimbursement claims for fiscal year 2010-2011 were due on February 15, 2012.

Eligible Claimants and Period of Reimbursement

Any city, county, or city and county whose law enforcement agency incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement of these costs.

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 City of Newport Beach filed the test claim on September 25, 2003, establishing eligibility for reimbursement for the 2002-2003 fiscal year. Therefore, the costs incurred for compliance with the mandated activities are reimbursable on or after July 1, 2002.

[1] Exhibit A.

Reimbursable Activities

The Commission approved the following activities for reimbursement:

- 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.

Statewide Cost Estimate

Assumptions

Staff reviewed the claims data submitted by cities and counties and compiled by the SCO. The actual claims data showed that 1,869 claims were filed for fiscal years 2002-2003 through 2010-2011 for a total of $67,703,120.[2] Although the cost is significant, it may reflect the enormity of the identity theft problem in the state. For example, over a period of nine fiscal years, the City of Los Angeles took a total of 130,048 reports of identity theft for claimed costs of $25,767,048, or about $198 per claim. This accounts for 38% of the costs claimed for the Identity Theft program. Based on this data, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program.

- *The actual amount claimed for reimbursement may increase and exceed the statewide cost estimate.*

  There are currently 478 cities and 58 counties in California. Of those, only 38% of cities and 36% of counties filed reimbursement claims for this program for fiscal years 2002-2003 through 2010-2011. If other eligible claimants file late or amended claims, the amount of reimbursement claims may exceed the statewide cost estimate. Late claims for this program for fiscal years 2002-2003 through 2009-2010 may be filed until January 30, 2013. Late claims for fiscal year 2010-2011 may be filed until February 15, 2013.

- *There may be several reasons that non-claiming counties did not file for reimbursement, including but not limited to:*

  Counties did not have supporting documentation to file a reimbursement claim.

- *The number of reimbursement claims filed will vary from year to year.*

  This program 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. Therefore, the total number of reimbursement claims filed with the SCO will increase or decrease based on the number of identity theft incidents reports filed with local agencies.

- *The large number of identity theft reports filed annually is making this a high cost program to implement.*

[2] Claims data reported as of April 3, 2012.

According to the Attorney General's Office, identity theft is one of the fastest growing crimes in America. The Attorney General also reports that, according to the California Office of Privacy Protection, there were more than 8.1 million victims of identity theft in the United States in 2010, and more than one million of those victims were Californians.[3] In addition, a U.S. Federal Trade Commission report states that for every 100,000 people in California, there were 114 complaints from victims of identity theft that year.[4]

- *The total amount of reimbursement for this program may be lower than the statewide cost estimate because the SCO may reduce any reimbursement claim for this program.*

  The SCO may conduct audits, and reduce any claims it deems to be excessive or unreasonable.

Methodology

Fiscal Years 2002-2003 through 2010-2011

The statewide cost estimate for fiscal years 2002-2003 through 2010-2011 was developed by totaling the 1869 actual reimbursement claims filed with the SCO for these years.

The statewide cost estimate includes nine fiscal years for a total of $67,703,120. This averages to $7,522,569 annually in costs for the state for this nine year period. Following is a breakdown of estimated total costs per fiscal year:

Fiscal Year	Number of Claims Filed with SCO	Estimated Cost
2002-2003	162	$4,209,779
2003-2004	178	$4,817,960
2004-2005	190	$5,873,975
2005-2006	203	$6,479,122
2006-2007	219	$7,951,854
2007-2008	221	$9,434,673
2008-2009	226	$9,868,260
2009-2010	228	$9,278,353
2010-2011	242	$9,789,144
TOTAL	**1869**	**$67,703,120**

Staff Recommendation

Staff recommends the Commission adopt the proposed statewide cost estimate of **$67,703,120** for costs incurred in complying with the *Identity Theft* program.

[3] California Attorney General's website: information on identify theft; at http://oag.ca.gov/idtheft.

[4] *Consumer Sentinel Network Data Book for January-December 2010,* http://www.ftc.gov/sentinel/reports/sentinel-annual-reports/sentinel-cy2010.pdf.

Adopted: July 28, 2011

PARAMETERS AND GUIDELINES

Penal Code Section 530.6(a)

Statutes 2000, Chapter 956

Identity Theft
03-TC-08

I. 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. ELIGIBLE CLAIMANTS

Any city, county, or city and county whose law enforcement agency incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement of these costs.

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 City of Newport Beach filed the test claim on September 25, 2003, establishing eligibility for reimbursement beginning July 1, 2002. Therefore, costs incurred for compliance with the mandated activities are reimbursable on or after July 1, 2002.

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 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. In the event revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a local agency 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 given 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, time sheets, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, calendars, 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 reported in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below.

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

1. Either a) or b) below:

   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; or

b) Reviewing the identity theft report completed on-line by the identity theft victim.

2. 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.

Providing a copy of the report to the complainant is not reimbursable under this program.

Referring the matter to the law enforcement agency where the suspected crime was committed for further investigation of the facts is also not reimbursable under this program,

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for the reimbursable activities identified in section IV of this document. Each 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 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 and 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 dates when services were performed and itemize all costs for those services during the period covered by the reimbursement claim. If the contract services were 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 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.

B. Indirect Cost Rates

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

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in 2 CFR Part 225 (Office of Management and Budget (OMB) Circular A-87). Claimants have the option of using 10% of 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)). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distributions 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 2 CRF Part 225, Appendix A and B (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 2 CFR Part 225, Appendix A and B (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.

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 State 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 offsets the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any federal, state or non-local source shall be identified and deducted from this claim.

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 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561(d)(1)(A), 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 the 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

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

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 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)(1), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

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