

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

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.

STAFF ANALYSIS

Claimant

City of Newport Beach

Chronology

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

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.¹

¹ 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.² 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.³ 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.⁴

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.

² California Code of Regulations, Title 2, section 1187.

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

⁴ California Code of Regulations, Title 2, section 1187.5.

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

A. Comments Filed by Cost Recovery Systems

Comments were received by Annette Chinn of Cost Recovery Systems, representing claimants in the mandates process.⁶ 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.⁷ 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."⁸

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.*

⁵ Exhibit A.

⁶ Exhibit B.

⁷ Exhibits C and D.

⁸ 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.⁹ 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.

⁹ 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.

PROPOSED PARAMETERS AND GUIDELINES

Penal Code Section 530.6(a)

Statutes 2000, Chapter 956

Identity Theft

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City of Newport Beach, Claimant

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 ~~local-city, county, or city and county whose~~ law enforcement agency ~~that~~ incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement of ~~those-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 ~~County of Alameda~~ 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. ~~If~~ 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.ernment code Code section §17560, subdivision~~ (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

~~1-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.

~~2.~~ Draft, review, and edit the identity theft police report.

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 ~~that~~ 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 ~~and Equipment~~

Report the purchase price paid for fixed assets ~~and equipment~~ (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset ~~or equipment~~ is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

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 CFR 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. RECORDS 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 chapter¹ 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

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

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

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The ~~S~~statement of ~~D~~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~~ statement of ~~Decision~~ decision, is on file with the Commission.