

**COMMISSION ON STATE MANDATES**

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March 18, 2009

Mr. Glenn Everroad  
Revenue Manager  
City of Newport Beach  
3300 Newport Boulevard  
P.O. Box 1768  
Newport Beach, CA 92568-8915

And Affected State Agencies and Interested Parties (see enclosed mailing list)

Re: **Request to Amend Proposed Statement of Decision or Postponement of Hearing**  
*Identity Theft*, 03-TC-08  
Penal Code Section 530.6, Subdivision (a)  
Statutes 2000, Chapter 956  
City of Newport Beach, Claimant

Dear Mr. Everroad:

Pursuant to section 1181.1 of the Commission's regulations, your request for postponement of the March 27, 2009 hearing on the above-named matter is denied for lack of good cause.

However, regarding the request to amend the proposed Statement of Decision, enclosed is Commission staff's supplemental analysis on this matter. This analysis is being posted to the Commission's website and will be provided to the Commission members. Pursuant to the Bagley-Keene Act, you may provide written comments to the supplemental analysis prior to the Commission hearing, and you may provide oral testimony at the hearing.

Under California Code of Regulations, title 2, section 1181, subdivision (c), you may appeal to the Commission for review of the actions and decisions of the executive director.

Please contact Nancy Patton at (916) 323-8217 if you have any questions.

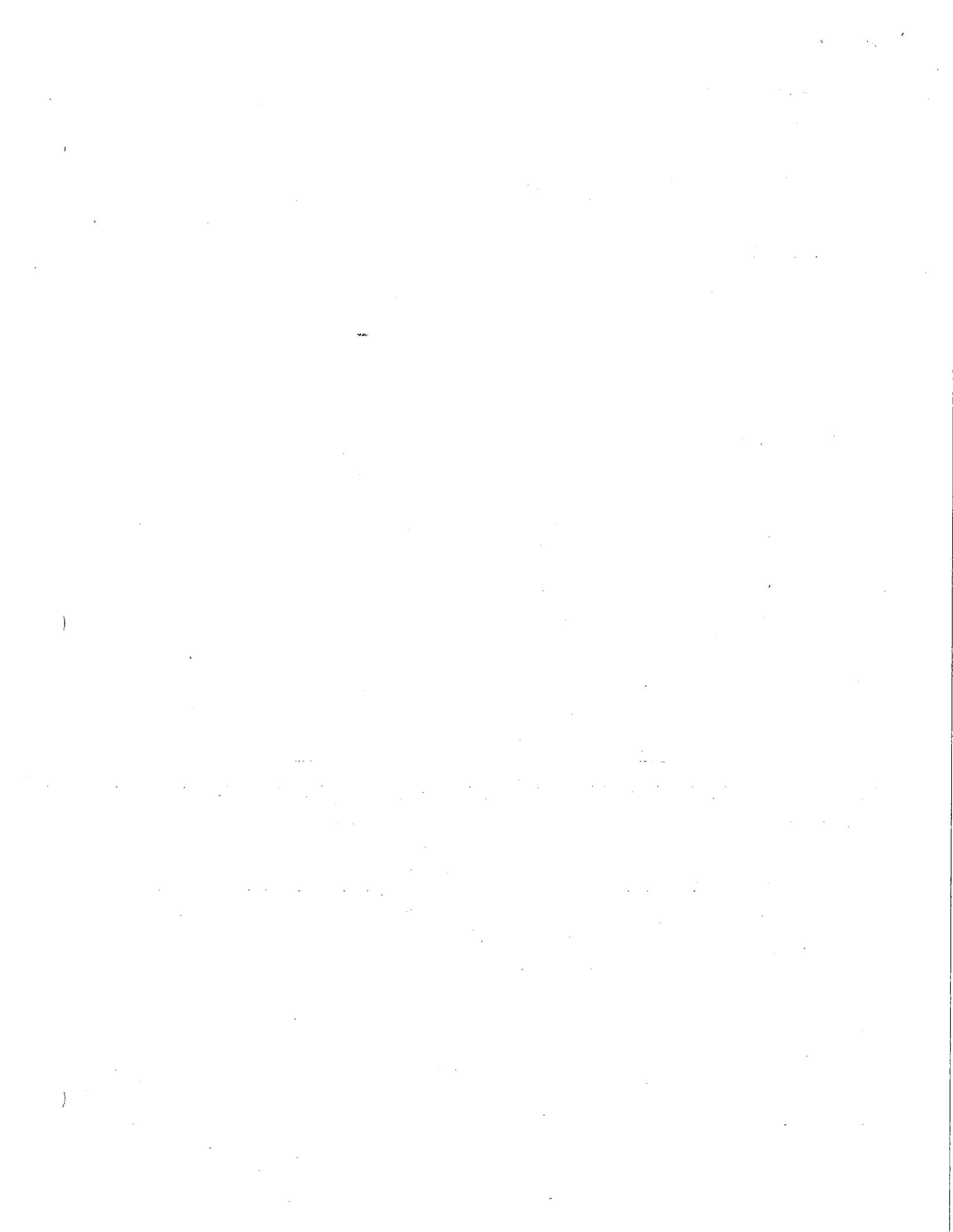
Sincerely,

A handwritten signature in cursive script that reads "Paula Higashi".

PAULA HIGASHI  
Executive Director

Enclosures

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**ITEMS 7 AND 8**  
**TEST CLAIM AND PROPOSED STATEMENT OF DECISION**  
**SUPPLEMENTAL STAFF ANALYSIS**

Penal Code Section 530.6, Subdivision (a)  
Statutes 2000, Chapter 956

*Identity Theft*  
03-TC-08

City of Newport Beach, Claimant

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**Background**

On February 2, 2009, Commission staff issued the draft staff analysis for this test claim which concluded that Penal Code section 530.6, subdivision (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.

The draft staff analysis also included specific findings that two activities were not reimbursable. First, referral of the matter to the law enforcement agency where the suspected crime was committed for further investigation of the facts is not a mandated activity and therefore is not reimbursable. Second, the requirement to provide the complainant with a copy of the police report is not a new program or higher level of service because Government Code section 6254, subdivision (f), as added by Statutes 1981 chapter 684, already required local law enforcement agencies to provide complainants with a copy of the report.

On March 3, 2009, the claimant submitted comments concurring with the draft staff analysis and made the following additional comment:

[T]he City, however, reserves the right to revisit during the Parameters and Guidelines phase, the issue of including the activity of referring the matter to the law enforcement agency where the suspected crime was committed for further

investigation. Although Staff has found that this activity was not mandated, it may still be considered as reasonable[y] necessary to carry out the mandate.<sup>1</sup>

The claimant's comment was addressed in the final staff analysis on page 12 and in the Proposed Statement of Decision as follows:

The Commission finds that determining the appropriate law enforcement agency to investigate the matter further and making a referral to that agency is not a state-mandated activity and as such is not reimbursable. Claimant, in comments on the draft staff analysis submitted March 4, 2009, states that it "reserves the right to revisit [this issue] during the Parameters and Guidelines phase. . . as reasonable[y] necessary to carry out the mandate."<sup>2</sup> If local law enforcement opts to undertake this activity it would do so after the completion of all of the state mandated activities. Because this activity cannot occur until all mandated activities are complete, it cannot be reasonably necessary to carry out the mandated activities. Though such a referral may be in the spirit of the law and may be good public policy, it is not a specifically mandated activity, not necessary to carry out the mandate, and therefore not reimbursable. The Commission finds that determining the appropriate law enforcement agency to investigate the matter further and making a referral to that agency is not a state-mandated activity and that this optional activity may not be addressed in the parameters and guidelines.<sup>3</sup>

On March 16, 2009 the claimant, the City of Newport Beach, filed a request to amend the Proposed Statement of Decision or, in the alternative, a request for a continuance of this test claim. Specifically, the claimant requests that the Proposed Statement of Decision be amended to delete any findings regarding the parameters and guidelines and suggests that the above paragraph be stricken with the exception of the first two sentences. This would enable the claimant to provide evidence at the parameters and guidelines stage that the activity of referring the matter to the law enforcement agency where the suspected crime was committed for further investigation is reasonably necessary to carry out the mandate. On March 18, 2009, the Executive Director denied the request to postpone the hearing and issued this supplemental analysis.

## **Discussion**

### **Amendment of the Proposed Statement of Decision**

The claimant states that the final staff analysis and Proposed Statement of Decision make a finding on the parameters and guidelines, which is not before the commission, and that staff increased the number of issues pending by raising an issue for the first time in the final staff analysis and Proposed Statement of Decision. However, the only issue addressed in the final staff analysis and the Proposed Statement of Decision that was not addressed in the draft staff analysis was not raised by staff. The issue of whether the activity of determining the appropriate law enforcement agency to investigate the matter further and making a referral to that agency is a

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<sup>1</sup> Exhibit F, page 153.

<sup>2</sup> Exhibit F, page 153.

<sup>3</sup> Proposed Statement of Decision, page 12.

mandated activity was raised by claimant in the original test claim filing.<sup>4</sup> The issue of whether the referral activity is “reasonabl[y] necessary to carry out the mandate,” was raised by claimant in its comments on the draft staff analysis and the final staff analysis and Statement of Decision simply responded to the claimant’s comment.

The Commission’s regulations state that “all written comments timely filed shall be reviewed by commission staff and may be incorporated into the final staff analysis.”<sup>5</sup> Moreover, with regard to the parameters and guidelines, California Code of Regulations, title 2, Section 1183.1, subdivision (a) (11) specifies that the legal and factual basis for the parameters and guidelines are found in the administrative record for the test claim, which is on file with the Commission. Since the legal and factual basis must come from the file on the test claim, it is not improper for the Commission to make legal and factual findings at the test claim hearing that may have an effect on what may be included in the parameters and guidelines. Moreover, though it is true that “the most reasonable means of complying with the mandate” are those methods not specified in statute or executive order that are necessary to carry out the mandated program,<sup>6</sup> the test claim file provides the legal and factual basis to support the parameters and guidelines.

Here, the draft staff analysis included a finding that the referral activity was not mandated. More importantly, for purposes of the issue at hand, it is clear from the legislative intent for Senate Bill 602, Statutes of 2003, chapter 53, which is discussed in the draft staff analysis, that the local agency is responsible for taking a police report and beginning investigation. If the investigation reveals the crime was committed in another jurisdiction, then the investigation can be referred to another agency in the jurisdiction where the crime occurred.<sup>7</sup> Page 10 of the draft staff analysis<sup>8</sup> states in pertinent part:

The adverb “further” means “1. Going beyond what currently exists: without further ado. 2. Being an addition.”<sup>9</sup> Thus, “further investigation” necessarily requires the law enforcement agency that takes the police report to first begin an investigation before referring it out to another agency so that that the other agency may go beyond or add to the investigation that was begun by the referring agency. Still, some local agencies found this language confusing saying that it was unclear whether it permitted a local law enforcement agency to simply refer a matter to a jurisdiction where the suspected crime occurred without investigation.<sup>10</sup> Three years after enactment of the test claim statute, section 530.6 was amended by Statutes of 2003, chapter 533 which is not pled in this test claim, for the purpose of clarifying that the local law enforcement agency with jurisdiction over the

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<sup>4</sup> Exhibit A, page 103.

<sup>5</sup> 2 California Code of Regulations (CCR) 1183.07 subdivision (c).

<sup>6</sup> 2 CCR 1183.1, subdivision (a) (11).

<sup>7</sup> See Assembly Floor Analysis, as amended September 10, 2003, page 5.

<sup>8</sup> See Exhibit E, page 142.

<sup>9</sup> Roget’s II, The New Thesaurus, Expanded Edition, page 435.

<sup>10</sup> Assembly Committee on Judiciary analysis of Sen. Bill (SB) 602, as amended June 26, 2003, page 7.

victim's residence or place of business must take the police report and begin an investigation<sup>11</sup> to say:

A person who has learned or reasonably suspects that his or her personal identifying information has been unlawfully used by another, as described in subdivision (a) of Section 530.5, may initiate a law enforcement investigation by contacting the local law enforcement agency that has jurisdiction over his or her actual residence or place of business, which shall take a police report of the matter, provide the complainant with a copy of that report, and begin an investigation of the facts. ~~or, i-~~ If the suspected crime was committed in a different jurisdiction, the local law enforcement agency may refer the matter to the law enforcement agency where the suspected crime was committed for further investigation of the facts.

(Underlining and strikethrough of amendments and deletions added.)

The California Supreme Court stated:

Where changes have been introduced to a statute by amendment it must be assumed the changes have a purpose ....' " (*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325, 1337 [283 Cal.Rptr. 893, 813 P.2d 240].) That purpose is not necessarily to change the law. "While an intention to change the law is usually inferred from a material change in the language of the statute [citations], a consideration of the surrounding circumstances may indicate, on the other hand, that the amendment was merely the result of a legislative attempt to clarify the true meaning of the statute. (*Martin v. California Mut. B. & L. Assn.* (1941) 18 Cal.2d 478, 484 [116 P.2d 71].)"<sup>12</sup>

In this instance, there is a statement of legislative intent to clarify the test claim statute.<sup>13</sup>

Thus, referral of the matter to another jurisdiction for further investigation of the facts is only permitted after the investigation has begun and at that point would be at the discretion of the referring law enforcement agency.<sup>14</sup> The clarifying language did not change the original requirement for the law enforcement agency where the alleged victim resides to begin an investigation of the matter because, as discussed above, the language "further investigation of the facts" necessarily implies that a preliminary investigation of the facts was conducted by the law enforcement agency that took the police report. Because this permissive authority to refer the matter to another jurisdiction does not require any action on behalf of local law enforcement, it does not impose a new state-mandated activity.

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<sup>11</sup> *Ibid.*

<sup>12</sup> *Williams v. Garcetti* (1993) 5 Cal.4th 561.

<sup>13</sup> Assembly Committee on Judiciary analysis of SB 602, *supra*, page 7.

<sup>14</sup> *Ibid.*

Based upon the language contained in the test claim filing, the draft staff analysis and the claimants comments on the draft staff analysis discussed above, it is clear that the final staff analysis and proposed statement of decision were not the first documents to raise the issue of whether the referral activity is mandated or is reasonably necessary to implement the mandate.

However, staff has no legal objection to limiting the finding to the mandate issue and deferring discussion of whether the activity of referring the matter to the law enforcement agency where the suspected crime was committed for further investigation is "reasonably necessary." As a courtesy to the claimant, staff proposes that the relevant paragraph on page 12 of the final staff analysis and page 12 of the Proposed Statement of Decision be modified as follows:

The Commission finds that determining the appropriate law enforcement agency to investigate the matter further and making a referral to that agency is not a state-mandated activity and as such is not reimbursable. Claimant, in comments on the draft staff analysis submitted March 4, 2009, states that it "reserves the right to revisit [this issue] during the Parameters and Guidelines phase. . . as reasonable[y] necessary to carry out the mandate."<sup>15</sup> ~~If local law enforcement opts to undertake this activity it would do so after the completion of all of the state mandated activities. Because this activity cannot occur until all mandated activities are complete, it cannot be reasonably necessary to carry out the mandated activities. Though such a referral may be in the spirit of the law and may be good public policy, it is not a specifically mandated activity, not necessary to carry out the mandate, and therefore not reimbursable. The Commission finds that determining the appropriate law enforcement agency to investigate the matter further and making a referral to that agency is not a state mandated activity and that this optional activity may not be addressed in the parameters and guidelines.~~<sup>16</sup>

## CONCLUSION

Therefore, staff concludes that the relevant paragraph on page 12 of the final staff analysis and page 12 of the Proposed Statement of Decision should be modified as follows:

The Commission finds that determining the appropriate law enforcement agency to investigate the matter further and making a referral to that agency is not a state-mandated activity and as such is not reimbursable. Claimant, in comments on the draft staff analysis submitted March 4, 2009, states that it "reserves the right to revisit [this issue] during the Parameters and Guidelines phase. . . as reasonable[y] necessary to carry out the mandate."<sup>17</sup> ~~If local law enforcement opts to undertake this activity it would do so after the completion of all of the state mandated activities. Because this activity cannot occur until all mandated activities are complete, it cannot be reasonably necessary to carry out the mandated activities. Though such a referral may be in the spirit of the law and may be good public~~

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<sup>15</sup> Exhibit F, page 153.

<sup>16</sup> Proposed Statement of Decision, page 12.

<sup>17</sup> Exhibit F, page 153.

~~policy, it is not a specifically mandated activity, not necessary to carry out the mandate, and therefore not reimbursable. The Commission finds that determining the appropriate law enforcement agency to investigate the matter further and making a referral to that agency is not a state mandated activity and that this optional activity may not be addressed in the parameters and guidelines.<sup>18</sup>~~

**Recommendation Item 7**

Staff recommends that the Commission adopt the final staff analysis as modified on March 18, 2009 with the language above. (Yellow Paper)

**Recommendation Item 8**

Staff recommends that the Commission adopt the Proposed Statement of Decision as modified on March 18, 2009 with the language above. (Blue Paper)

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<sup>18</sup> Proposed Statement of Decision, page 12.

# Commission on State Mandates

Original List Date: 9/30/2003  
Last Updated: 7/19/2006  
List Print Date: 03/18/2009  
Claim Number: 03-TC-08  
Issue: Identity Theft

## Agenda Mailing List

### TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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jurisdiction over his or her actual residence, section 530.6, subdivision (a), as added by Statutes 2000, chapter 956 requires local law enforcement agencies to undertake the following state-mandated activities:

- 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;
- provide the complainant with an actual copy of that report; 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.

The Commission finds that determining the appropriate law enforcement agency to investigate the matter further and making a referral to that agency is not a state-mandated activity and as such is not reimbursable. Claimant, in comments on the draft staff analysis submitted March 4, 2009, states that it “reserves the right to revisit [this issue] during the Parameters and Guidelines phase. . . as reasonable[y] necessary to carry out the mandate.”<sup>54</sup> ~~If local law enforcement opts to undertake this activity it would do so after the completion of all of the state mandated activities. Because this activity cannot occur until all mandated activities are complete, it cannot be reasonably necessary to carry out the mandated activities. Though such a referral may be in the spirit of the law and may be good public policy, it is not a specifically mandated activity, not necessary to carry out the mandate, and therefore not reimbursable. The Commission finds that determining the appropriate law enforcement agency to investigate the matter further and making a referral to that agency is not a state mandated activity and that this optional activity may not be addressed in the parameters and guidelines.~~<sup>55</sup>

**Issue 2. Do the state-mandated activities impose a new program or higher level of service on local agencies?**

For section 530.6, subdivision (a) to be subject to article XIII B, section 6 of the California Constitution, the statute must constitute a new “program” or “higher level of service.” The California Supreme Court, in the case of *County of Los Angeles v. State of California*,<sup>56</sup> defined the word “program” within the meaning of article XIII B, section 6 as a program that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state. Only one of these findings is necessary to trigger the applicability of article XIII B, section 6.<sup>57</sup> To determine if a required activity is new or imposes

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<sup>54</sup> City of Newport Beach, comments on draft staff analysis, March 4, 2009, page 1.

<sup>55</sup> Proposed Statement of Decision, page 12.

<sup>56</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

<sup>57</sup> *Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App.3d 521, 537.



change the original requirement for the law enforcement agency where the alleged victim resides to begin an investigation of the matter because, as discussed above, the language "further investigation of the facts" necessarily implies that a preliminary investigation of the facts was conducted by the law enforcement agency that took the police report. Because this permissive authority to refer the matter to another jurisdiction does not require any action on behalf of local law enforcement, it does not impose a new state-mandated activity.

Thus, based on the foregoing analysis, the Commission finds that when a victim of identity theft initiates a law enforcement investigation by contacting the local law enforcement agency that has jurisdiction over his or her actual residence, section 530.6, subdivision (a), as added by Statutes 2000, chapter 956 requires local law enforcement agencies to undertake the following state-mandated activities:

- 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;
- provide the complainant with an actual copy of that report; 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.

The Commission finds that determining the appropriate law enforcement agency to investigate the matter further and making a referral to that agency is not a state-mandated activity and as such is not reimbursable. Claimant, in comments on the draft staff analysis submitted March 4, 2009, states that it "reserves the right to revisit [this issue] during the Parameters and Guidelines phase. . . as reasonabl[y] necessary to carry out the mandate."<sup>55</sup> ~~If local law enforcement opts to undertake this activity it would do so after the completion of all of the state-mandated activities. Because this activity cannot occur until all mandated activities are complete, it cannot be reasonably necessary to carry out the mandated activities. Though such a referral may be in the spirit of the law and may be good public policy, it is not a specifically mandated activity, not necessary to carry out the mandate, and therefore not reimbursable. The Commission finds that determining the appropriate law enforcement agency to investigate the matter further and making a referral to that agency is not a state-mandated activity and that this optional activity may not be addressed in the parameters and guidelines.~~<sup>56</sup>

## **Issue 2: Does the test claim statute constitute a new program or higher level of service?**

For section 530.6, subdivision (a) to be subject to article XIII B, section 6 of the California Constitution, the statute must constitute a new "program" or "higher level of service." The California Supreme Court, in the case of *County of Los Angeles v. State of California*,<sup>57</sup>

<sup>55</sup> City of Newport Beach, comments on draft staff analysis, March 4, 2009, page 1.

<sup>56</sup> Proposed Statement of Decision, page 12.

<sup>57</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

