



# Office of the County Counsel

"Providing Quality Legal Services to the County of Tuolumne"

*JCS  
7/28*  
Sarah Carrillo  
County Counsel

July 26, 2017

**FILED**

JUL 28 2017

Superior Court of California  
County of Tuolumne

By: *[Signature]* Clerk

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Honorable Kate Powell-Segerstrom  
Tuolumne County Superior Court  
60 North Washington Street  
Sonora, CA 95370

**Re: Response to Grand Jury Report related to Information Technology Department  
(FY16/17)**

Dear Judge Powell-Segerstrom:

I have reviewed the aforementioned Report. I know the Grand Jury dedicated a substantial amount of time to this Investigation and Report. I thank them for their efforts and for working with the County to address the concerns set forth in the Report. The Grand Jury has requested that I respond to the following Recommendations.

**Recommendations:**

R3. Hire a Chief Information Officer (CIO) or IT Director that would report directly to the CAO and not a deputy CAO. That individual must have an experienced IT background and not have any other responsibilities within the county administration. Should the position not be created/filled, we request that the CAO, BOS and County Counsel explain why the current arrangement is not a conflict of interest. This Recommendation is based on Finding 2, which states because there is no IT Director, the IT manager reports to a deputy CAO. The Grand Jury believes this structure may cause a possible conflict of interest as it leaves no one at the Director level to advocate on behalf of the IT Department.

R22. Create, maintain and observe a policy and procedure for HIPPA compliance. Each affected Department should be aware of their obligations and actively participate and pursue full compliance.

R23. Create, maintain and observe a policy and procedure for PCI DSS compliance. Each affected Department should be aware of their obligations and actively participate and pursue full compliance.

*[Handwritten initials]*

## Responses:

1. Response to R3. At the time of writing this Response I am unaware of whether or not this Recommendation will be followed. Regardless of whether or not the Recommendation is followed, I disagree with the assertion that a conflict of interest may exist when an IT manager reports to a deputy CAO as opposed to the CAO.

From my review of the Grand Jury Report, it appears the conflict of interest concern arises solely out of budget related issues and not related to conflict of interest laws such as the Political Reform Act or Government Code Section 1090 (laws that prohibit personal financial gain or advantages). As a result, my response focuses solely on the county structure that authorizes managers reporting to deputy CAO's and will not address conflict of interest laws not raised by the Grand Jury.

In order to respond to the issue raised, it is important to first set forth the structure of County government. Government Code Sections 24000 et seq. set forth various county officers, including a county administrator.<sup>1</sup> Tuolumne County Ordinance Code (TCOC), Chapter 2.12 addresses the creation and duties of the County Administrative Officer (CAO). The CAO's duties include the supervision of all county departments, officers and institutions over which the Board of Supervisors has responsibility and control through its ability to appoint a department head. Additional duties include preparing an annual budget, administering the budget and exercising continuous expenditure control over the adopted budget. This budget authority applies to all county departments, whether elected or appointed. The CAO has contracting authority, is deemed the Personnel Officer, supervises appointed Department Heads, etc. The CAO is the County's top staff member and is responsible for the day-to-day operations of the County and represents the Board of Supervisors to assist in accomplishing the Board goals and policy directives.

Under general laws a county officer may appoint deputies to discharge duties of the office. The law also provides a deputy's official acts are those of the officer.<sup>2</sup> This means that the deputy takes the place of the principal officer in the discharge of his/her official duties. It is this structure that authorizes a deputy to oversee a department on behalf of the CAO and as a result no conflict of interest exists or is created. In this particular instance when a deputy CAO oversees the IT Department and the IT manager reports to the deputy CAO, the law would see that situation as the deputy CAO acting on behalf of the CAO. Under the current set-up the IT Manager is in effect reporting to the CAO even though his/her communication is directed through a deputy CAO. This hierarchical structure is not limited to IT, but also to other County departments such as Recreation and Facilities Management. And most importantly, even if the Grand Jury's recommendation was followed, it would make no practical difference to any perceived conflict of interest because the law authorizes deputies to act on behalf of the principal officer.

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<sup>1</sup> Gov't Code §24000(t).

<sup>2</sup> Gov't Code §§24100-24101 and *Sarter v. Siskiyou County* (1919) 42 C.A. 530.

2. Response to R 22. I agree with this Recommendation. I would note the County has a Notice of Privacy Practices policy that is based on HIPAA. I would also note that in numerous conversations with the CAO and Human Resources/Risk Manager, our mutual goal is to update and/or create County policies in the near future and this is no exception.

3. Response to R23. I agree with this Recommendation. I would also note that in numerous conversations with the CAO and Human Resources/Risk Manager, our mutual goal is to update and/or create County policies in the near future and this is no exception.

Regards,

  
SARAH CARRILLO  
County Counsel