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February 19, 2009

Daniel W. Hancock, Chairman
Little Hoover Commission
925 L Street, Suite 805
Sacramento, CA 95814

RE: Governor's Reorganization Plan for Consolidation of Statewide Information Technology Functions

Dear Mr. Hancock:

The Consumer Federation of California and the Privacy Rights Clearinghouse are pleased to submit these comments in advance of the February 25 hearing of the Little Hoover Commission on the Governor's Reorganization Plan to consolidate statewide information technology functions under the Office of State Chief Information Officer (OCIO). The CFC is a non-profit consumer advocacy organization established in 1960. The Privacy Rights Clearinghouse is a nonprofit consumer education and advocacy program based in San Diego, CA. It was established in 1992.

Our comments address one aspect of this reorganization: the state's role in protecting the personal privacy of Californians.

California's Constitution contains an express right of privacy. Article I, Section 1 of the California Constitution provides: "All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy."

We believe that the state Constitution requires any agency that oversees the collection of data on Californians by government to include privacy protection as a key element in its charge.

It is essential to recognize that "security" and "privacy" are distinct policy areas, and each deserves to be addressed in any mandate for the new OCIO. "Security" is the protection of personal data that the government collects. Security is largely a question of establishing protocols and technical safeguards to prevent hacking, identity theft, and other unauthorized or unlawful access to sensitive personally identifiable information.

While security of government records is an essential element for protecting our privacy, it is an inadequate framework for addressing the right to privacy.

“Privacy” is the individual’s right to keep our personal confidential information out of the hands of others. This includes preventing the collection of personal information by agencies of government. In simple terms, government has no business gathering our personal information, except to the extent necessary to effectuate a public policy requirement. The Governor’s Reorganization Plan fails to acknowledge the privacy rights of Californians, since it does not call for the development of policies within the OCIO to restrict the collection, retention and aggregation of personally identifiable information by the government.

The Office of Information Security and Privacy Protection is currently housed within the Department of Consumer Affairs. This agency was created in 2008 by legislation that combined two previously separate state agencies, the Office of Privacy Protection which was established within the Department of Consumer Affairs with the State Information Security Office which had been an agency within the Department of Finance.

The Governor’s Reorganization Plan would undo this merger and place the government information security functions of the Office of Information Security and Privacy Protection within the OCIO. An Office of Privacy Protection would be re-established within the State and Consumer Services Agency, which we presume would have the same responsibilities and staffing as the OPP had prior to its 2008 merger with the State Information Security Office.

The Office of Privacy Protection plays an important role in educating consumers about their privacy rights through the development of written and on-line materials, by conducting workshops and by responding to several thousand inquiries regarding privacy and security breaches each year. The office also plays an important advisory role to state and local government agencies, providing its expertise in development of agencies’ privacy policies and practices, training staff, and reviewing compliance with existing privacy standards.

Any reorganization must not overlook the key role that this agency plays, and legislation re-establishing the Office of Privacy Protection should insure that its duties and staffing are not diminished. The Governor’s Reorganization Plan contains almost no discussion of the role of the re-constituted Office of Privacy Protection. We urge the Hoover Commission to explicitly address the re-establishment of this agency.

Of greater concern to privacy advocates is the merger of the Information Security functions of the OISPP into the new OCIO. The Governor’s Reorganization Plan’s description of the OPSPP failed to identify privacy as a responsibility of this existing agency:

“Office of Information Security and Privacy Protection (OISPP) – The OISPP was established effective January 1, 2008, and is part of the State and Consumer Services

Agency. The OISPP is responsible for leading state agencies in securing and protecting the State's information assets by identifying critical technology assets and addressing vulnerabilities; deterring identify theft and security incidents; sharing information and technology lessons promptly; enhancing government response and recovery; and developing consumer education programs. In the Budget Act of 2008, the Legislature provided OISPP with authority for 14 positions and a budget of \$1.9 million.”
(*Organizing for Success” Governor’s Reorganization Plan #1, February 2009, page 7.*)

The “Organizing for Success” document is a 26 page description of the current and proposed functions of the agencies to be consolidated in the OCIO. The document mentions privacy only briefly in its discussion of the new agency. Page 15 mentions that the Enterprise Tier of this agency will “enhance security and stakeholder privacy.” Page 20 states that OIS (Office of Information Security) be responsible for “... promoting and protecting the privacy of Californians. The OIS will implement enterprise information and privacy protection policies and practices to safeguard information to ensure the confidentiality, integrity and availability.” This last sentence suggests a privacy policy role, but it also blurs this role with the need for security safeguards. We are concerned that it does not explicitly state that one responsibility of the OIS is the development of policies to determine which personally identifiable information an agency of government should collect, retain or aggregate in the first place, in order to maximize Californians’ privacy rights. The OIS should develop and review government privacy policies subject to rigorous public hearing processes.

Enabling legislation implementing the Governor’s Reorganization Plan should expressly establish a privacy watchdog role for the OIS. Unwarranted intrusion by government information technology is a threat to our privacy rights. If the OCIO becomes the information technology center for California government, it must be required to develop policies that maximize the privacy of state residents.

Sincerely,



Richard Holober
Executive Director
Consumer Federation of California



Beth Givens
Director
Privacy Rights Clearinghouse