



C A L I F O R N I A

DEPARTMENT of JUSTICE

COMMUNICATIONS POLICY

ASSEMBLY BILL 1506
GOVT. CODE § 12525.3(A)

JULY 2021



AB 1506 COMMUNICATIONS POLICY

This protocol is designed to provide guidelines concerning communications with the media during a California Department of Justice investigation into an officer-involved shooting.

When an officer-involved shooting (OIS) occurs, transparent and open communication is critical to maintaining public trust, and the California Department of Justice (DOJ) will strive to be as transparent as possible throughout the process. However, the interests of public disclosure must be balanced with the privacy concerns of all involved, as well as the requirements of the investigation and the rights of involved individuals. As in every case, care must be taken to ensure that misleading, erroneous, or potentially prejudicial statements are not made. Agencies and individuals who are not intimately involved with the progress and results of the criminal investigation should be careful in making statements to the press. These protocols are not intended to impede any law enforcement agency from their responsibility to provide timely and relevant information to the communities they serve on police policy and/or procedures when it is needed to add clarity and understanding for the actions of their officers or how the incident will be investigated.¹ With these understandings, the DOJ will follow these guidelines:

A. THE INVESTIGATIVE STAGE

1. At the Incident Scene

At the incident scene, DOJ will generally defer all press inquiries to the local investigating agency. Once it has been determined that the incident falls under California Assembly Bill 1506 (AB 1506), DOJ will assign a specific contact to coordinate with partner agencies and handle the release of case information to members of the news media. That point of contact will work with local law enforcement agencies to provide coordinated responses and to minimize interruptions to the OIS investigation.

While each incident is unique, it is expected that to the extent it is appropriate for DOJ to release information in the immediate aftermath of an incident, that information will consist, at most, of the following:

- The fact that an OIS has occurred, including the date, time, location, number of individuals involved, and law enforcement agencies involved;
- The fact that the incident falls under AB 1506 and DOJ is participating in the investigation of the incident;
- Whether other agencies are investigating related potentially criminal conduct in addition to an OIS that falls under AB 1506; and
- Any additional, verified information that investigators reasonably believe will assist the investigation if publicly known.

Care will be taken to provide accurate information that will not, in any way, compromise investigative efforts. Additionally, to protect the privacy of all involved, at this point in the proceedings DOJ will not provide the identity of the officer(s) involved, nor the identity or medical condition of any involved civilian(s), to allow appropriate notifications to take place. Inquiries concerning any potential related criminal investigations will be referred to the law enforcement agency conducting those investigations.

¹ Throughout the course of the AB 1506 investigation, DOJ will endeavor to provide notice to local investigating agencies and/or the agency employing the involved officer(s) and to representatives of the decedent(s) in advance of any formal press release or press conference.

2. Following Completion of Crime Scene Investigation

Once the initial crime scene investigation is complete, all media inquiries concerning the DOJ's participation in the investigation will be directed to the DOJ Communications Office. Throughout the investigative process, every effort will be made to coordinate with the local investigating agency regarding disclosures to the press.

Once appropriate notifications have been made, the identities of involved officers and civilians may be released. The release of that information should be coordinated amongst the DOJ, local investigating agencies, the Law Enforcement Agency that employs the involved officer(s) ("Employing Agency"), and the Coroner's Office. In general, the Employing Agency will be provided the opportunity to release the identity of the officer.

During the investigation, in order to preserve the integrity of the investigation and the rights of all involved, the DOJ will not disseminate any information regarding the following:

- An involved officer's statement, confession, or refusal to give a statement;
- The prior criminal history of any Involved party, unless it is part of the criminal pleading or crime under investigation;
- The result of any forensic examinations;
- The pendency of a search warrant; and
- Any information that has a substantial likelihood of materially prejudicing a potential adjudicative proceeding in the matter.

a. The County Coroner's Office

DOJ requests that information obtained from investigators not be released by the Coroner's Office without prior clearance from DOJ. Where the Coroner's Office releases information, it should generally be limited to autopsy findings, including the condition of the deceased, the cause of death, and toxicology test results. Such releases should occur only after the DOJ has received this information and, if applicable, after the DOJ has closed the investigation without charges. Coroner's Offices are requested not to release any information to the media where there is a pending criminal prosecution.

b. Law Enforcement Body-Worn and Dashboard Camera Footage

Releasing video and audio recordings from law enforcement body-worn cameras and/or dashboard cameras relating to officer involved shooting incidents can be an important step in maintaining transparency and building public trust. Accordingly, DOJ will encourage and collaborate in efforts by local law enforcement agencies to make such materials publicly available where legally permissible and appropriate, taking into account significant factors such as due process requirements, the integrity of the investigation and legal review, policies of local investigating agencies, and the privacy of individuals portrayed in such recordings. Each of these factors may be relevant to a determination of whether, when, and how such material is made available.

Where such material is made public, it is not an expression of any opinion as to the guilt or innocence of any party in a criminal matter or any opinion as to how or whether any individual may be charged with a crime.

B. FOLLOWING CONCLUSION OF THE INVESTIGATION

Once the investigation is concluded and under review by DOJ prosecutors, all inquiries should be directed to the DOJ Communications Office. In general, other than confirming the status of the investigation, the DOJ will not respond to particularized inquiries until a charging decision is made.

1. Charges Not Filed

At the conclusion of the DOJ's investigation and review for potential criminal liability, in cases in which the facts do not support criminal charges, the DOJ will prepare and make public a written report that includes: a statement of the facts, as revealed by the investigation; an analysis of those facts in light of applicable law; an explanation of why it was determined that criminal charges were not appropriate; and where applicable, recommendations to modify the policies and practices of the involved law enforcement agency.² At this time, DOJ may also make available particular video and audio evidence.

2. Charges Filed

In announcing the initiation of criminal charges, DOJ will be careful not to make statements that will "have a substantial likelihood of materially prejudicing" the prosecution of a defendant.³ At any point prior to a verdict, whenever we state that an individual has been charged with a criminal offense, we must include "a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty."⁴

a. DOJ may generally disclose:

- The identity, general area of residence, and occupation of the accused;⁵
- The substance of the charge, as contained in the complaint, indictment, information, or other public documents;⁶
- Amount of bail and location where the accused is being held;
- Potential penalty range;
- The fact, time, and place of arrest;⁷ and
- The scheduling or result of any step in litigation.⁸

b. DOJ will not disclose the following information:⁹

- Observations about a defendant's character;¹⁰
- Any opinion as to the guilt or innocence of a defendant or suspect;¹¹
- Any opinion as to the possibility of a plea of guilty to the offense charged, or the possibility of a plea to a lesser offense;¹²

2 Such recommendations may be made, as applicable, at a different time and in a different format by professionals within the DOJ possessing applicable expertise.

3 State Bar Rule 3.6(a).

4 ABA Model Rule 3.6, Comment [5](6); USDOJ Justice Manual, 1-7.500.

5 State Bar Rule 3.6(b)(7)(i).

6 USDOJ Justice Manual, 1-7.500(B); State Bar Rule 3.6(b)(1).

7 State Bar Rule 3.6(b)(7)(iii).

8 State Bar Rule 3.6(b)(4).

9 ABA Model Rule 3.6, Comment [5]. This policy does not prevent the Department from facilitating access to publicly filed records.

10 USDOJ Justice Manual, 1-7.610(A); ABA Model Rule 3.6, Comment [5](1).

11 ABA Model Rule 3.6, Comment [5](4); USDOJ Justice Manual, 1-7.610(F) .

12 USDOJ Justice Manual, 1-7.610(F); ABA Model Rule 3.6, Comment [5](2).

- Statements concerning the identity, testimony, or credibility of prospective witnesses;¹³
- Statements concerning the existence or contents of any confession, admission, statement, or alibi given by a defendant or suspect or that person's refusal or failure to make a statement;¹⁴
- Statements concerning the performance or results of any examination or test, such as fingerprints, polygraph examinations, ballistic tests, or forensic services, including DNA testing, or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;¹⁵
- Statements concerning anticipated evidence or argument in the case;¹⁶ and
- Any information we know or reasonably should know is likely to be inadmissible as evidence in a trial and that would, if disclosed, create a substantial risk of prejudicing an impartial trial.¹⁷

13 USDOJ Justice Manual, 1-7.610(D); ABA Model Rule 3.6, Comment [5](1).

14 ABA Model Rule 3.6, Comment [5](2); USDOJ Justice Manual, 1-7.610(B).

15 ABA Model Rule 3.6, Comment [5](3); USDOJ Justice Manual, 1-7.610(C).

16 USDOJ Justice Manual, 1-7.610(E).

17 ABA Model Rule 3.6, Comment 5.