

LA County Department of Health
Services Public Health

LA County Sheriff's Department

Federal Bureau of Investigation – LA
Field Office

**Joint Bioterrorism
Investigation
Memorandum of
Understanding**

MEMORANDUM OF UNDERSTANDING regarding joint field investigation protocols following a suspected bioterrorist incident between Los Angeles County Department of Health Services Public Health, Los Angeles County Sheriff's Department, and the Los Angeles Field Office of the Federal Bureau of Investigation.

1. Introduction

In the event of a suspected or confirmed bioterrorist (BT) event, it is essential that public health and law enforcement agencies coordinate their investigations closely, so that shared objectives (e. g., determining where and when a release may have occurred) can be reached. For Los Angeles County Public Health (LACPH), determining the time and place of a BT event allows interventions to contain the spread of disease and protect the public's health. In the event of an intentional introduction of a biological agent, identification of the crime scene and those potentially infected would represent a major step toward apprehending those responsible for the crime. When the public health and law enforcement sectors collaborate soon after a possible bioterrorist event has been identified, critical information can be uncovered and shared more efficiently and quickly. These guidelines apply to the following potential scenarios – (a) investigation of the initial reports of a patient(s) with a potential, but not yet confirmed infection that may represent the first indication that an intentional biological release has occurred, or (b) once a BT event is either suspected or confirmed in the county, interviewing other persons who are exhibiting the signs and symptoms of the particular disease, to determine when and where they may have been exposed (following a covert release, this epidemiologic information would be essential to identify the time and place of the attack).

2. Legal References

a. Under California law, health care providers are required to report certain diseases or conditions to the local health officer for the jurisdiction where the patient resides (California Code Regulations (CCR), tit. 17, § 2500 (b)). The State and local health departments are authorized by law to conduct infectious disease investigations and initiate disease control interventions. Upon receiving a report of a disease, the local health officer must take whatever steps are deemed necessary for the investigation and control of the disease, condition or outbreak reported (CCR, tit. 17, § 2501 (a)). Further, local health officers must prepare individual case and outbreak reports and provide these to the State Department of Health Services. It is mandatory to supply personal health information related to the individual's disease to the local health officer who collects the information in order to prepare such case reports (CCR, tit. 17, § 2502(g)). The authority of local health officers to investigate and take necessary measures to prevent the spread of disease is provided in the Health and Safety Code § 120175:

b. *“Each health officer knowing or having reason to believe that any case of the diseases made reportable by regulation of the department, or any other contagious, infectious or communicable disease exists, or has recently existed, within the territory*

under his or her jurisdiction, shall take measures as may be necessary to prevent the spread of the disease or occurrence of additional cases.”

c. After a communicable disease outbreak has been detected or reported, LACPH will investigate that outbreak in order to determine the epidemiology or source of the outbreak.

d. The HIPAA Privacy Rule specifically allows disclosures of protected health information to public health authorities in both the preamble of the rule and the text of the rule. The preamble states: *“The final rule continues to permit covered entities to disclose protected health information without individual authorization directly to public health authorities, such as the Food and Drug Administration, the Occupational Safety and Health Administration, the Centers for Disease Control and Prevention as well as state and local public health departments, for public health purposes ... ”* (65 Fed. Reg. 82526 (December 28, 2000)). The Privacy Rule in 45 Code of Federal Regulations (CFR) §164.512(b) explicitly permits disclosures to public health authorities for public health activities: *“(1) Permitted disclosures. A covered entity may disclose protected health information for the public health activities and purposes described in this paragraph [§164.512(b) (1)] to: (i) A public health authority that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions; ... ”* (See 45 CFR §164.512(b) (1)). Additionally, 45 CFR § 160.203(c) of the Privacy Rule indicates that State law, including State procedures established under such law, actually preempts or overrides contrary HIPAA privacy provisions in the area of public health disease or injury reporting and the conduct of public health surveillance, investigation, or intervention.

e. After a preliminary epidemiologic investigation, should LACPH suspect that the outbreak or disease was caused by an intentional act or a potentially criminal act, it shall immediately notify the FBI and the LA County Terrorism Early Warning Group of this suspicion. The purpose of the report is to obtain assistance in determining the root cause of the outbreak and to prevent the further spread of disease or occurrence of additional cases. Although communicable disease outbreak information reported to LACPH is acquired in confidence and is confidential, personally identifying information, or protected health information, may be disclosed without the consent of the affected individual by LACPH in certain limited circumstances. Initially, LACPH may, for the purposes of its investigation, disclose any information obtained in any individual, communicable disease outbreak report, including personal information, as may be necessary to prevent the spread of disease or occurrence of additional cases (17 California Code Regulations § 2502 (f) (2)).

f. Additionally, LACPH may, in accordance with 45 CFR § 164.512 (j), disclose protected health information to avert a serious threat to health or safety if, *“in good faith, the covered entity [LACPH] believes the use or disclosure: (i) (A) is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public;*

and (B) is to a person or persons [law enforcement] reasonably able to prevent or lessen the threat, including the target of the threat; or (ii) is necessary for law enforcement authorities to identify or apprehend an individual: (A) because of a statement by an individual admitting participation in a violent crime that the covered entity reasonably believes may have caused serious physical harm to the victim: or (B) where it appears from all circumstances that the individual has escaped from a correctional institution or from lawful custody, as those terms are defined in §164.501.” Additionally, it is presumed that the covered entity has acted in good faith in that the entity has “actual knowledge” or is relying on “a credible representation by a person with apparent knowledge or authority” regarding the immediate threat.

g. As a terrorist event is a federal crime, the Federal Bureau of Investigations (FBI) is the lead agency for the multi-agency, multi-jurisdictional law enforcement response and has primary jurisdiction over the criminal investigation. FBI will coordinate law enforcement activities with LA County Sheriff’s Department (LASD) through the Joint Terrorism Task Force (JTTF) and/or LA County Terrorism Early Warning Group (TEW). While LACPH is not a law enforcement agency, a covert bioterrorism act in Los Angeles will likely be detected by LACPH, and it must effectively and immediately notify and coordinate with the FBI or LASD to allow law enforcement to promptly investigate the crime. Additionally, it is important that LACPH regularly receive relevant law enforcement information or terrorism intelligence because such information may increase LACPH’s ability to quickly determine that an illness may have been caused by an intentional act. Likewise, law enforcement agencies, in responding to potential terrorist threats, will at times require assistance from LACPH in assessing and interpreting medical information derived from their investigations.

3. Protocol Assumptions and Principles

This protocol establishes a means for LACPH, LASD and FBI (the parties) to collaborate in joint investigations during the initial phase of the epidemiologic and possible criminal investigations of a suspected or confirmed BT event. It rests on the following shared understandings and principles:

a. All activities and data sharing that occur as part of this protocol will comply with all applicable laws, rules and regulations (including the California Health and Safety Code, Federal Privacy Act, and the Health Insurance Portability and Accountability Act) that govern when routinely collected public health and law enforcement data can be shared with other parties.

b. LACPH recognizes that law enforcement agencies (including the FBI and LASD as well as local and state police departments) may be separately involved in criminal investigations relating to the same BT event. LACPH recognizes that although the FBI and LASD will attempt to lawfully share all available information, some information may be considered law enforcement sensitive (i.e., grand jury material, source reporting, etc) and cannot be shared. In addition, LACPH recognizes that law

enforcement protocols and evidentiary concerns may dictate the FBI's and/or LASD's response to an event including the handling of crucial witness interviews.

c. The joint epidemiologic investigation will focus on interviews with patients, relatives and potential contacts that will address primarily where and when exposures to suspected or confirmed biological agents may have occurred. Data collected will be shared and protected in accordance with all applicable laws and regulations.

d. Absent unusual circumstances as agreed upon between all of the parties, joint epidemiologic investigation interviews will occur in a location adequately removed from potentially contaminated areas or crime scenes.

e. To protect the integrity of the investigation and to preserve a low profile, when possible, detective and special agent personnel (who normally do not wear uniforms) will participate in the joint interview. It is understood that joint investigations remain essentially a public health epidemiologic investigational activity, and that LACPH is not an agent of law enforcement when conducting such investigations. The confidentiality of medical information discussed or obtained in the course of such investigations shall be deemed subject to the provisions of applicable law.

f. In an effort to familiarize each individual agency with the other, a joint training program will be developed. Training will emphasize the integration of LASD detectives, FBI special agents, and Public Health personnel (who would assist in an investigation) with a common goal to successfully investigate a suspected or actual bioterrorism incident. Training will be an ongoing process.

4. Deployment

When the decision has been made to conduct a joint field epidemiologic investigation, the following will occur:

a. Absent unusual circumstances as agreed upon between all of the parties, if the subject of the interview is hospitalized, LACPH will inform the facility's on-call administrator that public health and law enforcement personnel will be interviewing a patient(s) at their facility. Whenever possible, the interview will be conducted in a manner that minimizes disruption to normal hospital operations and patient care.

b. The LACPH, FBI and LASD team will collect needed equipment and meet at an agreed upon staging area for a briefing and transport to the hospitals or other facilities where individuals will be interviewed.

c. Absent unusual circumstances as agreed upon between all of the parties, when arriving at a facility, LACPH personnel will inform the on-call administrator who will be present (from the FBI or LASD).

d. While at the hospital, LACPH team members will independently identify other contacts who may have symptoms consistent with the disease of concern by reviewing additional medical records and/or interviewing medical staff. Absent unusual circumstances as agreed upon between all of the parties, FBI or LASD will not be present while LACPH conducts these activities, in order to protect the confidentiality of other patients at the hospital or medical care setting who are not yet known to have the disease of concern.

e. Whenever joint interviews are conducted, LACPH, FBI and LASD team members will introduce and identify themselves and explain that they need to ask a series of questions to help determine where and when the subjects may have been infected. An effort will be made to obtain the consent of the individual to allow the disclosure of protected health information between LACPH and law enforcement.

f. During the joint interview, LACPH questions will be limited to those pertaining to the symptoms of concern and how the subject may have been exposed or infected. To the extent possible under the circumstances and as agreed upon between all of the parties, sensitive or private medical information will not be discussed in the joint interview. Absent unusual circumstances as agreed upon between all of the parties, LACPH personnel will review medical records and interview patients and health care providers independently to collect sensitive or private medical information that is needed for the public health investigation. The subject of the interview will not be physically examined when law enforcement personnel are present in the room. In certain cases, if such information becomes relevant to the law enforcement investigation, LACPH may provide this information to the FBI or LASD, but only in these cases.

g. Absent unusual circumstances as agreed upon between all of the parties, LACPH staff will interview the subject of the interview first, while the FBI or LASD personnel are present in the room. The data collection tool that will be used will be an LACPH questionnaire. After completing the LACPH interview, the FBI or LASD personnel will interview the patient, while the LACPH staff remains in the room.

h. If the subject of the interview requests that either party leave the room before or during the interview, this will occur, although LACPH, FBI or LASD personnel may decide to return to interview this person at a later time.

i. After the interview, LACPH, FBI and LASD joint investigation team members will review the collected data and share information as appropriate. In an effort to ensure all interview statements are consistent, when possible, the parties should agree to consolidate all notes so that only one statement is produced.

j. If requested by FBI or LASD, and agreed upon by LACPH, copies of all completed questionnaires will be shared with FBI or LASD, as appropriate and consistent with all applicable laws. Records containing confidential information will be maintained at LACPH, FBI and LASD in a secure manner that is agreed upon by the parties. The FBI

will only retain records where such records relate to a law enforcement or national security purpose.

k. During the period of the joint investigation, FBI or LASD may assign liaisons to LACPH, and vice versa. If a Joint Operations Center is established, a Public Health representative will be assigned to the investigative section.

l. During the period of the joint investigation, the parties will inform each other in a timely fashion of any information that may have an impact on the joint investigation. All information shared by the FBI with LACPH and LASD will be in compliance with Title 28 Code of Federal Regulations (CFR) § 16.21 et. seq., and the Privacy Act of 1974, Title 5 U.S.C. § 552a. Moreover, such records will remain the property of the FBI and be subject to the Federal restrictions listed above and may not be disclosed under any state open records law. If LACPH determines a possible time and/or location of a biological agent release, it will inform FBI or LASD immediately, and vice versa.

m. The parties will consult to determine the best course of action regarding when to conclude the joint epidemiologic investigation.

n. If it is mutually agreed by the parties that the investigation of a BT event is concluded or no longer suspected, all confidential LACPH, LASD and FBI documents will be maintained in a secure manner that maintains their confidential status. Further, dissemination of these records shall be in compliance with all local, state, and federal laws and regulations. In addition, to the extent allowed by law, the approval of an authorized representative from the originating agency (LACPH, LASD, or FBI) shall be required prior to such dissemination.

o. It is understood that any LACPH information or documents that may have been provided to the FBI and/or the LASD in the course of a joint investigation are acquired in confidence and shall remain confidential. These documents should be clearly marked as confidential. Similarly, all FBI or LASD information or documents, which are provided to LACPH in the course of a joint investigation, are acquired in confidence and shall remain confidential. These documents will be marked "Law Enforcement Sensitive."

5. Term of MOU

The term of this MOU is indefinite, but may be terminated at any time upon written mutual consent of the agency involved. The MOU will be reviewed on an annual basis and modified as appropriate. Modifications to this MOU shall have no force and effect unless such modifications are reduced to writing and signed by an authorized representative of each participating agency.

6. Media Releases

All media releases related to the joint investigative activities mentioned in this MOU will be mutually agreed upon and jointly handled according to the guidelines of

each agency. No release will be issued without obtaining separate approval from each agency.

IN WITNESS WHEREOF, the parties have caused these presents to be executed by their duly authorized officers. This agreement shall be effective as of the date of the last signature hereon.

LOS ANGELES COUNTY
HEALTH OFFICER

BY: _____
Jonathan Fielding, M.D., M.P.H.
Dated:

LOS ANGELES COUNTY
SHERIFF'S DEPARTMENT

BY: _____
Leroy D. Baca
Sheriff
Dated:

FEDERAL BUREAU OF INVESTIGATION

BY: _____
Stephen J. Tidwell
Assistant Director-in-Charge
Los Angeles Office
Dated: