

AGREEMENT regarding joint field investigations following a criminal or suspected bioterrorist incident between the San Francisco Department of Public Health located at 101 Grove Street, San Francisco, California 94102, the San Francisco Police Department and the San Francisco Office of The Chief Medical Examiner both located at 850 Bryant Street, San Francisco, California and the Federal Bureau of Investigation located at 450 Golden Gate Avenue, San Francisco, California.

## INTRODUCTION

In the event of a suspected or confirmed bioterrorist (“BT”) or criminal event potentially involving biological agents or toxins, 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 the San Francisco Department of Public Health (SFDPH), determining the time and place of a BT event allows interventions such as mass prophylaxis to focus on those individuals most likely to have been exposed and who are at-risk of preventable infection. For law-enforcement agencies, identification of the crime scene and potentially infected people significantly advances their efforts to apprehend those responsible for the crime. When the public health and law-enforcement sectors collaborate soon after the identification of a possible BT or criminal biological event, 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 city, interviewing other persons who may have the illness of concern, to determine when and where they may have been exposed (NOTE: Following a covert release, this epidemiologic information would be essential to identify the time and place of the attack).

## AGENCY ROLES AND LEGAL REFERENCES

### A) San Francisco Department of Public Health

During a suspected criminal or BT event involving cases or suspected cases of disease, exposed and/or potentially exposed persons, joint investigations will need to be conducted. The role of the **San Francisco Department of Public Health** will be to:

- 1) Conduct public health investigations to determine the cause of disease and characterize the epidemiology of the incident:

California Code of Regulations Title 17, §2501. Investigation of a Reported Case, Unusual Disease, or Outbreak of Disease. “(a) ...If the health officer finds that the nature of the disease and the circumstances of the case, unusual disease, or outbreak warrant such action, the health officer shall make or cause to be made an examination

of any person who or animal which has been reported pursuant to Sections 2500 or 2505 in order to verify the diagnosis, or the existence of an unusual disease, or outbreak, make an investigation to determine the source of infection, and take appropriate steps to prevent or control the spread of the disease. Whenever requested to do so by the Department, the health officer shall conduct a special morbidity and mortality study under Health and Safety Code Section 211 for any of the diseases made reportable by these regulations.”

2) Take action to control the spread of disease:

California Health and Safety Code §120175. “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.”

California Health and Safety Code §101040. “(a) The local health officer may take any preventive measure that may be necessary to protect and preserve the public health from any public health hazard during any "state of war emergency," "state of emergency," or "local emergency," as defined by Section 8558 of the Government Code, within his or her jurisdiction. "Preventive measure" means abatement, correction, removal or any other protective step that may be taken against any public health hazard that is caused by a disaster and affects the public health....”

California Health and Safety Code §101080.2. “(a) The local health officer may issue, and first responders may execute, an order authorizing first responders to immediately isolate exposed individuals that may have been exposed to biological, chemical, toxic, or radiological agents that may spread to others....”

3) Gather and share confidential patient information with other parties as is necessary to protect public health:

California Civil Code 56.10(b)(9). A provider of health care, a health care service plan, or a contractor shall disclose medical information if the disclosure is compelled by any of the following:

...(9)When otherwise specifically required by law.

45 Code of Federal Regulations §164.512(b)(1)(i). A covered entity may disclose protected health information for the public health activities and purposes described in this paragraph 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; or, at the direction of a public health authority, to an official of a foreign government agency that is acting in collaboration with a public health authority.”

**B) San Francisco Police Department**

In such an event, the role of the **San Francisco Police Department** is to:

**1) Preserve public peace, prevent crime and guard the public’s health:**

San Francisco City Charter Sec 4.127. Police Department shall preserve the public peace, prevent and detect crime and protect the rights of persons and property by enforcing the laws of the United States, California and San Francisco City and County.

California Penal Code Sec 409.5. (a) Whenever a menace to the public health or safety is created by a calamity such as flood, storm, fire, earthquake, explosion, accident, or other disaster, officers of the California Highway Patrol, California State Police Division, police departments, marshal's office or sheriff's office...may close the area where the menace exists for the duration thereof by means of ropes, markers, or guards to any and all persons not authorized by the lifeguard or officer to enter or remain within the enclosed area. If the calamity creates an immediate menace to the public health, the local health officer may close the area where the menace exists pursuant to the conditions set forth in this section.

**2) Notify and coordinate with the San Francisco Department of Public Health if there is a threat to human life and public health:**

California Penal Code §11419 (d). Any peace officer who encounters any of the restricted agents mentioned above shall immediately notify and consult with a local public health officer to ensure proper consideration of any public health risk.

**3) Aid the San Francisco Department of Public health in enforcement of the Health and Safety Code:**

San Francisco Health Code Sec 72. The Department of Public Health of this City and County is hereby authorized and empowered to quarantine persons, houses, places and districts within this City and County, when in its judgment it is deemed necessary to prevent the spreading of contagious or infectious diseases.

California Government Code §26602. The Chief of Police or sheriff shall prevent and suppress any affrays, breaches of the peace, riots, and insurrections...may execute all orders of the local health officer issued for the purpose of preventing the spread of any contagious or communicable disease.

C) San Francisco Office of The Chief Medical Examiner

The Office of the Chief Medical Examiner is responsible for identifying the manner and cause of death in persons potentially involved in the incident being investigated, and notifying their next of kin using existing protocols. If a BT agent is suspected or identified during an examination, OCME will use existing protocols to contact SFPD and SFDPH to request their aid in the investigation.

D) Federal Bureau of Investigations

If the joint investigation is due to a suspected bioterrorist event, this is a federal crime and the **Federal Bureau of Investigation (FBI)** is the lead agency for the multi-agency, multi-jurisdictional law-enforcement response. FBI has primary jurisdiction over the criminal investigation. FBI will coordinate law-enforcement activities with SFPD through the Joint Terrorism Task Force (JTTF) if relevant.

**PROTOCOL ASSUMPTIONS AND PRINCIPLES**

This protocol establishes a means for SFDPH, SFPD, SFOCME 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:

1. All activities and data sharing that occur as part of this protocol will comply with all applicable laws, rules and regulations (including the San Francisco City Charter, the San Francisco Health and Safety Code, the San Francisco Administrative Code, California Code of Regulations, California Health and Safety Code, California Civil 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.
2. The joint investigation will focus on interviews (e.g., patients, relatives and potential contacts) that will address primarily where, when and how 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.
3. Joint investigation interviews will occur in a location adequately removed from potentially contaminated areas or crime scenes, unless unusual circumstances arise and exceptions are agreed upon between all of the parties
4. It is understood that joint investigations remain essentially a public health epidemiologic investigational activity, that SFDPH 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 HIPAA and the California Civil Code 56.10(b)(9).

5. When possible, FBI and SFPD investigative personnel will be assigned to work with the same SFPDPH field investigation teams for the duration of a joint investigation.
6. FBI and SFPD will be responsible for evaluating and addressing the security needs of SFPDPH field investigation teams.
7. In an effort to aid agencies in familiarizing themselves with one another, a joint training program will be developed. Training will be held for SFPD investigative personnel, FBI Special Agents, and Public Health personnel and will emphasize how to conduct a joint investigation for a suspected or actual bioterrorism incident or other criminal investigations as integrated teams. Training will be an ongoing process.

#### **NOTIFICATION**

In the event of a suspected BT incident or criminal incident involving a biological agent, the parties will notify one another using established protocols. As protocols are developed or updated, they will be appendices to this MOU.

#### **DEPLOYMENT**

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

1. Absent unusual circumstances as agreed upon between all of the parties, if the subject of the interview is hospitalized, SFPDPH 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.
2. SFPDPH, FBI and SFPD teams 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.
3. Absent unusual circumstances as agreed upon between all of the parties, when arriving at a facility, SFPDPH, FBI and SFPD personnel will inform the on-call administrator or hospital incident commander if the hospital emergency incident command structure has been activated.
4. While at the hospital, SFPDPH team members may independently identify other patients who may have illness 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 and SFPD will not be present while SFPDPH 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.

5. Whenever joint investigation interviews are conducted, SFPDPH, FBI and SFPD 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 SFPDPH and law-enforcement.

6. During the joint investigation interview, SFPDPH questions will be limited to those pertaining to the illness of concern, how the subject may have been exposed or infected, and whether and how many have been exposed or infected. To the extent possible under the circumstances and as agreed upon between all of the parties, confidential medical information will not be discussed in the joint investigation interview and will be maintained by SFPDPH. Absent unusual circumstances as agreed upon between all of the parties, SFPDPH personnel will review medical records and interview patients and health care providers independently to collect confidential 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.

7. Absent unusual circumstances as agreed upon between all of the parties, SFPDPH staff will interview the subject of the interview first, while the FBI and SFPD personnel are present in the room. The data collection tool that will be used will be a SFPDPH-prepared questionnaire. After completing the SFPDPH interview, the FBI and SFPD personnel will interview the patient, while the SFPDPH staff remains in the room.

#### **INFORMATION SHARING, ANALYSIS AND CONCLUSION**

1. After the interview, SFPDPH, FBI and SFPD joint investigation team members will review the collected data and share information as appropriate. In an effort to prevent discrepant statements, when possible, parties should agree to consistent content in their reports.

2. If requested by FBI and SFPD, and agreed upon by SFPDPH, copies of all completed questionnaires will be shared with FBI and SFPD, as appropriate and consistent with all applicable laws. Records containing confidential information will be maintained at SFPDPH, FBI and SFPD in a secure manner that is agreed upon by the parties. Information collected during medical records review and medical staff interviews by SFPDPH will be maintained at SFPDPH; data relevant to the incident will be shared with FBI and SFPD.

3. SFPDPH recognizes that law-enforcement agencies (including the FBI and SFPD, as well as local and state police departments) may be separately conducting criminal investigation relating to the same BT event. SFPDPH recognizes that although the FBI and SFPD 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, SFPDPH recognizes that law-

enforcement protocols and evidentiary concerns may dictate the response of FBI or SFPD to an event, including the handling of crucial witness interviews.

4. During the period of the joint investigation, FBI and SFPD may assign liaisons to SFDPH, and vice versa. Liaisons will operate under the supervision of their own agency's chain of command for the duration of the joint investigation.

5. 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. If SFDPH determines a possible time and/or location of a biological agent's release, it will inform FBI and SFPD immediately, and vice versa.

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

7. When parties agree that the investigation may be concluded, all parties' confidential documents will be maintained in a secure manner in keeping with 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 shall be required prior to such dissemination.

8. It is understood that any SFDPH information or documents that may have been provided to the FBI and/or the SFPD in the course of a joint investigation shall remain confidential and shall be marked as such. Similarly, all FBI or SFPD information or documents provided to SFDPH in the course of a joint investigation are acquired in confidence and shall remain confidential. These documents shall be marked "Law-Enforcement Sensitive."

9. 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.

#### **EVIDENCE COLLECTION**

1. It is understood that SFDPH will collect samples of biological material for potential future analysis to determine threats or in order to identify the pathogen of interest, which will inform epidemiological investigation and disease control strategies. The FBI will collect and preserve all evidence as it pertains to the joint investigation. The FBI may employ other parties, including SFDPH and SFPD, to facilitate evidence collection.

2. All laboratories that may be handling or analyzing evidence from the investigation (i.e. SFDPH Public Health Laboratory, SFPD Forensics Laboratory, OCME Forensic

Laboratory Division, and Laboratory Response Network) will follow currently existing chain-of-custody protocols.

**TERM OF MOU**

The term of this MOU is indefinite, but may be terminated at any time upon written mutual consent of the agencies involved. The MOU will be reviewed on an as-needed 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.



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.

**SAN FRANCISCO DEPARTMENT OF PUBLIC HEALTH**

BY: 

Mitch Katz, MD, Health Officer/Deputy Health Officer

Dated:


**SAN FRANCISCO POLICE DEPARTMENT**

BY: 

George Gascon, Chief of Police

Dated:


**SAN FRANCISCO OFFICE OF THE CHIEF MEDICAL EXAMINER**

BY: 

Amy P. Hart, MD, Chief Medical Examiner

Dated:

**FEDERAL BUREAU OF INVESTIGATION**

BY: 

Stephanie Douglas, Special Agent in Charge

Dated: