



OCDA POLICY FOR DISCLOSURE OF OFFICER INVOLVED SHOOTING AND CUSTODIAL DEATH VIDEO & AUDIO EVIDENCE

The Orange County District Attorney's Office (OCDA) recognizes that releasing video and audio evidence of officer involved shooting and custodial death incidents can assist the public in understanding how and why these incidents occur, increase transparency, and build public trust in law enforcement.

By implementing this policy, the OCDA is recognizing that it should be the practice in most situations, as soon as it is legally permissible, to release video and audio evidence in officer involved shooting and custodial death cases, subject to the limitations detailed in this policy. This policy is intended to cover recordings from Body Worn Cameras, as well as from Mobile Audio-Visual equipment and other law enforcement recording devices. The OCDA is also committed to prioritizing and expediting the investigations and legal reviews of officer involved shooting and custodial death cases.

At the same time, other valid and substantial factors such as due process requirements, the integrity of the investigation and legal review, privacy of those involved, and public safety concerns must also be considered in determining how and when to release such video and audio evidence. The OCDA is committed to protecting the legal rights of all the involved parties, and to balancing such rights with the public's desire to view and hear this kind of video and audio evidence.

The default position of the OCDA will be to release video and audio evidence relating to officer involved shooting and custodial death incidents, in accordance with, and subject to the limitations listed in, this policy. However, the OCDA will not release such video and audio evidence:

1. Until the OCDA's independent investigation and review of the incident has been completed, and the findings have been provided to the involved law enforcement agency; and

2. If any criminal case related to the officer involved shooting or custodial death incident is pending in a court of law. Such criminal case could include any criminal charges filed against a person involved in an officer involved shooting or custodial death case where a peace officer or a civilian is charged with a criminal offense. It should be noted that when a criminal case is filed in connection with an officer involved shooting or a custodial death incident, video and audio evidence would likely become public when it is used as evidence during the court proceedings.

In order to provide a consistent manner of releasing video and audio evidence relating to officer involved shooting and custodial death cases, and to provide the appropriate and important context as to each specific incident, the OCDA will make a public statement and release the results of the OCDA's review of the incident at the same time the video and audio evidence is released to the public. Prior to the OCDA releasing any such video and audio evidence, the OCDA will notify the involved law enforcement agency and peace officers. In addition, and prior to releasing any such video and audio evidence, the OCDA will show the involved law enforcement agency the video and audio evidence to be released, and the OCDA will also show the involved law enforcement agency any factual presentations or written factual statements the OCDA intends to release to the public.

Once the OCDA has issued its written findings, and any related criminal prosecution is no longer pending in court, the OCDA will release to the public, subject to the limitations listed in this policy, the relevant video and audio evidence.

Recognizing that the release of this often-graphic video evidence is a sensitive matter for all involved parties, the OCDA may edit the video and audio evidence based on applicable safety and privacy concerns. The OCDA will make this determination on a case-by-case basis. Nothing in this policy shall be construed as a waiver or mandate requiring the OCDA to release unedited portions of any video and audio evidence.

The OCDA policy detailed in this document is not intended in any way, shape, or form to waive any applicable exemptions under the California Public Records Act, or any other recognized privilege or statutory authority.

The OCDA policy detailed in this document is not intended in any way, shape, or form to limit the ability of the involved law enforcement agency to release to the public, at any time, video and audio evidence that is in the possession of the law enforcement agency. The chief executive of the involved law enforcement agency

will make this decision, after consulting with the OCDA, and after considering Public Safety concerns, and the impact, if any, of releasing such video and audio evidence on any ongoing criminal or administrative investigation.

While the OCDA policy will generally result in the release by the OCDA of the relevant portions of video and audio evidence relating to officer involved shooting and custodial death incidents, there may be instances where the OCDA will not release such video evidence.

The OCDA has a legal and ethical duty not to do anything that would jeopardize the integrity of an investigation, or prejudice a potential criminal case. In addition, the OCDA will give substantial deferential weight to any valid concerns expressed by the involved law enforcement agency against the release of the video and audio evidence. Furthermore, in the event the involved law enforcement agency is a party to a Protective Order from a civil court of proper jurisdiction hearing a civil matter relating to the officer involved shooting or custodial death incident, the OCDA will give substantial deferential weight to honoring the civil Protective Order. Therefore, the OCDA, at its discretion but in consultation with the involved law enforcement agency, may make exceptions to this policy in the interests of justice and public safety.