

15 February 2022

Guyon Espiner
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REF: IR-01-21-37659

Dear Guyon

Thank you for your Official Information Act 1982 (OIA) request dated 21 December 2021 regarding NZ Police's critical incidents policy. The Police response to each part of your request can be found below.

You requested:

I seek the following information in relation to the evidence, including video footage, police officers are given when they are the subject of investigations into critical incidents, including homicide inquiries following police shootings:

- *The current Investigation of Critical Incidents Policy*
- *All police reports and documents produced in 2021 in relation to reviewing, updating or changing this policy*
- *All 2021 police emails and correspondence with the Police Association, the Minister of Police, the Minister of Justice and the Ministry of Justice in 2021 in relation to this policy*

The current Investigation of Critical Incidents Policy is provided. For context, the Policy update in 2021 was regarding the interview process for involved employees. No changes were made to the Policy as it relates to any material provided prior to interview.

Other than the updated Policy itself, no other reports exist. However, to assist you, I have provided two additional administrative documents in relation to the publishing of the updated policy, as follows:

1. '2021 Critical Incident Chapter Update,'
2. 'Police Manual Approval.'

No e-mails or correspondence with the Minister of Police, the Minister of Justice, or the Ministry of Justice exists, therefore, this part of your request is refused under section 18(g) of the OIA, as the information requested does not exist.

Police National Headquarters

180 Molesworth Street. PO Box 3017, Wellington 6140, New Zealand.
Telephone: 04 474 9499. Fax: 04 498 7400. www.police.govt.nz

E-mails exist in relation to the Policy with the Independent Police Conduct Authority (IPCA) and the Police Association's legal Counsel. Correspondence involving the IPCA is exempt from the OIA. The correspondence with the Police Association legal Counsel is withheld under section 9(2)(g)(i) of the OIA to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any public service agency or organisation in the course of their duty. I do not believe there are any considerations under section 9(1) of the OIA rendering it desirable in the public interest to make the information available which would outweigh the reason for withholding.

You have the right, under section 28(3) of the OIA to ask the Ombudsman to review my decision if you are not satisfied with the way I have responded to your request.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'D C Lynch', with a small flourish at the end.

D C Lynch
Detective Superintendent: Northern
New Zealand Police



Critical Incident Investigations - chapter update

by [LYNCH, David \(Dave\) \[DLG012\]](#)

Created on behalf of [LYNCH, David \(Dave\) \[DLG012\]](#)

Published on 08/11/2021 Last modified 08/11/2021 - 3:05 pm

The '[Investigation of critical incidents](#)' chapter has been amended and re-published in [Police Instructions](#). Key updates include changes to the process used to interview Involved Officers and the requirement for such interviews to be completed by staff who have completed specific training. Staff involved in the investigation of critical incidents should familiarize themselves with changes. Any questions should be directed to one of the Territorial Detective Superintendents

Category:

Police Instructions

District:

National

Police Manual Approval / Cancellation

To	Police Instructions (police.instructions@police.govt.nz)
From	David Lynch, Detective Superintendent Investigations Leadership Team
Topic	Investigation of Critical Incidents

Action Required

Amendment of Police Manual chapter.

Brief Rationale (Detail purpose, what changed and why, any other matters)

Changes required to be made after consultation with IPCA and Police Association. Changes relate primarily in interview process in respect of involved employees

Does the chapter contain reporting requirements <small>(See note 6 next page):</small>	<input type="checkbox"/> No
Is the chapter new or significantly updated <small>(See note 1 next page):</small>	<input type="checkbox"/> No
If to ELT, detail:	<u>Sub-governance group:</u> Paper ref: Date:

Impact assessment	Recommended security classification
<input type="checkbox"/> Impact assessment form attached <small>(see note 2 next page)</small>	<input type="checkbox"/> UNCLASSIFIED <input type="checkbox"/> SENSITIVE / RESTRICTED <small>(See note 3 next page)</small>

Communications planning (see note 4 next page)

These communications are planned as a result of publishing this document:

A Paunui notice will accompany the chapter update

Consultation (tick to indicate who was consulted)

<input type="checkbox"/> Police Instructions mandatory	<input type="checkbox"/> Police Association mandatory, or <input type="checkbox"/> Not required <small>(see note 5 next page)</small>
<input type="checkbox"/> Police Leaders Guild mandatory, or <input type="checkbox"/> Not required <small>(see note 5 next page)</small>	<input type="checkbox"/> Safer People <small>(if there could be possible health & safety issues), or</small> <input type="checkbox"/> Not required
<input type="checkbox"/> IPCA	<input type="checkbox"/>
<input type="checkbox"/> Police Professional Conduct	<input type="checkbox"/>
<input type="checkbox"/> Investigations leadership Team	<input type="checkbox"/>
<input type="checkbox"/> Other <small>(state)</small>	<input type="checkbox"/> Other <small>(state)</small>

Approval

The National Manager/Director or equivalent, detailed below, has approved the required action.

Approving Manager details: Tom FITZGERALD, Director Criminal Investigations, Investigations Leadership Team

the completed form to Police Instructions, you must cc the Approving Manager listed above.

Notes for Completing the Police Manual Approval/Cancellation Form

1 New or significantly updated chapter

Where any Police Manual chapter is new or significantly updated, the relevant Executive member considers whether it is of such importance that it should be forwarded to one of the [Executive Leadership Team \(ELT\) sub-governance groups](#) for consideration and endorsement. If so, attach to the ELT/Sub-governance group paper:

- a copy of draft chapter
- a completed Impact Assessment.

The sub-governance group will advise whether the chapter can be issued or if amendments are required. Non-ELT chapters can be approved by the relevant Director/National Manager or Executive member.

2 Impact assessment

Complete the form if the impact of a new or updated policy/chapter is significant and effects other groups.

3 Security classification

Is this chapter unclassified (open access for all employees to read) or are there reasons to restrict access to authorised employees by QID? If a document has restricted access only those that are authorised access will be able to locate and access it on-line. You must supply the QIDs of those who will be granted access to the restricted document.

4 Communications planning

How will the change be communicated to Police? (Employees must be informed - use as many methods as possible). Other than publishing the chapter in Police Instructions it is the responsibility of the business owner to communicate the chapter to employees. This must be well considered as employees may be held accountable for non-compliance.

The Police Instructions Team will provide you with a suitable template in their confirmation of publishing notice to you.

5 Consultation

If you have consulted you should attach any written advice you have received from any of the groups, to this approval/cancellation form or retain on your file for audit purposes. If the advice was verbal, detail that on a separate page or retain on file.

The **Police Leaders Guild** and the **Police Association** must be consulted on any proposed new or amended Police Manual chapter:

- that has a direct or immediate personnel, people or industrial relations dimension
- Where non-compliance might have serious consequences for the employee, e.g. firearms, TASER, fleeing drivers, prisoner assessments/management.

Note: Consultation must be "meaningful". Where service union recommendations are not followed, they must be advised of this in writing and given a further opportunity to respond.

Check with the PI Team Leader on whether service union consultation is required.

If a proposed new or amended Police Manual chapter:	then. . .
<ul style="list-style-type: none"> • is technical in nature; or • changes involve technical amendments such as legislative references, links, words that do not affect content and meaning or does not meet the criteria detailed above 	contact the Team Leader: Police Instructions (TLPI) on ext. 44137 for permission not to consult.

Remember: If in **any doubt** contact the TLPI to discuss.

Other business groups must be consulted if the proposed new or amended Police Manual chapter affects any of the other business groups or districts. As an example, ask: Will another group have to amend any of their Commissioner of Police Circulars, Police Manual chapters or should Legal be consulted to confirm advice given correctly reflects legislative requirements? Will it affect RNZPC training, MyPolice, modules or curriculum?

6 Reporting Requirements

Tick 'yes' if the chapter contains any reporting requirements. This will allow the Assurance Group to be advised so that it can be included in assurance audits.

Investigation of critical incidents

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This chapter should be read in conjunction with the ['Critical Incident Information Booklet'](#).

Policy statement and principles

What

A critical incident means an incident involving death or life-threatening injury to a person during any Police activity or to a person in Police custody or under the care of Police. It also includes:

- any incident where a Police employee discharges a firearm intentionally at a person, whether or not death or injury results. In this respect, a firearm does not include a tactical option that fires non-lethal rounds.
- any accidental discharge that results in death or injury

Critical incidents are likely to be Category "A" Independent Police Conduct Authority (IPCA) independent investigations.

Following a critical incident a number of internal and external investigations or reviews may take place. The Police critical incident investigation is the lead investigation with a range of objectives including to determine the circumstances of the incident; gather and preserve all evidence; establish whether force used was legally justified and whether any person is criminally liable for actions taken. It must also ensure the wellness needs of involved employees are met and identify and manage reputational risks to NZ Police.

The purpose of this chapter is to provide national consistency in the investigation of critical incidents. The term 'Police Investigation' is to be used in all internal and external communications referencing the critical incident investigation.

Why

A robust and thorough investigation into a critical incident promotes public trust and confidence in Police.

The Police investigation drives and informs any other internal and external investigations and enquiries. Information generated by the Police investigation is provided to the IPCA to enable them to conduct an independent investigation of the incident and may also be shared with other agencies.

Police has a statutory obligation to notify work-related deaths, and certain types of injuries, illnesses, and near misses to WorkSafe New Zealand under the Health and Safety at Work Act 2015, whether or not the injured party is a Police employee.

An employee's involvement in a critical incident will be traumatic for them and their family and the psychological impact of their involvement can be great. Ensuring the wellness needs of involved employees are met in a timely way and providing ongoing support as required minimises post incident reactions and the risk of developing ongoing psychological harm.

How

When establishing and carrying out investigations into critical incidents, Police will:

- ensure that good practice investigation guidelines are followed as for any other serious crime investigation

- ensure no conflict of interest arises in the appointment of investigators
- apply the Police [Trauma policy](#) to employees involved in critical incidents in a timely way
- treat employees directly involved in critical incidents as witnesses, unless there are good reasons to treat them as suspects
- advise employees directly involved in the incident before interview that they may consult with a legal and/or service organisation representative and that information gathered in the Police investigation may be used in a code of conduct or employment process and will be disclosed to the IPCA
- direct involved employees not to discuss the incident with each other prior to interview to ensure their account of events is not cross-contaminated
- use alpha codes to protect employees' identities during investigations and seek advice on how to maintain anonymity in subsequent proceedings
- make firearms used in a critical incident safe as soon as practicable and maintain the integrity of the firearm exhibit
- establish contact with any deceased or injured person's family or next of kin as soon as possible and appoint a Subject Liaison Officer.

Overview

What is a critical incident?

A critical incident means an incident involving death or life-threatening injury to a person during any Police activity or to a person in Police custody or under the care of Police. It also includes:

- any incident where a Police employee discharges a firearm intentionally at a person, whether or not death or injury results
- any accidental discharge that results in death or injury

Critical incidents are likely to be Category "A" Independent Police Conduct Authority (IPCA) independent investigations.

(see the '[Police investigations of complaints and notifiable incidents](#)' chapter).

Investigations that may follow a critical incident

Following a critical incident a number of investigations or reviews may take place:

- a Police investigation into the critical incident to establish the facts of what occurred and determine whether Police employees or any other persons are criminally liable for actions taken
- an [IPCA investigation](#)
- a [Policy, Practice and Procedure \(PPP\)](#) review to examine compliance with current policy, practice and procedures and make recommendations as necessary
- a Coroner's enquiry if a person has died
- a [WorkSafe](#) investigation under the [Health and Safety at Work Act 2015](#)
- an internal Police [Health and Safety investigation](#)
- an Employment Investigation may be carried out separately if a potential breach of the Code of Conduct was identified.

The Police investigation is the lead investigation. It drives and informs the other investigations and enquiries. The material generated by this investigation will be provided to the IPCA as part of their independent investigation or review of the incident. Information generated by the Police investigation may also be shared with other agencies as required.

Related information

See also these related chapters:

- [Police investigations of complaints and notifiable incidents](#)
- [Managing conflicts of interest](#)

Establishing a Police critical incident investigation

Leading the investigation

A Detective Superintendent should be appointed to provide oversight into the following categories of critical incident investigations:

- Any incident involving a Police employee intentionally discharging a firearm at a person whether or not death or serious injury occurs
- Any incident involving a death to a person in custody or otherwise under the care of Police
- Any other critical incident as directed by the Assistant Commissioner Investigations and/or Assistant Commissioner Districts

For critical incidents that do not have a Detective Superintendent appointed to provide oversight the District Commander must ensure that a suitably experienced senior officer is appointed to the oversight role

The Detective Superintendent or other Senior Officer should **provide oversight** of the Police investigation and ensure investigation objectives are identified, documented and good investigative practice followed.

An experienced senior investigator will be appointed **to lead** the Police investigation. (Hereafter referred to as the Senior Investigating Officer (SIO)).

The appointments must ensure that no conflict of interest arises (see the [‘Managing conflicts of interest’](#) chapter).

Investigation objectives include:

- determining the circumstances of the incident that resulted in the death, life threatening injury, or near miss.
- identifying, gathering, and preserving all evidence
- establishing whether force used was, in the circumstances, legally justified
- establishing whether Police employees or any other persons are criminally liable for actions taken
- ensuring wellness needs of involved employees are met
- identifying and managing reputational risks to NZ Police.

Investigation standards

Investigation processes must include:

- an investigation plan
- agreed Terms of Reference between the SIO and appointed Detective Superintendent/Other Senior Officer
- regular liaison with the complainant/victims/subject or their nominated representative in accordance with the Victims’ Rights Act 2002 and the appointment of a Subject Liaison Officer
- regular liaison with the IPCA investigators including supply of information in accordance with section [24](#) of the Independent Police Conduct Authority Act 1988

- completion of an 'Independence of Investigation Conflict of Interest Declaration Form' under the '[Managing conflicts of interest](#)' chapter
- regular updates to any employees that are the subject of the investigation unless inappropriate
- advice of the result of the investigation to subject employees involved as soon as practical.

Recommendations and decisions

The SIO will fully document the investigation in a report to the appointed Detective Superintendent or other Senior Officer on the approved [Critical Incident Police Investigation Report Template](#). The SIO will make recommendations on the criminal culpability of anyone identified as committing a causative act or omission relevant to the death or life-threatening injury of anyone involved in the incident.

The appointed Detective Superintendent or other Senior Officer will review the investigation and the recommendations and seek any legal opinions as required prior to making a final decision. In the case of a critical incident investigation that has oversight from a Detective Superintendent, the Detective Superintendent must consult the relevant District Commander(s) and the Assistant Commissioner Investigations prior to making a decision. In the case of a critical incident that is overseen by another senior officer, that officer shall consult the relevant District Commander prior to making a decision.

Related information

See:

- Critical Incident Investigations - Oversight & Decision-Making Process on the intranet

[Critical Incident Investigations Oversight and Decision-Making November 2021](#)

17.55 KB

Investigation standards Category 1 in the [Police investigations of complaints and notifiable incidents](#) chapter

Managing conflicts of interest

See [Managing conflicts of interest](#) particularly the section on Conflicts in an investigation context

All investigators assigned to Police investigations of critical incidents must complete an **Independence of Investigation Conflict of Interest Declaration form (in Police Forms>Police Professional Conduct>Independence of Investigation Conflict of Interest Declaration)** whether or not a conflict of interest exists. This form must be attached to the file.

Media

See [Part 7 Media strategy for homicide and serious crime investigations](#)

A media strategy is to be developed as part of the investigation plan. Advice and guidance should be sought from a Media Liaison Officer.

A senior Police employee should issue a media statement in relation to the critical incident at the earliest opportunity

Care should be taken in any media statements to avoid causing unnecessary offence to the officers involved in the incident. For the sake of clarity the term 'Criminal Investigation' is generally not appropriate and should not be used unless individual circumstances of the case warrant this description.

A person presenting as an offender during the incident who is killed or seriously injured should not be referred to as a "victim".

Dealing with family / next of kin

As a priority the SIO should establish contact with the family or next of kin to the deceased/injured person. The purpose of this meeting is to:

- provide factual information about what has occurred where possible prior to any public release
- explain the investigative processes
- facilitate the co-operation of the family
- answer any questions as fully as possible
- establish a single point of contact with the investigation
- present and explain the result of the investigation after it is concluded.

Appointments to the investigation

Multiple roles are required to complete an investigation and manage other aspects following the incident. Brief each person holding a role on their responsibilities and who holds the other roles they will need to consult and cooperate with.

 [Cooperating roles following a critical incident 2021](#)

186.86 KB

The number of staff appointed to the investigation will depend on the scale of the incident. In some cases one person may hold several roles or in others several people might be needed to fulfil the duties of one role.

Subject Liaison Officer to be appointed

An appropriate employee should be appointed to liaise with the family/next of kin of the deceased or with the person seriously injured.

The role of the Subject Liaison Officer is to:

- act as a point of contact with the investigation
- keep the family/next of kin updated of the progress of the investigation
- obtain family/next of kin co-operation with the investigation
- assist them in managing media requests.

Critical Incident Liaison Officer (CILO) or alternative appointed

A Critical Incident Liaison Officer (CILO) will be appointed by the District Commander to support the involved employee(s). The CILO will become the primary point of contact between the Police Investigation and the involved employees and the SIO will liaise with the CILO as required.

CILO must be used for incidents involving Police shooting at an offender or where the use of a tactical option results in the death of a person. A CILO can be used in other critical incidents such as deaths in custody if appropriate.

If no-one is appointed solely to the CILO role, the involved employee's supervisor may be appointed to fulfil the requirements of the CILO role when serious events and harm occur.

The CILO role does not replace the role of the wellness advisor who will remain involved in supporting the involved employee and their families as per the [Trauma support policy](#).

Carrying out the investigation

Managing the scene

The Incident Controller/Tactical Commander must manage a critical incident scene in accordance with good practice for managing a serious crime scene.

See these chapters:

- [Part 1 Initial response to homicide or serious crime](#)
- [Crime scene examination](#)

See also 'Discharge of Police firearms' in the [Police firearms](#) chapter.

Scene handover

The scene of a critical incident:

- remains under the control of the Incident Controller or Tactical Commander until such time as a formal handover to the SIO, or delegate, is completed
- must be handed over at the earliest reasonable opportunity once the Incident Controller or Tactical Commander is satisfied the scene is cleared and safe.

Post-incident briefing on handover

The Incident Controller/Tactical Commander must provide a briefing to the SIO. The briefing should contain sufficient information to:

- allow the scene boundaries to be set or reviewed
- allow the effective management of the scene
- enable the SIO/Delegate to understand generally what has occurred and who was involved
- identify the respective locations of the employees and other parties at the relevant times throughout the incident
- enable the SIO to prioritise and task immediate enquiries
- inform the basis of the initial investigation plan
- advise the SIO of any wellness or [rights](#) issues that immediately present themselves for involved employees.

Care must be taken to ensure this information is obtained by the Incident Controller or Tactical Commander in such a way that:

- integrity of the scene is maintained
- accounts given by employees are not cross-contaminated.

Consideration given to immediate wellness needs of employee

Consideration should be given to the best place for employees to go immediately after a critical incident. It may be more appropriate for employees to be taken to a non-Police site. Employees should wherever

possible and unless there is good reason to the contrary be consulted on the proposed location they will be taken to for any post incident procedures.

Any location must cater to the privacy of the employees from media and other Police staff.

The SIO must ensure that employees are not left alone and that a suitable senior officer stays with the employees until the arrival of a Critical Incident Liaison Officer and/or Wellness Advisor.

Scoping interviews of involved employees

“Involved employees” in this context means any employee who has discharged a firearm intentionally at a person, whether or not death or injury results. It also includes any employees who have used other lethal or life-threatening force or whose actions or omissions may have contributed toward death or serious injury of any person. It does not include officers who are witnesses or otherwise involved in critical incidents.

Where preliminary or ‘scoping’ interviews of involved employees are undertaken, the interview should be limited to the points contained under [Post incident briefing](#).

Where possible preliminary information should be gathered from sources other than involved employees such as CCTV and other Police or civilian witnesses.

In cases where information is not readily available from other sources, any scoping interviews must be done in a manner sensitive to the wellness needs of the involved employee and in a manner that does not compromise their anonymity. Consideration should be given as to whether maps and photographs can be used as opposed to involved employees being asked to remain at the scene for this purpose.

Critical incidents involving tactical squads

It is acknowledged that tactical squads are required to identify and manage any issues with communications, tactics, weapons or equipment following deployment. This must be addressed in a way that:

- integrity of the scene is maintained
- the account given by involved employees is not cross-contaminated.

Responsibility for deciding whether a scene ‘walk through’ or ‘reconstruction’ is conducted

If an initial scene ‘walk through’ is being considered, this decision should be made by the SIO. Factors that inform this determination are based on relevant considerations for any serious incident or crime scene.

The general principle is that involved employees should not be involved in any initial ‘walk through’ of a scene and should be withdrawn from the scene prior. In cases where there is complexity involved in the scene and confusion exists as to what has occurred it may be necessary to seek some clarification from the involved employees if there are no other information sources. Before a request is made of an involved employee to assist in providing basic information about a scene by way of ‘walk through’, consideration must be given to whether this can be achieved by the use of maps and/or scene diagrams instead.

Where a scene ‘walk through’ is conducted, consideration should also be given to briefing and conducting a scene ‘walk through’ with the Coroner. Consideration should also be given to inviting the OC of the Policy, Practice and Procedure review, and the IPCA representative or other agency representative as required. In any case where an involved employee is involved in an initial scene ‘walk through’ then this should be conducted with the Critical Incident Liaison Officer (CILO), SIO and Officer in charge of the scene only.

No requests should be made of any employee directly connected to the death or life threatening injury of a person to walk through the scene by way of a reconstruction as part of their formal interview unless this is authorised by the Detective Superintendent with oversight of the Police investigation. In cases where this is being considered the Detective Superintendent must assess whether a clear rationale exists for the making of any request before it is made.

The Wellness Advisor assigned to the Police employee must be consulted prior to any request being made. The wellness needs of the employee are paramount in deciding whether to proceed with the request. The Wellness advisor may choose to liaise with the psychologist in relation to the involved employee’s suitability to complete a “walk through” or “reconstruction”.

In some cases there can be positive wellness outcomes for an employee involved in an incident to revisit the scene at a later point in time. Where the scene is accessible to Police later in time the SIO must consult with the Wellness Advisor and CILO and seek advice as to whether the employee involved could be escorted back through the scene. This should be considered as a wellness consideration and not part of the investigation process.

Post incident debriefs

Post incident command and control debrief

A command and control debrief will be conducted by the District Commander in accordance with the [‘Debriefs’](#) chapter.

Note that the debrief should be conducted as soon as possible after the critical incident.

The District Commander must ensure that the anonymity of Police employees directly involved in the critical incident is preserved. Consideration should be given to having the CILO attend the debrief on their behalf to ensure the Police employees directly involved can have input and receive direct feedback from the debrief.

Post incident critical investigation debrief

The SIO Investigation will conduct a Police investigation debrief after the decision maker has confirmed the investigation outcome.

Seizure of firearms

Any firearm(s) used in a critical incident must be made safe as soon as practicable.

The integrity of the firearm exhibit must be maintained.

The state of the firearm must be verified and recorded by a person other than the person who discharged the firearm. Any actions taken to make the firearm safe or any other dealings with the firearm must also be recorded.

The firearm(s) used in the critical incident must be handed to the SIO, or a person appointed by them, as soon as reasonably practicable. Note the section on '[Maintaining anonymity when seizing firearms](#)'.

Where a delay may occur, advice should be sought from the SIO and agreement reached as to how any exhibits will be dealt with.

Forensic and other testing of employees

Type of forensic testing determined by the OC Investigation

The SIO must determine the type of forensic testing to be carried out in respect of the involved employee(s) or exhibits associated to the involved employee(s). A decision to request samples or to carry out particular testing should be informed by the likely investigative benefits, the need to conduct a robust enquiry and the perception of a thorough and impartial investigation.

Where the SIO decides that any bodily samples will be requested from the employee, then this should be done by 'informed consent' along with the mandatory testing required under the Health & Safety policy.

Post mortem examination

The SIO or other senior investigator appointed by them should attend the post mortem examination of any deceased.

Release of firearm exhibits

The decision on whether and when to release firearm exhibits back to the originating Police station must be made by the SIO. Consideration should be given to the effect on operational capability if the firearm is retained as an exhibit for an extended period. The needs of the investigation will have precedence over the return of the firearm.

Where the firearm is an exhibit, consideration must be given to whether the employee's legal representative is offered an opportunity to examine the firearm prior to release.

The SIO Investigation must ensure that the Police Armoury and if applicable the ESR prioritise examination of any Police firearms seized.

Interviewing employees involved

Preventing cross-contamination

The SIO must ensure employees are directed not to discuss the incident with each other prior to interview to ensure their account of events is not cross-contaminated.

Employee treated as a witness unless evidence to the contrary

Unless there is evidence to the contrary, employees involved in critical incidents are to be treated as witnesses. If information exists that suggests that employees should be treated as suspects then the SIO is required to consult with the Detective Superintendent prior to proceeding with the interview.

Interviewing procedure when employees are treated as suspects

If after consultation with the Detective Superintendent, the SIO Investigation determines that the employee should be interviewed as a suspect, the normal rules for interviewing suspects apply. Follow the [Investigative interviewing suspect guide](#) and [Investigative interviewing - suspects requiring special consideration](#).

Advice to persons interviewed

The [rights caution](#) advice pursuant to the New Zealand Bill of Rights Act 1990 must be provided to people who are arrested or detained, or where Police want to question someone where there is sufficient evidence to charge that person with an offence.

Employees who are being interviewed as witnesses in relation to a critical incident should be advised they may consult with a legal representative and/or a Police Association / Police Leaders' Guild representative.

Employees must be advised that information gathered in the critical incident investigation and the Policy, practice and procedure review may be used in a code of conduct or employment investigation should such an investigation be required. Employees must also be advised that this information will be disclosed to the IPCA.

This advice should be given prior to the start of the interview with sufficient notice that allows the employee to act on the advice.

Planning interviews for employees as witnesses

The assigned CILO should be the primary point of contact when planning for an interview. Consideration should be given to:

- Police Association or Managers' Guild representation or advice
- the timing and location of the interview
- not referring to employees by their [alpha codes](#) in the interview if that would inhibit the flow of the interview
- consultation with Tactical Commanders or other applicable SMEs around terminology etc. where applicable

- consultation with Policy SMEs
- obtaining of training records and assessment of relevance to interview
- pre-interview provision of contemporaneous notes made by the officer undergoing interview. This can include the officer's own notebook entries, tactical options reports and comms radio traffic
- pre-interview provision of any visual aids to be used during interview, i.e. Google Map of scene, blank scene diagram etc.
- liaison with the IPCA in timing of interviews and facilitating IPCA attendance at interviews
- consultation with the IPCA over interview plans
- liaising with the OC PPP re inclusion of interview topics such as compliance with Police policy and health and safety requirements
- identification of all relevance issues, law and policy and the preparation of a thorough interview plan.

CCTV/Eagle/other footage of incident

- Where CCTV/Eagle/other footage exists of the incident, care needs to be taken to ensure that the officers account of events is based on their recollection of the event and not influenced by any footage of the incident that may be available.
- For this reason, such footage should not generally be supplied prior to the interview. The Detective Superintendent with oversight of the investigation may consider pre-interview provision of footage on a case by case basis. Where this occurs, the reason for such provision shall be documented on the file.
- Where such footage exists and there is potential for it to be played as part of the interview, the wellness advisor and the officer's representative should be advised of this fact prior to interview so it is not a surprise and to allow for appropriate psychological support to be coordinated.
- The playing of footage to an Involved Employee during an interview may be distressing for them. Consideration should be given to as to whether there is valid investigative purpose for playing any footage as part of the interview process. There will be a valid investigative purpose where an involved officer's account differs from what can be observed in any footage.
- An assessment of whether there is a requirement for footage to be played as part of the interview can only be made after the Involved Officer has recounted events from memory.
- Where there is a requirement for showing footage to an Involved Employee as part of the interview process, the interview should first address events captured on footage by way of questions and answers without reference to the footage. At an appropriate time, the interviewer should signal the intention to play relevant portions of the footage. After the footage is played the interviewer should invite any further comment from the Involved Employee before asking any further questions.

Interview mode and guidelines

All interviews of Involved Employees must be conducted in accordance with the relevant Investigative Interviewing guidelines:

- Suspect and special witness (PEACE Plus) guidelines
- [Investigative interviewing - witnesses requiring special consideration](#)
- [Investigative interviewing suspect guide](#)
- [Investigative interviewing - suspects requiring special consideration](#)

Interviews of involved Employees must be completed by a specialist interviewer who has been trained in interview practice specific to critical incidents by way of a course approved by the Investigations leadership Team. Consideration should be given to using interviewers from outside the district to interview employees directly involved in the critical incident.

The SIO should determine, in consultation with the Detective Superintendent, which employees should be interviewed by a specialist interviewer. In general, only employees that meet the definition of “Involved Employee” should be interviewed by a specialist interviewer.

The preference is for interviews to be recorded. The camera should be obscured allowing an audio record only to be recorded.

The interview structure shall follow a “question and answer” format to ensure that all relevant information is obtained. For consistency the pre-amble in the linked document is to be used:

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 [Involved Employee Interview Pre-amble November 2021](#)

24.53 KB

IPCA Involvement in Police Interview

In most cases the IPCA will request to monitor the Police Interview. The IPCA Investigator may then ask any further questions at the conclusion of the Police Interview. The IPCA section at the conclusion of the Police interview is for the IPCA Investigation only. The monitor should ensure that the Police recording and monitoring equipment is turned off prior to the IPCA interview commencing.

This practice has the advantage of the Police employee only having to be interviewed once at one location and not having to undergo another separate IPCA interview.

Ensure that the Police employee being interviewed and their legal representative are aware well prior to the interview of the intention of the IPCA to monitor the Police interview and consent is given prior to the interview for the IPCA to monitor it.

The IPCA maintain the discretion to conduct their own interview or further interviews if required.

Timing of interviews

Formal interviews with involved employees should be held at a time that balances the wellness needs of the employee with the demand for an accurate account of the incident by the investigation team. Guidance in relation to an involved employees psychological readiness for interview should be sought from the Wellness Advisor. As a general guideline interviews should not be conducted within 72 hours of the critical incident but should be completed within seven working days of the critical incident unless good reasons to the contrary.

Employees to be informed of the possibility of interview by other agencies

The SIO should ensure that involved employees are informed of the possibility that other agencies may

contact them for interview regarding the incident. This could include WorkSafe and the IPCA if they were not present at the Police interview.

Interviewing subjects

Follow the relevant [Investigative Interviewing guideline](#) when interviewing subjects involved in critical incidents.

Anonymity - protection of involved employees' identity

There is no statutory protection of the identities of involved employees. Efforts will be made to protect the identities of involved employees as far as the law permits.

Initial action at the scene following a critical incident to protect identity

The Incident Controller or Tactical Commander must ensure steps are taken to protect the identity of the involved employee. This may include having them removed from the scene as soon as possible.

The Incident Controller or Tactical Commander must remind all employees of the need to protect the identity of involved employees

Cordons should be put in place as soon as possible to secure the integrity of the scene and prevent unauthorised access.

Maintaining anonymity as the investigation progresses

Advice should be sought from Police Legal Section around protecting the identity of involved employees.

Advice and assistance should also be sought from the District Communication Manager/Media Advisor in dealing with media around protecting the identity of involved employees.

The SIO must ensure that only members of the investigation team that need to know the identity of involved employees are advised. The SIO must reinforce the need for strict confidentiality of the investigation and the identities of any employees involved.

Section [16](#) of the Criminal Disclosure Act 2008 provides a number of relevant grounds for withholding information identifying Police witnesses.

The Privacy Act 2020 ([s51](#)) and the Official Information Act 1982 ([s6](#)) both provide support for withholding the identity of Police employees involved.

Alpha codes must be used to protect employees identity

Employees directly involved in critical incidents must be assigned an alpha code which is to be used in subsequent correspondence relating to the matter. The alpha code must be unique to that employee. Alpha codes are only to be assigned to people who meet the definition of "involved employees". For the avoidance of doubt alpha codes are not to be used for other police officers involved in the incident as witnesses.

The alpha codes should be assigned by the Incident Controller, Tactical Commander or SIO. Alpha codes must be assigned as soon as practicable following a critical incident. The codes may be sequential or randomly assigned. The SIO should make the final determination as to which employees are assigned or retain an alpha code.

The alpha code list must be secured by the person assigning them until such time as the SIO is available. The list will then be provided to the SIO who will ensure that it is secured within the electronic file.

The list will be given security permissions to restrict access to those persons authorised by the SIO.

The legal counsel and Police Association / Police Leaders' Guild representative of the involved employee should be advised of the alpha code(s) relating to the employee(s) they represent

The list is to be provided to the IPCA and the Coroner (if applicable).

At the conclusion of the investigation or proceedings the SIO Investigation must ensure unauthorised access to the alpha codes is prevented.

Alpha code must also be used on any forms that are completed as part of the drug and alcohol testing process.

Alpha codes not to be used during interview

To promote a free flowing account of the incident employees should not be referred to by their alpha code during interview if this would inhibit the flow of the interview. When the interview is later transcribed the assigned alpha code should be inserted in the transcript in place of the actual names. Interviews should be edited as required.

Partner, family and friends of the involved employee(s)

The Incident Controller or Tactical Commander must advise involved employees to ensure that partners, family and friends maintain confidentiality. The SIO must also ensure that the immediate needs of any partners of involved employees are able to be catered for whilst the involved employees are undergoing any post-incident procedures.

Maintaining anonymity in court proceedings generally

Advice should be sought from Police Legal Services on how to protect employee anonymity in proceedings. Consideration should be given to seeking authority to retain the Crown Solicitor.

Once a matter is before a court, the question of name suppression is a matter for the Court, not Police.

Once a person is charged, Police should apply for:

- a pre-trial witness anonymity order (in proceedings for a Category 3 or 4 offence) preventing the disclosure of any witness's name, address, occupation or other particulars likely to lead to their identification (s110 Evidence Act 2006)
- interim or permanent orders prohibiting the publication of details leading to the identification of any person connected with the proceedings - in proceedings for any offence (s202 Criminal Procedure Act 2011).

Maintaining anonymity in Coroner's courts

Advice should be sought from Police Legal Services on how to protect employee anonymity in Coroner's proceedings. Consideration should be given to making a mode of evidence application and seeking authority to retain the Crown Solicitor. Advice must also be sought prior to disclosing the identity of the

employee(s) to the coroner.

For the purposes of an inquiry, the coroner must receive evidence ([s76 Coroners Act 2006](#)) from anyone who offers relevant evidence and anyone whom they consider it is appropriate to examine.

A coroner may:

- prohibit the making public of any evidence given and the name or any particulars likely to lead to the identification of any witnesses ([s74 Coroners Act 2006](#))
- exclude any person(s) from all or a part of an inquest. Police may therefore make submissions to have the public and or media excluded
- choose to deal with the matter "on the papers" ([s77 Coroners Act 2006](#)) but only if no one wishes to give oral evidence.

High Court suppression order applications should also be considered.

Maintaining anonymity when seizing firearms

Steps should be taken to ensure that the firearm(s) used in a critical incident is/are not seized at a time or in a manner that unintentionally discloses the identity of the involved employee. Consideration should be given to issuing a replacement firearm for any that are seized or waiting until all staff deployed return to a controlled environment out of public sight.

Employee wellness

Link to the investigation

A CILO will be appointed to the involved employee(s) to support them and provide information to them and to the other relevant groups (act as a link). They have no part in the investigation. The CILO will work collaboratively with the Wellness Advisor to coordinate support and schedule any necessary appointments.

Police Trauma policy applies

The Police '[Trauma support policy](#)' provides access to appropriate psychological assessment and support for all employees. An employee involved in a critical incident must be referred through the District Wellness Advisor to a psychologist for a one-on-one assessment and/or debrief before being cleared to return to duties.

Employees may also find the 'Critical Incident Information Booklet' below and the Reintegration Booklet helpful

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 [Critical Incident Information Booklet 2021](#)

699.36 KB

Wellness needs generally

Consideration should also be given to the wellness needs of the investigation team.

Guidance on ensuring the wellness needs of employees are met is found in the [Wellness Policy](#).

Testing Police employees for alcohol and illegal drugs after a critical incident

See the [Police drug and alcohol policy](#).

Release of reports and advice to involved employees

Advising employees of the progress of the critical incident investigation

The SIO must keep the employee(s) advised of the progress of the investigation via the CILO.

Early advice where no criminal proceedings are contemplated

Where no criminal proceedings are being contemplated, consider giving employees early advice of this fact. The Detective Superintendent should be consulted prior to any such advice being given to employees. If early advice is given it must be given with the caveat that the advice is in good faith and based on information known at the time.

Advice of the investigation result

When the result of the investigation is determined by the decision maker the employee must be formally advised of that result without delay

Timing of the release of reports

Consideration should be given to liaising between the IPCA, SIO and the PPP review around timing of the release of the reports. This is to assist in managing any media comment around the contents of the reports. Note that not all reports will be released publicly.

The CILO is to be kept updated as to the release of any reports of findings and the results so they can be communicated to the involved employees prior to public release or internal release of reports.

Health and Safety investigation

The Director: Safer People has a requirement under the Health and Safety at Work Act 2015 to conduct an investigation into the circumstances of an incident resulting in injury or death of a Police employee acting in their duty.

Obligation to notify WorkSafe New Zealand

Almost all critical incidents will be notifiable under the Health and Safety at Work Act 2015, whether or not the injured party is a Police employee. This notification is handled by the Safer People team through the District Health and Safety Advisors.

WorkSafe NZ may decide to initiate their own investigation into a critical incident. If this happens, seek advice from the Safer People team immediately.

See the [Recording and reviewing health and safety events](#) chapter.

Health and Safety reviews

A health and safety review will almost always be required, whether or not the injured party is a Police employee, if the event falls under the following circumstances:

- A Police employee or contractor is seriously injured or killed
- There have been serious failures in Police procedures that exposed a person to a risk of serious injury or death.
- Following a near miss or minor injury that had the potential to result in a more serious injury and exposes a gap in Police risk management processes
- Following an adverse interaction with WorkSafe (e.g. if we receive an enforcement notice or WorkSafe is conducting their own investigation).
- The Health and Safety Committee directs an investigation take place
- At the direction of District or National Leadership.

Sharing information with the Health and Safety investigation

The Safer People team may request documents or information contained within the investigation file to satisfy the requirements of the Police Health and Safety review. Safer People (through the District Health and Safety Advisor) should also be included in debriefs relating to notifiable events.

The SIO should facilitate sharing of investigative material for this purpose.

Health and safety investigative processes may require release of information to a third party.

Investigative processes may require release of information to a third party such as WorkSafe NZ. The Safer People team must liaise with the SIO investigation prior to release of investigative material or information to a third party. Police Legal section may need to be contacted if any third party other than the IPCA request the details of any officers involved.

Tactical Options Reporting (TOR)

Death or injuries after police use of a tactical option

Incidents involving death or injury after use of a tactical option, must be recorded in the [Tactical Options Reporting \(TOR\) database](#) (available on the intranet homepage>notifications).

The notification must be completed within 72 hours of the incident by a supervisor, rather than the officer involved.

The notification is designed to collect high level data only for example time and place nature of injuries and tactical options used. The notification does not identify Police employees and does not require a narrative of the incident or justification for the use of force. Use of the notification assists with better:

- informed evidence-based decision-making
- identification of lessons learnt for improving police and public safety
- database accuracy for OIA requests, research, monitoring and evaluation of the use of force.

Note: The collection of this data is intended for tactical options report analysis.

Independent Police Conduct Authority (IPCA) investigations

The functions of the IPCA

The functions of the IPCA are specified in section [12](#) of the Independent Police Conduct Authority Act 1988.

Critical incidents are likely to be Category "A" IPCA independent investigations

Critical incidents involving death or bodily injury are incidents requiring written notification under section 13 to the IPCA as soon as practicable. The IPCA investigations into critical incidents are likely to be categorised as Category "A" (Authority Investigation) independent investigations.

For more information on Category "A" investigations, see:

- Schedule 2 Practice Note Two in the [Police IPCA Memorandum of Understanding](#)
- the 'Police investigations of complaints and notifiable incidents' chapter.

Notification to the IPCA of a critical incident

The District Commander, or the employee's Director must:

- ensure that the Director: Integrity and Conduct is notified immediately
- provide written notice under section [13](#) of the Independent Police Conduct Authority Act 1988 to the Director: Integrity and Conduct as soon as practicable setting out particulars of the incident in which the death or serious bodily harm was caused.

The Director: Integrity and Conduct must then notify the IPCA of the incident at the earliest possible opportunity and send the IPCA the notice of the particulars of the incident when that is received.

Sharing information with the IPCA

Refer to Paragraph 4, [Schedule 2 - Practice Note Two](#) in the Police IPCA Memorandum of Understanding.

Police will provide all documents and information requested by the Authority to further its investigation in accordance with section [21](#) of the Independent Police Conduct Authority Act 1988

The SIO should appoint a liaison officer to facilitate sharing of information with the IPCA. This includes ensuring that IPCA investigators assigned to the case are able to access the Investigation via IMT.

Alpha codes provided to the IPCA

Refer to [Schedule 2 - Practice Note Two](#), Paragraph 11 - 'Anonymity of Police staff in Serious Harm Incidents' section in the Police IPCA Memorandum of Understanding.

Police will provide the IPCA with a schedule of the employees involved including their real names and the unique identifier that has been attached to them for the purposes of the investigation (e.g., Officer A). Thereafter, all documentation will be provided using the unique identifier.

Notification of interview

Refer to [Schedule 2 - Practice Note Two](#), Paragraph 9 which states the IPCA accept that Police should have the opportunity to interview officers before the IPCA does, unless there is unacceptable delay.

Subject to the paragraph above the IPCA may be notified of interviews

Refer to the section [IPCA Involvement in Police Interview](#)

Policy, Practice and Procedure (PPP) review

Purpose of a PPP review

The purpose of a Policy, Practice and Procedure (PPP) review is to confirm that Police policies, practices and procedures are 'fit for purpose' and maximise the likelihood that Police activities result in positive outcomes. An aspect of this focus includes identifying potential opportunity for enhancement to policies, practices or procedures.

See the chapter [Policy practice and procedure \(PPP\) review](#)

Printed on : 19/01/2022

Printed from : <https://tenone.police.govt.nz/pi/police-manual/operations-prevention-and-emergency-response/incident-and-emergency-response/investigation-critical-incidents>