



Gathering and preserving evidence in car crash cases

THE TRAFFIC COLLISION REPORT IS JUST THE BEGINNING OF YOUR CRUSADE FOR EVIDENCE

You've got the Traffic Collision Report, a few property damage photographs of the vehicles, and even some photographs the police were thoughtful enough to take at the scene of the crash. Now you've got the evidence of the crash that you need, right? Wrong.

While it is true that traditional sources of information, particularly law-enforcement reports, continue to be valuable evidence in car-crash cases, the number of alternative sources of information and evidence that is at your fingertips has increased in recent years. These resources provide access to information that is quicker, less costly (and often free), and typically involves jumping through fewer bureaucratic hoops. Utilizing a comprehensive set of information-gathering tools can help you serve your clients more competently, litigate your cases more effectively, and ultimately achieve better results.

Law enforcement records

Let's start with the obvious – as soon as you get a case involving a car crash, you should order the Traffic Collision Report and any photographs taken by the law-enforcement personnel who responded to the scene. Less obvious, but also important, pieces of evidence that may be available through law enforcement can include:

- 1) photographs and video recordings from body-worn cameras, dashboard cameras, video collected by police from nearby businesses, residences, or witnesses,
- 2) computer-aided dispatch (CAD) report/printout and 911 logs and audio recordings,
- 3) blood taken for alcohol or drug screening, and
- 4) any other evidence collected by law enforcement at the scene.

Photographs and video recordings

Body-worn cameras and vehicle dashboard cameras are becoming standard with law enforcement agencies. While they are most often thought of as providing evidence in the context of police misconduct cases, photographs and video recordings captured by body-worn cameras and dashboard cameras certainly have usefulness in car crash cases as well. Recordings can memorialize statements made by the parties and witnesses to law enforcement.

The Traffic Collision Report generally contains a very brief summary of the party and witness statements. All too often when talking with a party or witness about the facts of the crash, it appears that those summaries mischaracterize or take statements out of context, omit key details, or are flat out inaccurate. Body-worn camera recordings provide a way to not only validate the content of statements made at the scene, but also gather additional details that may have been omitted in the Traffic Collision Report or in your discussions with your client or eyewitnesses.

Additionally, recordings and photographs can illustrate the road and weather conditions shortly after a crash. Was the road wet? Were all the streetlights out? Was the fog so thick that



visibility was limited? Were the traffic signals malfunctioning? Recordings can also capture any number of other things that may prove helpful in litigating a car crash case, from the position of vehicles to EMS providing medical aid on the scene.

Law enforcement may attempt to gather surveillance video from surrounding businesses or residences. Because of this it is important to also request copies of all video recordings collected by law enforcement.

911 calls

A 911 call is usually the first report of a crash and can contain valuable factual statements from eyewitnesses or the involved parties themselves. It also provides insight into the scene immediately following a crash and can reveal the chaos, shock, fear, and even anger that can come in the wake of a car crash. This type of evidence can be much more impactful than the typically dry description in a Traffic Collision Report in setting the scene of a crash for a jury.

Depending on the entity a 911 call was directed to, you should obtain the computer-aided dispatch (CAD) report and 911 audio recordings, through either a public records request or with an authorization signed by your client. Unfortunately, some public entities are increasingly refusing to produce these items without a subpoena. Some other law enforcement entities will produce the CAD but refuse to produce the audio recordings without a subpoena.

A common justification cited by law enforcement for not producing 911 records pursuant to the California Public Records

Act is that they fall under the investigatory-records exemption of Government Code section 6254, subdivision (f). However, not all calls to a 911 call center or local police department are or should be protected from disclosure under this provision. Section 6254(f) exempts only “[r]ecords of complaints to, or investigations conducted by, or records of intelligence information or security procedures of” various law enforcement agencies, as well as certain “investigatory . . . files” maintained by those agencies. (Gov. Code, § 6254, subd. (f).) In *Haynie v. Superior Court*, 26 Cal.4th 1061, 1071, 112, the California Supreme Court made clear that this exemption must not be interpreted to “shield everything law enforcement officers do from disclosure” and that the “records of investigation exempted under section 6254(f) encompass only those investigations undertaken for the purpose of determining whether a violation of law may occur or has occurred.” (*Ibid.*)

If law enforcement attempts to deny your request for 911 records on the basis of section 6254(f), don’t just throw in the towel. Follow up and explain that when a 911 call relates to a traffic collision and the need for medical assistance, for example, it is not related to the investigation of a violation of the law and section 6254(f) is not implicated.

If law enforcement continues to block your request for 911 records based on the investigatory records exemption of section 6254(f), they are still required to disclose some detailed information culled from the audio. Specifically, section 6254(f) provides that while investigatory records may be exempt from disclosure, “state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof [.]” Therefore,

as authorized representatives of the victim injured in the incident, the law enforcement agency is mandated to disclose the above specified information to you.

If you have tried the above but are still unable to get the 911 records without a subpoena, make sure to send a letter demanding the records be preserved (discussed in more detail later in this article) so that the records have not been deleted by the time you are in litigation and issue a subpoena.

Public Records Act requests

In addition to 911 records (discussed above), California Public Records Act requests are particularly helpful in obtaining information and documents relating to the area – the intersection and/or individual street(s) – on or around where the crash occurred. Specifically, items that can be useful include:

- Geometric plans and diagrams
- Documents reflecting the installation, modification, and maintenance of traffic control devices, including traffic signs, traffic striping, and traffic signals
- Traffic signal timing plans/charts, traffic signal phasing diagrams, traffic and phasing coordination descriptions, and other traffic signal-related documents
- Transportation or transit engineering surveys, records, or reports
- Traffic management analysis of speed, traffic volume, or collisions and any proposed or implemented traffic changes
- Documents regarding complaints
- Documents regarding history of crashes

California Public Records Act requests should be addressed to the governmental entity – state, county, or city agency – that has control of the area where the crash occurred. It is not always completely clear what entity has (or had) control of the area. For example, I have had cases in which a crash occurred at an intersection that was one city on the north side of the intersection and another city on the south side of the intersection.

Another scenario I’ve encountered in which the control of the intersection is not straightforward occurs when there are smaller cities and unincorporated areas that may rely on a county to perform some functions like road maintenance. Whenever there is any doubt about who has control over the area where the crash occurred, it is best to send requests to all potential controlling entities.

How to request public records

Many cities and counties have transitioned to managing their public-record requests through online portals or via email, so getting these documents has become faster and easier. For example, the cities of Los Angeles, Long Beach, Compton, Torrance, Manhattan Beach, Redondo Beach, Santa Monica, West Hollywood, Pasadena, Glendale, Santa Clarita, Malibu, Huntington Beach, Santa Ana, Irvine, and Riverside all have online systems that allow you to submit public record requests.

Similarly, Orange County, San Bernardino County, and the California Department of Transportation (Caltrans) have online systems for requesting public records. Los Angeles County accepts public record requests by email and has a list on their website with department contact information so you can make sure your request is going to the appropriate place. The Los Angeles County Sheriff’s Department, Orange County Sheriff’s Department, cities of Downey, Cerritos, Hermosa Beach, Calabasas, also accept public-record requests via email. This list is not exhaustive but serves to highlight how many public entities have shifted to accepting public-record requests online and via email. A simple Google search and/or review of the public entity’s website will usually quickly reveal the method through which a Public Records Act request should be made.

Under the California Public Records Act, a government agency must respond to a CPRA request within 10 days, or up to an additional 14 days in “unusual circumstances,” (such as when a request requires review of lots of documents or requires retrieval of documents from

other locations) but the requester must be apprised of this extension in writing. The agency must also state the estimated date when disclosable records will be made available.

Collision data

In addition to information and documents available through Public Records Act requests, there are publicly available records and data relating to car crashes that can be easily accessed and downloaded online.

Statewide Integrated Traffic Records System (SWITRS)

Accessible at: <https://iswitrs.chp.ca.gov/Reports/jsp/index.jsp>, this database serves as a means to collect and process data gathered from a collision scene in California. The online SWITRS application allows you to create custom reports with data relevant to specified criteria such as jurisdiction, location, and date range. SWITRS reports cannot be narrowed down to specific streets, but once you have generated the report with traffic collisions in the relevant jurisdiction or location, the data is in alphabetical order and you can extract out the pages of the PDF report that have the data for the streets that are relevant to a particular case. It is important to remember to review the data for both the street a crash occurred on and the closest cross streets as the reporting agency may input the data in such a way that the cross street is listed in the report as the primary road.

City of Los Angeles traffic collision data from 2010 to present

Accessible at: <https://data.lacity.org/Public-Safety/Traffic-Collision-Data-from-2010-to-Present/d5tf-ez2w>, this data can be filtered in a number of different ways, such as limiting the dataset to collisions that occurred on a specific street and cross street. This allows for the data set to be narrowed down so that it is more manageable to sort through and more likely to be relevant to a specific case.

These collision databases are particularly helpful in providing information that may be helpful in

determining whether there could be a dangerous condition claim.

Surveillance/security-video camera recordings

It's no longer just the large corporate gas stations and fast-food restaurants that have video cameras on their properties. In recent years, more and more businesses have installed surveillance cameras. Similarly, in the past few years, an increasing number of homeowners and renters have added security systems with video cameras to their homes. It is not uncommon for these surveillance/security systems to include an exterior video camera facing the street and these cameras may record a crash that occurs nearby. The quality of video recordings has also improved dramatically. Several years ago, it was common to only have access to grainy, pixelated, black and white surveillance video. Now, it is somewhat standard for surveillance systems to produce higher resolution, color video that shows much more detail.

Hiring an investigator to canvas the area and determine if there are any businesses or residences that have video cameras that may have recorded the crash is a small investment when you consider the potential jackpot of evidence that a video of the crash may provide. If a video recording does exist, it is important to request a copy of the recording and send a letter to the person or business that has the video, demanding that the video recording be preserved.

Event-data recorder

You've almost certainly heard of Event Data Recorders (EDR) or "black boxes" in the context of airplanes. But did you know that EDRs have become standard in almost all cars? An EDR is a device installed in a vehicle that records technical and occupant information for a brief period of time before, during and after a crash. EDRs record data regarding speed, acceleration, braking, steering, seatbelt restraint usage, air-bag deployment, and activation of an automatic collision notification (ACN)

system. The National Highway Traffic Safety Administration (NHTSA) has issued rules that standardize the data collected by EDRs and how it can be retrieved. (For more details, see 49 CFR Part 563) EDRs can provide information that is very valuable to understanding a crash and EDR information should be downloaded from the vehicles involved in a crash as soon as possible after a crash.

It is important to make sure the EDR data is preserved so that you can download it. Set up an inspection of the vehicle as soon as possible so that you can download the EDR data. A download is accomplished by connecting a laptop with translation software to a data port (usually in the center console or under the driver's seat depending upon the vehicle). Bosch makes a commercially available translation tool, which is widely used by law enforcement and accident-reconstruction engineers. The tool is expensive and you will still need an accident-reconstruction expert to interpret the data, so it is generally advisable to retain an accident-reconstruction expert who will perform the vehicle inspection, EDR download, and EDR interpretation.

Google Street View

"Google it" seems to be the solution whenever there is something we don't know. It turns out that getting an idea of what the area where a crash happened looks like is no exception. Using Google Street View allows you to view the immediate surroundings of the area where a crash occurred. You can "walk" the street from different directions and view it from different angles. Google Street View allows you to visualize the area that is described in the Traffic Collision Report or communicated to you by your client.

Google Street View is an especially useful tool when the crash site is too far away for you to go to the scene immediately. It is also helpful in seeing how an area has changed over time. If the crash in your case happened in 2018 but you didn't get the case until 2020, Google

Street View may allow you to go back in time and look at the area as it existed closer to the time of when the crash occurred. Depending on the location, Google may have Street View images for a few times a year going back a decade, or they may just have images available for every other year for the past handful of years.

Remember that crash data you got (if you didn't get the crash data, then you aren't paying attention, so go back and read the Public Records section of this article again) that showed an unusually high number of T-bone collisions at the intersection where the T-bone crash in your case occurred? When you are using Google Street View, keep an eye out for potentially dangerous roadway conditions that could be a factor in causing so many similar collisions to occur in the same place.

Scene Inspection

Now that I've sung the praises of Google Street View, I want to make clear that not everything can and should be done from the comfort of your office. As anyone who's ever had the knock-off electronics they bought on Amazon start a fire or who's eaten a faux-meat burger knows, ain't nothing like the real thing. It is important to actually go to the area of where a crash occurred, watch for a while, take some photographs and video. Bear in mind that traffic patterns and signal phasing may vary depending on the day of the week and time of day, so take this into account when scheduling when you will go to a scene so that you can visit when the circumstances are most similar to your case. In more serious injury cases, it is also highly advisable to retain an expert to inspect the scene and take measurements and photographs as soon as possible.

Preserving evidence

You will not always have access to all the evidence immediately when you request it. This may be the case for a number of reasons, including because a potential party or their insurer refuses to

produce evidence prior to litigation, there is an ongoing law enforcement investigation, or a public entity or business will not provide evidence without a subpoena. If there is some delay in obtaining evidence, it is critical to send a letter demanding that the evidence be preserved.

Preservation-of-evidence letters

Some important items that you should request that a vehicle owner and driver involved in a crash preserve include the vehicle involved in the crash; Event Data Recorder (or any other digital recording device data) from the vehicle; photographs, video recordings of the crash, the vehicles involved in this crash, and the crash scene; and cell phone records and data from the date of the crash. It is prudent to send the preservation-of-evidence letter to not only the driver and owner of the vehicle involved in the crash, but to the insurer for those parties as well.

Items that law enforcement may have possession of that should be preserved include vehicles impounded by law enforcement, evidence collected at the scene, blood taken for alcohol or drug screening, photographs and video recordings (including body-worn cameras, dashboard cameras, and photographs and/or video collected by law enforcement from nearby businesses, residence, or witnesses), and 911 recordings.

As mentioned above, if a business or residence has relevant video recordings, but refuses to provide you with a copy, then send a letter requesting that the video recording be preserved.

A preservation-of-evidence letter should specify that the evidence is not to be altered from its present condition, nor should it be destroyed, discarded, sold, or otherwise removed from the premises, until such time as an appropriate inspection or copying thereof has taken place. It is also important to state in the letter that the evidence constitutes critical evidence that will be required for production at a later time in an action for damages for personal injury or wrongful death.

Spoilation of evidence

The California Discovery Act *does not* specifically prohibit the intentional destruction of relevant evidence before a lawsuit has been filed or before a discovery request has been made. With regard to the discovery of Electronically Stored Information, there is little California authority on point. Because of the similarity of California and federal discovery law, federal decisions have historically been considered persuasive absent contrary California decisions. Under federal precedent, parties are subject to a duty to preserve material evidence as soon as the party reasonably should know that the evidence may be relevant to anticipated litigation.

A properly worded preservation-of-evidence letter can constitute the required notice of the relevancy to anticipated litigation, that triggers a party to take affirmative steps to maintain and preserve the evidence or risk the imposition of sanctions.

The destruction, alteration, or loss of evidence that has been demanded to be preserved may constitute spoliation of evidence. Sanctions may be available if spoliation of evidence occurs and include:

- Adverse inference jury instructions – See CACI 204 “You may consider whether one party intentionally concealed or destroyed evidence. If you decide that a party did so, you may decide that the evidence would have been unfavorable to that party.” (See also BAJI 2.03.)
- Monetary sanctions.
- Issue sanctions – ordering that designated facts be taken as established or precluding the offending party from supporting or opposing designated claims or defenses.
- Evidentiary sanctions – excluding related or derivative evidence offered by a party who has destroyed evidence while under a duty to preserve it.
- Terminating sanctions – striking part or all of the pleadings, dismissing part or all of the action, or granting a default judgment against the offending party.

Wrapping up

Frequently overlooked and underutilized resources can produce information and evidence that add value to your car-crash cases and reveal potential additional causes of action, such as dangerous condition or defective product. If you aren't taking advantage of all of the potential sources

of information and evidence available in your cases (much of which costs either nothing or a negligible amount), then you are doing a disservice to your clients. If you take anything from this article, let it be this – information is easier to access and comes from a wider variety of sources than ever before and all you have to do is put in the work to get it.

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