

General Order

Houston Police Department



ISSUE DATE:

November 4, 2019

NO.

500-10

REFERENCE: This newly created General Order supersedes all prior conflicting Circulars, Directives, and General Orders

SUBJECT: BRADY/MICHAEL MORTON ACT DISCLOSURE REQUIREMENTS

POLICY

Employees shall follow the *Brady* disclosure requirements that are mandated by the Texas Code of Criminal Procedure 39.14 and the U.S. Supreme Court. There is an affirmative duty of law enforcement to identify and provide to the prosecution any exculpatory material that would have a reasonable probability of altering the results in a trial, could reasonably mitigate the sentencing of a defendant, or is relevant to the credibility of government witnesses, including, but not limited to, police officers. This policy provides the information necessary for employees to properly fulfill the reporting and testimonial requirements.

This General Order applies to all employees.

DEFINITIONS

Brady Material/Exculpatory Evidence. Exculpatory evidence is evidence that is favorable to the accused; is material to the guilt, innocence, or punishment of the accused; and that may impact the credibility of a government witness, including a police officer. There is no distinction between "exculpatory evidence" and "impeachment evidence" for *Brady* disclosure purposes. Impeachment material is included in the *Brady* disclosure requirements. *Brady* violations are, by definition, violations of an individual's 14th Amendment right to due process of law.

Duty to Disclose. The affirmative constitutional duty of the police to notify the prosecutor of any *Brady* material.

Material Evidence. Exculpatory evidence is "material" if there is a reasonable probability that disclosing it will change the outcome of a criminal proceeding. A "reasonable probability" is a probability sufficient to undermine confidence in the outcome of the trial or sentencing of a criminal case.

1 GENERAL PROVISIONS OF DISCLOSURE

The department has an affirmative duty to report *Brady* material and shall exercise due diligence to ensure material of possible *Brady* relevance is made available to the office of the prosecutor. Suppression of evidence favorable to an accused violates due process when the evidence is material either to guilt or to punishment, irrespective of good or bad faith.

The defense is not required to request potential *Brady* material. It is the department's responsibility to disclose such material, as soon as reasonably possible, to the office of the prosecutor, or in time for effective use at trial. Responsibility for disclosing such material extends from indictment through the trial and sentencing process. It is the prosecutor's responsibility to establish whether material disclosed by this department must be provided to the defense.

Examples of *Brady* material that may be subject to disclosure include, but may not be limited to, the following:

- a. Information that would directly negate the defendant's guilt concerning any count in an indictment.
- b. Information that would cast doubt on the admissibility of evidence that the government plans to offer that could be subject to a motion to suppress or exclude.
- c. Any criminal record or criminal case pending against any witness whom the prosecution anticipates calling.
- d. The failure of any proposed witness to make a positive identification of a defendant.
- e. Information that casts doubt on the credibility or accuracy of a witness or evidence.
- f. An inconsistent statement made orally or in writing by any proposed witness.
- g. Statements made orally or in writing by any person that are inconsistent with any statement of a proposed government witness regarding the alleged criminal conduct of the defendant.
- h. Information regarding any mental or physical impairment of any governmental witness that would cast doubt on the witness' ability to testify accurately and truthfully at trial.
- i. Information that tends to diminish the degree of the defendant's culpability or the defendant's offense level under state or federal sentencing guidelines.
- j. A finding of misconduct by an administrative investigation that reflects on the witness's truthfulness, bias or moral turpitude. This includes employees under suspension.
- k. Evidence that a proposed witness has a racial, religious, or personal bias against a defendant individually or as a member of a group.
- l. An employee's excessive use of force, untruthfulness, dishonesty, bias or misconduct in conjunction with the employee's service as a law enforcement officer in the employ of this or any other agency.

2 DUTY TO DISCLOSE

Adherence to departmental policy and rules in all matters is an imperative of the employee's office. Breaches of such rules and policies related specifically to honesty and veracity may have direct bearing on an employee's ability to continue serving as a law enforcement officer.

It is the obligation of individual employees to inform their supervisor of any elements of their employment as a police officer, information contained in investigative reports, or evidence connected with a criminal indictment or trial that they reasonably believe may be subject to *Brady* disclosure.

Supervisors are equally responsible for ensuring that they act with due diligence in identifying any potential *Brady* material connected with any criminal proceeding for which they have oversight and for bringing such material to the attention of the prosecutor in a timely manner through established reporting procedures.

Disclosure of Employment History

Employees whose history regarding integrity, honesty, credibility, veracity, and related matters having negative bearing on their professional reputation may be subject to *Brady* disclosure requirements.

Employees who have had disclosure made to the prosecutor's office regarding their history may be subject to impeachment of testimony at trial.

Although the department is making every effort to disclose the proper information to the prosecutor's office, it is the individual employees' responsibility to disclose potential impeachment information to the prosecuting attorney before serving as a witness in any criminal case or matter. This includes the obligation of individual employees to disclose sustained administrative allegations of misconduct and administrative discipline arising from employment with the Houston Police Department or any other law enforcement agency to the prosecutor. In addition, employees shall provide the prosecutor a list of all the administrative investigations resulting in the employee's sustained allegations.

Employees may obtain a copy of their personal HPD sustained history (public 3X5) from any supervisor or a supervisor at the Court Liaison office. The sustained history shall be presented to the prosecutor of every case for which the employee will potentially serve as a witness.

Although discrepancies in the record keeping should be rare, employees are encouraged to review their sustained history. If the employee believes that something appears in error or was inadvertently omitted, then the employee shall send a correspondence to the Internal Affairs Division commander via the employee's chain of command detailing the alleged discrepancy. The Internal Affairs Division shall research the department's internal investigative files to determine if there is an error in the employee's sustained history. The Internal Affairs Division commander shall advise the requesting employee, by correspondence, of the results of the inquiry.

3 TRAINING

All sworn law enforcement officers of this department shall receive training in *Brady* disclosure requirements.



Art Acevedo
Chief of Police