

145. BRADY DISCLOSURE REQUIREMENTS



RICHFIELD POLICE DEPARTMENT POLICY

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Authority:	Chief Jay Henthorne

NOTE: This policy is for internal use only and does not enlarge an employee's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of this policy, if proven, can only form the basis of a complaint by this Department, and then only in a non-judicial administrative setting.

I. PURPOSE

It is the purpose of this policy to provide officers with the information necessary to properly fulfill the reporting and testimonial requirements mandated under U.S. Supreme Court decisions including *Brady v. Maryland* 373 U.S. 83 (1963) and *Giglio v. U.S.* 405 U.S. 150 (1972).

II. POLICY

The *Brady* decision and subsequent rulings have made it a duty of all law enforcement agencies to (1) identify and provide to the prosecution any exculpatory material that would have a reasonable probability of altering the results in a trial, or any material that could reasonably mitigate the sentencing of a defendant and (2) any material relevant to the credibility of government witnesses, including, but not limited to, police officers. It is the policy of this police department to follow *Brady* disclosure requirements consistent with the law.

III. DEFINITIONS

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.

EXCULPATORY EVIDENCE/BRADY MATERIAL: *Brady* violations are, by definition, violations of an individual's 14th Amendment right to due process of law. 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. Impeachment material is included in the *Brady* disclosure requirements.

DUTY TO DISCLOSE: The affirmative constitutional duty of the police to notify the prosecutor of any *Brady* material.

IV. PROCEDURE

GENERAL PROVISIONS OF DISCLOSURE

Affirmative Duty to Report

- This department shall exercise due diligence to ensure that material of possible *Brady* relevance is made available to the office of the prosecutor.
- Although the defense is not required to request potential *Brady* material, it is this department's responsibility to disclose such material as soon as reasonably possible to the office of the prosecutor, for disclosure to the defense, or in time for effective use at trial. Responsibility for disclosing such material extends from indictment through the trial and sentencing process.

- The prosecution must disclose and allow the defense to inspect material within the prosecution's possession or control that tends to negate or reduce the guilt of the accused for the offense. Rule 9.01, subdivision 1(6), does not provide for as extensive discovery as under *Brady v. Maryland*, because it does not require disclosure of information that might lessen the punishment that may be imposed, but it does provide for disclosure of favorable or exculpatory evidence.
- It is the prosecutor's responsibility to establish whether material disclosed by this department must be provided to the defense.
- 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. There is no distinction between "impeachment evidence" and "exculpatory evidence" for *Brady* disclosure purposes.
- Allegations that cannot be substantiated, are not credible, or have resulted in an individual's exoneration are generally not considered potential impeachment information.

NOTIFICATION PROTOCOL

- The Richfield Police Department will notify the Richfield City Attorney and the Hennepin County Attorney's Office of any administrative files with sustained findings (whether or not discipline was imposed).
- If a finding is appealed as outlined in the Collective Bargaining Agreement, it is considered sustained upon the issuance of a written decision supporting the finding.
- The Richfield City Attorney and the Hennepin County Attorney's Office will be given access to any such files. The Richfield City Attorney and the Hennepin County Attorney's Office will promptly review those files to determine whether any *Brady* material is present.
- The Richfield Police Department will provide written notice to any Richfield Police employee who has been determined to be the subject of *Brady* material. If the employee elects to submit a written explanation of the conduct the Richfield City Attorney and/or the Hennepin County Attorney's Office will review it and include it with any disclosures when appropriate.
- The identification of a Richfield Police Department employee as being the subject of *Brady* material is for the limited purpose of ensuring compliance with the prosecuting agency's discovery obligations. The identification is not, in and of itself, related to the employee's employment and will not be used by the Richfield Police Department for disciplinary purposes.

CATEGORIES OF *BRADY* MATERIALS INCLUDE:

- False written statement, report, or other document.
- Misconduct that indicates untruthfulness.
- Misconduct that indicates bias against any protected class.
- Misconduct involving undisclosed or improper promises, offers, or inducements to witnesses or suspects.
- Misconduct involving mishandling of evidence or property.
- Misconduct that involves the use of excessive force.
- Criminal conviction (misdemeanor or above).
- Misconduct that involves abuse of police authority.
- Misconduct that involves the inappropriate or unauthorized use of government data.
- Misconduct that reflects on credibility
- Other conduct potentially discoverable under *Brady* not fitting into any of the above categories.

DUTY TO REPORT

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

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

- It is the obligation of individual officers to inform their superior officer 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.
- Supervisory officers are equally responsible for ensuring that they act with due diligence in identifying any potential *Brady* material connected with any civil and 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.
- After reviewing potential *Brady* material, prosecutors will then make the determination of whether an officer will be subjected to Brady Disclosure Procedures.

DEPARTMENT RESPONSE TO OFFICER TESTIMONIAL IMPEACHMENT

Officers who are knowingly and intentionally untruthful, are otherwise dishonest in the course of their employment, are subject to impeachment of testimony at trial. Such officers are also subject to disciplinary action up to and including termination of employment.

TRAINING

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

RECORDS RETENTION

It is the policy of the Richfield Police Department that records retention of Brady Disclosure Requirements are indefinite.

By Order Of: _____



Chief of Police