

WINDERMERE POLICE DEPARTMENT

GENERAL ORDER



Effective Date: October 6, 2022	<input type="checkbox"/> Rescinds <input type="checkbox"/> Amends 17.6 (March 3, 2020)	Number: 17.6
SUBJECT: Brady Disclosure Requirements		Print Date: 10/06/22
Distribution: All Personnel	Review Month: October	

This order consists of the following:

1. Purpose
2. Policy
3. Definitions
4. Procedures

1. Purpose

The purpose of this policy is 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).

2. 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.

3. Definitions

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

- C. 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.

4. Procedures

A. General Provisions of Disclosure

1. 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.

- 2. It is the prosecutor’s responsibility to establish whether material disclosed by this department must be provided to the defense.
- 3. 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.
- 4. Allegations that cannot be substantiated, are not credible, or have resulted in an individual’s exoneration are generally not considered to be potential impeachment information.

B. Examples of *Brady* Material

- 1. 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 known 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 his or her 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 Internal Investigation that reflects on the witness's truthfulness, bias, or moral turpitude.
 - 1. Prosecutors shall be made aware of any employee under suspension. The agency shall adhere to **FS 112**.
 - 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 officer's excessive use of force, untruthfulness, dishonesty, bias, or misconduct in conjunction with his or her service as a law enforcement officer.
2. Officer personnel files that are related to matters stated above may be provided or open to the prosecution or defense as part of a *Brady* disclosure.

C. Duty to Report

Officer adherence to departmental policy and rules in all matters in 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.

- 1. 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.
- 2. 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.

3. Supervisory officers 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.

D. Departmental Response to Officer Testimonial Impeachment

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

E. Training

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

F. Records Retention

The retention of records shall be in accordance with **FS 119**.


Chief David A. Ogden