

## Brady Information

### 605.1 PURPOSE AND SCOPE

This policy establishes guidelines for identifying and releasing potentially exculpatory or impeachment information to a prosecuting attorney, and to provide Missoula Police Department 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).

#### 605.1.1 DEFINITIONS

Definitions related to this policy include:

**Brady information** - Information known or possessed by the Missoula Police Department that is both favorable and material to the current prosecution or defense of a criminal defendant.

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

**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. Brady material also includes material that may impact the credibility of a government witness, including a police officer. Impeachment material is included in the Brady disclosure requirements.

**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.

### 605.2 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 the Missoula Police Department to follow Brady disclosure requirements consistent with the law.

The Missoula Police Department will provide the prosecution with both incriminating and exculpatory evidence, as well as information that may adversely affect the credibility of a witness. In addition to reporting all evidence of guilt, the Missoula Police Department will assist the prosecution by complying with its obligation to disclose information that is both favorable and material to the defense.

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#### **605.3 DISCLOSURE OF INVESTIGATIVE INFORMATION**

##### **605.3.1 AFFIRMATIVE DUTY TO INVESTIGATE AND REPORT**

Officers must include in their investigative reports adequate investigative information and reference to all material evidence and facts that are reasonably believed to be either incriminating or exculpatory to any individual in the case. If an officer learns of potentially incriminating or exculpatory information any time after submission of a case, the officer or the handling investigator must prepare and submit a supplemental report documenting such information as soon as practicable. Supplemental reports shall be promptly processed and transmitted to the prosecutor's office.

If information is believed to be privileged or confidential (e.g., informant or attorney-client information, attorney work product), the officer should discuss the matter with a supervisor and/or prosecutor to determine the appropriate manner in which to proceed.

##### **605.3.2 EXAMPLES OF BRADY MATERIAL**

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 criminal charge.
- (b) The failure of any proposed witness to make a positive identification of a defendant.
- (c) Information that casts doubt on the credibility or accuracy of a witness or evidence.
- (d) An inconsistent statement made orally or in writing by any proposed witness.
- (e) A finding of misconduct by the Missoula Police Department that reflects on the witness's truthfulness.
- (f) An officer's untruthfulness, bias, or moral turpitude. This includes employees under suspension, dishonesty, bias, or misconduct in conjunction with his or her service as a law enforcement officer.

##### **605.3.3 GENERAL PROVISIONS OF DISCLOSURE**

- (a) 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.
- (b) It is the Missoula Police Department's responsibility to disclose such material as soon as reasonably possible to the prosecutor's office, or in time for effective use at trial. Responsibility for disclosing such material extends from charging through the trial and sentencing process.
- (c) It is the prosecutor's office responsibility to establish whether material disclosed by this department must be provided to the defense.
- (d) 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.

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There is no distinction between "impeachment evidence" and "exculpatory evidence" for Brady disclosure purposes.

- (e) 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.

#### **605.4 DUTY TO REPORT**

Officer 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

- (a) If information is believed to be privileged or confidential (e.g., informant or attorney-client information, attorney work product), the officer should discuss the matter with a supervisor and/or prosecutor to determine the appropriate manner in which to proceed.
- (b) It is the obligation of individual officers to inform their Shift Commander 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.
- (c) Evidence or facts are considered material if there is a reasonable probability that they would affect the outcome of a criminal proceeding or trial. Determining whether evidence or facts are material often requires legal or even judicial review. If an officer is unsure, the officer should address the issue with a supervisor.
- (d) 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. Supervisors who are uncertain about whether evidence or facts are material should address the issue with the prosecutor's office. (in a written memo to an appropriate prosecutor. A copy of the memo should be retained in the department case file.)

#### **605.5 BRADY PROCESS**

The Chief of Police shall select a member of the Missoula Police Department to coordinate requests for information involving department members. This person shall be directly responsible to the Administrative Division Captain or the authorized designee.

The responsibilities of the coordinator include but are not limited to:

- (a) Working with the appropriate prosecutors' offices and the City Attorney's office to establish systems and processes to determine what constitutes information and the method for notification and disclosure.
- (b) Maintaining records about members who have information in their files or backgrounds.

Updating these records whenever potential information concerning any department member becomes known to the Department or is placed into a personnel or internal affairs file.

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#### **605.5.1 PROCESS FOR NOTIFICATION OF THE PROSECUTOR'S OFFICE**

When a Missoula Police Department employee becomes aware of Brady information through the process of a criminal investigation they will notify the prosecutor's office through the normal criminal investigation reporting process and notify his/her supervisor. The supervisor will ensure the officer's information has been relayed to the prosecutor's office.

When a Missoula Police Department employee becomes aware of Brady information relating to an employee the following process will be followed:

- (a) The employee will notify their direct supervisor,
- (b) The supervisor will notify the Chief of Police, through the chain of command.
- (c) The Chief of Police or designated administrative officer will notify the prosecutor's office.
- (d) Required documentation will be provided through the City Attorney's Office.

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, as is consistent with the law. When appropriate, the prosecutor will require an inspection, a court order and/or a protective order prior to disclosure of personnel files.

#### **605.6 INVESTIGATING BRADY ISSUES**

If the Department receives information from any source that a member may have issues of credibility or dishonesty or has been engaged in an act of moral turpitude or criminal conduct, the information shall be investigated and processed in accordance with the Personnel Complaints Policy.

#### **605.7 TRAINING**

Department personnel should receive periodic training on the requirements of this policy.