



Ocean City Police Department

General Order

Subject: Brady Material and Consequent Matters		No. G.O. 200 A-2	
Rescinds: 200 B-2 (07/21/08)	Amends:	Related Directive: OCPD Training Bulletin 2008-0018	
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I. Purpose:

The purpose of this policy is to assure the Department and its employees meet their constitutional obligations to disclose exculpatory evidence in criminal prosecutions, including information that would bear negatively on the credibility of material witnesses for the government - including police witnesses.

In *Brady v. Maryland* (1963) and *Giglio v. United States* (1972), the United States Supreme Court created these disclosure requirements. Originally thought of by some as exclusively a prosecutorial duty, it now appears that the duty may be affirmative, not just responsive, and extends to law enforcement. That is, if law enforcement officials know of evidence or information that would be favorable to the defense in a criminal prosecution, those officials must disclose the information to the prosecutor, whether or not the defense has requested the information.

“Brady Material” includes but is not limited to information that would bear negatively on the credibility of a material government witness, including police employees who may testify in the case. Specifically, this includes any conclusive information establishing a record of untruthfulness, bias, and/or commission of crimes. It does not include mere allegations, rumors, or other inconclusive information. In the case of prior untruthfulness on the part of a police employee, the duty of disclosure extends only to untruthfulness in police business or matters, or in any sworn testimony, not to one’s entire life history. Similarly, disclosure of commission of crimes committed by police employees refers to crimes committed since becoming a police employee, not to every minor transgression perpetrated in early life. In short, if the “government” knows that its material witness is a criminal, a liar, or may be biased in respect to the defendant, the evidence or information supporting that belief must be disclosed by police to prosecutors, and by prosecutors to the defense.

II. Definitions:

- A. **Duty to Disclose:** The landmark decision of *Brady v Maryland* (1963) places an affirmative constitutional duty on a prosecutor to disclose exculpatory evidence to a defendant. This duty has been extended to police agencies through case law, requiring law enforcement agencies to notify the prosecutor of any potential exculpatory information.
- B. **Exculpatory Evidence/Brady Material:** Evidence or information in the government’s possession that is favorable to the accused and that is material to either guilt or punishment, including evidence that may impact the credibility of a witness. This includes information that could cause or contribute to reasonable doubt as to the defendant’s guilt - and is consequently subject to the mandatory disclosure requirement stated above.

III. Policy:

All exculpatory “Brady Material” evidence in a criminal case shall be provided to the Office of the State’s Attorney as prescribed within this policy.

IV. Procedure:

A. Internal Identification of “Brady Material”

1. Sworn employees investigating criminal matters shall make all reasonable efforts to identify exculpatory evidence. Any employee working on a criminal case who realizes the existence of exculpatory evidence or information in that case shall report that belief to his or her supervisor, who shall report the matter through the chain of command to the Division Commander. All members of that chain of command shall provide a written response in support or non-support of the claim.
2. If the Division Commander is satisfied that the evidence or information is in fact “Brady Material”, the Division Commander shall cause the disclosure of that evidence or information to the Office of the State’s Attorney.
3. The Office of the State’s Attorney will then determine whether, in his or her opinion, the evidence or information is, in fact, “Brady Material” and, if it is, will make the required disclosure to the attorney for the criminal defendant.

B. Affected Personnel

1. Division Commanders and the Commander of the Office of Professional Standards shall make all reasonable efforts to become aware of any employee whose record would be “Brady Material” if that employee were to be a material witness in a criminal prosecution and shall promptly report any such circumstances to the Chief of Police.
2. The Chief of Police will then, by conferral with prosecutors and legal counsel if necessary, determine whether any potential “Brady Material” regarding the employee is so serious that the employee is unable to render credible testimony in a court of law. If so, the Chief of Police may determine the employee to be unfit for duty (because of inability to testify effectively in court) and may take appropriate administrative action, including termination.

V. Training:

The Agency will routinely provide training material in the form of training bulletins and formal lecture to personnel on their individual obligations under in Brady v. Maryland and Giglio v. United States.