



Approved:  
*Chief Marcia Harnden*

Subject:

# 854. Disclosure of Brady Information

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## 854.1: PURPOSE AND SCOPE

This policy establishes guidelines for identifying and releasing potentially exculpatory or impeachment information (commonly referred to as “Brady information”) to a prosecuting attorney.

### 854.1.1: DEFINITIONS

**Brady Information** – Information known to or possessed by the Albany Police Department which is material on the issue of a defendant’s guilt or punishment, and which may be exculpatory to a defendant in a current criminal prosecution, or to a suspect in an investigation which is likely to become a criminal prosecution. ‘Exculpatory information’ includes, but is not limited to, information which may provide a defense to a defendant or a suspect, or which may cast doubt on otherwise incriminating information.

## 854.2: POLICY

**It is the policy of the Albany Police Department to conduct fair and impartial investigations, including reporting as soon as practical to the proper prosecutor information which may be exculpatory to a defendant or a suspect.**

## 854.3: DISCLOSURE OF INVESTIGATIVE INFORMATION

- a. 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 suspect in the case.
  - 1) If an officer learns of potentially incriminating or exculpatory information at any time, the officer or the handling investigator must prepare and submit a supplemental report documenting such information as soon as practical.
- b. If information is believed to be privileged or confidential (e.g., confidential informant or protected personnel files), the officer should discuss the matter with a supervisor and/or prosecutor to determine the appropriate manner in which to proceed.
- c. Evidence or facts are considered material if there is a reasonable probability that they would affect the outcome of a criminal prosecution, a decision which often requires legal or judicial review. If an

officer is unsure whether evidence or facts are material, the officer should address the issue with a supervisor.

- d. Supervisors who are uncertain about whether evidence or facts are material should address the issue in a written memo to an appropriate prosecutor. A copy of the memo should be retained in the Department case file and not disseminated when ordinary reports are disseminated.

#### 854.4: DISCLOSURE OF PERSONNEL INFORMATION

- a. If a member of this department is a material witness in a criminal case, a person or persons designated by the Chief of Police (typically the Support Division Captain) shall examine the personnel file and/or internal affairs file of the officer to determine whether they contain Brady information. If Brady information is located, the following procedure shall apply:
  - 1) If a motion has not already been filed by the criminal defendant or other party, the prosecuting attorney and department member shall be notified of the potential presence of Brady material in the member's personnel file as soon as practical.
  - 2) The prosecuting attorney or department counsel should be requested to file a motion in order to initiate an in-camera review by the court.
    - A. If no motion is filed, the supervisor should work with counsel to determine whether the records should be disclosed to the prosecutor.
  - 3) The Support Division Captain shall accompany all relevant personnel files during any in camera inspection to address any issues or questions raised by the court.
  - 4) If the court determines that there is relevant Brady material contained in the files, only that material ordered released will be copied and released to the parties filing the motion.
    - A. Prior to the release of any materials pursuant to this process, the Support Division Captain should request a protective order from the court limiting the use of such materials to the involved case and requiring the return of all copies upon completion of the case.
  - 5) If a court has determined that relevant Brady information is contained in the member's file in any case, the prosecutor should be notified of that fact in all future cases involving that member.
- b. The person or persons designated by the Chief of Police should periodically examine the personnel files and/or internal affairs files of all officers who may be material witnesses in criminal cases to determine whether they contain Brady information.
  - 1) If any new Brady information is identified, the prosecuting attorney and department member shall be notified only when there is a current criminal prosecution or an investigation which is likely to become a criminal prosecution in which this information may be relevant.

**854.5: INVESTIGATION OF REPORTED BRADY INFORMATION**

If the Department receives information from any source that a member may have issues of credibility, 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.

**854.6: TRAINING**

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