



Policy 1809

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By Order of the Police Commissioner

PURPOSE

The purpose of this policy is to ensure the compliance of Baltimore Police Department (BPD) members with their solemn obligation to disclose Potential Exculpatory and Impeachment Evidence in criminal cases. This obligation is established in the United States Constitution and the Maryland Declaration of Rights, and recognized through court decisions, including *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972), and *Fields v. State*, 432 Md. 650 (2013).

BPD members must carefully comply with this obligation because all knowledge of Potential Exculpatory and Impeachment Evidence in the possession of BPD members is attributed to the prosecuting authority. If a BPD member fails to disclose Potential Exculpatory or Impeachment Evidence to the prosecutor in a criminal case so that the prosecutor is incapable of disclosing it to the defense, the government's case will be tainted and could be dismissed, and the defendant's constitutional rights may be violated. The prompt disclosure of Potential Exculpatory and Impeachment Evidence preserves the integrity of the criminal justice system. The failure to promptly disclose such evidence undermines it.

POLICY

It is the policy of BPD to identify and provide to the prosecution any Potential Exculpatory and Impeachment Evidence as soon as possible following the initiation of any criminal case in state or federal court.

The evidence BPD is required to provide to the prosecution under this policy is not limited to evidence that is admissible at trial, and the duty of disclosure under this policy continues for the duration of a case—from the filing of charges through trial and appeal, until the defendant has completed serving their sentence.

This policy requires honesty and transparency from each BPD member and oversight from the Public Integrity Bureau (PIB). Breaches of this policy will adversely affect a member's ability to continue serving as a law enforcement officer.

DEFINITIONS

Confidential Disciplinary Investigation – A disciplinary investigation conducted in a covert manner, such that its existence is concealed from the subject member in order to safeguard its integrity. Not all

open disciplinary investigations are confidential. Only those whose existence is concealed from the subject member are confidential.

Potential Exculpatory Evidence — Evidence that is favorable to the defendant because it may disprove the guilt of the defendant or may show the defendant should receive less severe punishment. Examples of Potential Exculpatory Evidence include, but are not limited to:

- Information that tends to disprove the defendant's guilt concerning any count in a criminal case.
- Information that tends to cast doubt on the admissibility of evidence that the government plans to offer and that could be subject to a motion to suppress or exclude—for instance, information that tends to undermine probable cause for an arrest or a search, or information related to the mishandling of physical evidence.
- The failure of any eyewitness to make a positive identification of a defendant or an eyewitness's identification of another individual as the perpetrator.
- Any statement made by any person that is inconsistent with the testimony of a potential witness for the government regarding the alleged criminal conduct of the defendant, whether or not the inconsistent statement was written or recorded.
- Information that tends to diminish the degree of the defendant's culpability, the severity of the offense charged, or the severity of the defendant's sentence—for instance, information about a defendant's intellectual or behavioral health disability or minor role in the offense compared to the roles of co-defendants.

Potential Impeachment Evidence – Evidence that is favorable to the defendant because it may cast doubt on the credibility of a potential witness for the government, including but not limited to a police officer, an eyewitness, or an informant. Examples of Potential Impeachment Evidence include, but are not limited to:

- Any criminal record or criminal case pending against any anticipated witness for the government.
- Any formal or informal offer of leniency or favorable treatment made by the government to an anticipated witness in any existing or potential criminal case against that witness—for instance, an offer of immunity, non-prosecution, reduced charges, or a reduced sentence.
- Any formal or informal request for leniency or favorable treatment made by an anticipated witness in any existing or potential criminal case against that witness—for instance, a request for immunity, non-prosecution, reduced charges, or a reduced sentence.
- Any benefits, formal or informal, provided by the government to an anticipated witness.
- Information that tends to cast doubt on the credibility or accuracy of an anticipated witness for the government.
- An inconsistent statement made by any anticipated witness for the government, whether or not that statement was written or recorded.

- Information regarding any mental or physical impairment of any anticipated witness for the government that tends to cast doubt on the witness's ability to testify accurately and truthfully at trial.
- Any allegation of misconduct in any court of competent jurisdiction, a BPD trial board or BPD's Public Integrity Bureau that reflects on the truthfulness, integrity, motive or bias of any BPD member or any other individual who is anticipated to be called as a witness for the government, regardless of the outcome of the proceeding or investigation addressing such allegation.
- Evidence of untruthfulness, dishonesty, lack of integrity, motive or bias of any BPD member who is anticipated to be called as a witness.
- Evidence that an anticipated witness for the government, including a BPD member, has a racial, religious, or personal bias against a defendant individually or as a member of a group.

REQUIRED ACTIONS

Members

1. In any criminal case in which a BPD member is involved as an investigator or an anticipated witness for the government, the member shall provide all Potential Exculpatory Evidence known to the member, as well as all known Potential Impeachment Evidence regarding any anticipated witness for the government who is not a BPD member, to the relevant prosecuting authority, whether it be the Office of the State's Attorney (OSA), the United States Attorney's Office (USAO) or another prosecutor's office. The BPD member shall inform the prosecutor of such evidence in writing within five business days after learning that the case has been filed and no later than the date of the first court hearing in the case, or if the member does not identify evidence until after the first court hearing, then within five business days after such discovery. Video evidence, audio evidence, written witness statements, member investigative notes, and any other contemporaneously recorded evidence must be provided in their original, unedited form.

NOTE: In many cases, particularly misdemeanor cases, the member may not be aware that the prosecuting authority is pursuing the case until the member receives a summons for the first court hearing.

- 1.1. The responsibility of BPD members to provide the relevant prosecuting authority with Potential Exculpatory Evidence, as well as Potential Impeachment Evidence regarding any anticipated witness for the government who is not a BPD member, exists regardless of whether the prosecutor makes a request for such evidence.
- 1.2. The responsibility of BPD members to disclose to the relevant prosecuting authority Potential Exculpatory Evidence, as well as Potential Impeachment Evidence regarding any anticipated witness for the government who is not a BPD member, continues for the duration of a case—from the filing of charges through trial and appeal, until the defendant has completed serving their sentence. This continuing duty requires providing new or updated information concerning any previously provided Potential Exculpatory or Impeachment Evidence as such new or updated information is generated or discovered.

- 1.3. This policy requires members to provide the prosecuting authority with Potential Exculpatory and Impeachment Evidence that is known to them. This policy does not impose on members an affirmative obligation to conduct additional investigation for Potential Exculpatory and Impeachment Evidence—e.g., running witness criminal histories—though sound investigative practice necessarily involves testing the integrity of evidence that incriminates a criminal suspect or defendant.
2. Members must complete Required Court Disclosure Form 430 (see Appendix A), and provide it to the prosecutor, in all criminal cases in which they are investigators or anticipated witnesses, without a specific request from the prosecutor.
 - 2.1. In order to properly complete Form 430, all BPD members have an affirmative duty to maintain knowledge of their own disciplinary/internal affairs histories, including open investigations, closed matters, and expunged matters.
 - 2.1.1. In order to fulfill this obligation, if not testifying in court on a regular basis, at least once per year members shall schedule an appointment with the Brady/Giglio Liaison or request their disciplinary history. This should be done every year on or near the member's EOD date. Members shall make a notation of the date/time/participants of each such meeting.
 - 2.1.2. In every case in which they are testifying, members must attempt to review their histories with prosecutors before testifying. Members shall make a notation of the date/time/participants of each such meeting.
 - 2.2. When completing Form 430, members shall identify their known disciplinary histories, including any allegations they are aware of, regardless of whether the complaint or allegation has been unfounded, exonerated, sustained, not sustained, or expunged.
 - 2.2.1. IAPro records for disciplinary matters that occurred prior to 2010 may not be complete. Accordingly, members must be sure to identify all older matters on the memorandum attached to Form 430.
 - 2.2.2. A member may or may not have received notice of the expungement of a matter. Historically, some members have followed a practice of requesting expungements for any eligible matter at regular intervals, which may have resulted in matters being expunged without notice to the member. If a member has followed this practice, they should disclose that fact to the prosecutor in the memorandum attached to Form 430.
 - 2.2.3. If the member is the subject of a Confidential Disciplinary Investigation, the member does not have a duty to find out about or disclose such investigation. Members must still disclose any current or prior investigation that they know about, regardless of outcome.

NOTE: The allowance in the Law Enforcement Officers' Bill of Rights for the expungement of disciplinary records under certain circumstances does not override the constitutional rights of criminal defendants or BPD's corresponding obligations under *Brady v. Maryland*, *Giglio v. United States*, and Maryland cases such as *Fields v. State*. Therefore, Potential Impeachment Evidence regarding BPD members that prosecutors are obligated to disclose to the defense

could include historical information from expunged disciplinary records. Additionally, under *Fields v. State*, allegations of misconduct implicating a member's credibility may qualify as Potential Impeachment Evidence regardless of whether those allegations are sustained in administrative proceedings. Therefore, administrative findings or determinations regarding allegations of member misconduct—including not sustained findings—do not affect whether those allegations may qualify as Potential Impeachment Evidence.

3. Members must document in writing in the appropriate report and/or case management system any Potential Exculpatory Evidence (e.g., a negative photo array or a misidentification) and any Potential Impeachment Evidence (e.g., the inconsistent statement of a witness) known to or discovered by them.
4. In order to properly document disclosure of Potential Exculpatory and Impeachment Evidence in any case in which a BPD member makes a disclosure, members must memorialize disclosure of Potential Exculpatory and Impeachment Evidence by uploading to evidence.com, in a "Restricted" file, all material disclosed to the prosecutor. The material required to be uploaded includes, but is not limited to, the Required Court Disclosure Form 430 and any accompanying memoranda, report, case management system entry and evidence provided to the prosecutor.
5. In fulfilling their disclosure obligations under this policy, BPD members shall not attempt to predict which of the potential witnesses the prosecutor may call, which evidence the prosecutor will use at trial or which evidence the defense will use in its investigation or at trial. **BPD members are required to provide to the prosecutor all Potential Exculpatory and Impeachment Evidence, without exception. It is the prosecutor's decision—not the decision of any BPD member—to determine which evidence to disclose to the defense.**

Public Integrity Bureau

1. In order to ensure that prosecutors are timely and efficiently furnished with Potential Impeachment Evidence regarding BPD members who are involved in criminal cases as investigators or anticipated witnesses for the government, BPD shall provide the OSA and USAO with secure, confidential access to its disciplinary case management software, IAPro. IAPro contains up-to-date information regarding the disciplinary histories of all BPD members. Providing the OSA and USAO with access to IAPro enables prosecutors to determine promptly whether there exists any Potential Impeachment Evidence regarding BPD members involved in their cases and to retrieve such evidence and provide it to the defense as required.

NOTE: Because IAPro was not implemented until 2010, and because of historical practices and different interpretations of what matters are expungable, there may be some disciplinary matters that are not captured in IAPro. Accordingly, BPD members and prosecutors cannot exclusively rely on IAPro for the purpose of this policy. To the extent BPD members or prosecutors have questions or concerns about the completeness of the Potential Impeachment Evidence being provided regarding BPD members, they should contact the Brady/Giglio Liaison.

NOTE: All activity in IAPro is logged and tracked, allowing the Department to view everyone who has logged on and into any files. Any misuse of IAPro access will be reported to the appropriate management or licensing authority. Misuse of IAPro includes the inspection of member disciplinary histories unrelated to investigation or prosecution of a specific criminal complaint.

2. Unless directed by Legal Affairs, a member's disciplinary history and/or files related to that history shall never be provided directly to a defense attorney. Regardless of how the request originates, all disclosures of member disciplinary histories should be made to the requesting prosecutor, who will then make any required disclosures to the defense.
3. Access to Confidential Disciplinary Investigations will be restricted in IAPro, except to those in the Department involved in covert investigations into officer misconduct. In order to ensure that prosecutors are timely notified of any such investigation that may be Potential Impeachment Evidence, the Deputy Commissioner of PIB will communicate with the head of the OSA Public Integrity Unit or their designee, and to the designee of the USAO on a weekly basis to inform them about which BPD members are involved in Confidential Disciplinary Investigations. The Deputy Commissioner of PIB will maintain an internal log of which Confidential Disciplinary Investigations were raised with the OSA or USAO during each weekly communication.
4. To assist prosecutors and members, PIB shall assign one or more members, civilian or sworn, to serve as the Brady/Giglio Liaison(s) for prosecutorial authorities.
5. Within five business days of receiving from any member a request for records relating the member's disciplinary history, including IAPro records, the Brady/Giglio Liaison shall fulfill the request.
6. The information in IAPro may not constitute all information in possession of the Department pertaining to a BPD member's disciplinary history. In addition to what is available on IAPro, prosecutors may need to consider whether to disclose to the defense additional information or documents that may exist at BPD only in hardcopy. In order to properly fulfill requests from prosecuting authorities:
 - 6.1. In the event that a prosecutor submits a request to the Brady/Giglio Liaison to inspect the disciplinary history of any member, the Brady/Giglio Liaison shall fulfill the request by sending it electronically to the prosecutor within five business days, unless good cause is shown for an extension (see 6.2. below) or the request indicates it is needed sooner or immediately.
 - 6.1.1. The Brady/Giglio Liaison shall send any records requested or, if a complete disciplinary history is requested, any and all disciplinary cases in which the member was accused of violating Departmental rules, whether closed or active, regardless of the case outcome. Thus, in fulfilling a prosecutor's request for the disciplinary history of the member, the Brady/Giglio Liaison shall ensure that the member's IAPro file contains all materials from every case in which the member was or is a subject of an investigation. In the event the member's IAPro file does not contain all materials from every case, the Brady/Giglio Liaison shall search the hardcopy of the member's disciplinary case files for all such materials. The Brady/Giglio Liaison shall then provide to the prosecutor all hardcopy materials that have not been uploaded to IAPro, as well as all materials that have been uploaded to IAPro and document the transmittal.
 - 6.1.2. IAPro may not contain materials from expunged matters. To the extent materials regarding an expunged matter are not captured in IAPro, the Brady/Giglio Liaison shall use their best efforts to identify information pertaining to the expunged matter, including searching hard copy files of past investigations. However, it

may be impossible for the Brady/Giglio Liaison to locate materials from that matter, because the materials may no longer exist or may be incapable of being located in hardcopy. To ensure reliability of reporting, members have the ongoing duty to report to the prosecution expunged matters to the best of their ability in Required Court Disclosure Form 430s.

- 6.1.3. PIB shall ensure that any request from the prosecutor contains the name and sequence number of the BPD member who is the subject of the request.
- 6.2. If the Brady/Giglio Liaison is unable to fulfill the request within five business days, they must show good cause for delay in a written extension request. No extension shall be for more than five business days.
 - 6.2.1. An extension request must be made in writing by the Brady/Giglio Liaison, and either granted or denied by the PIB Administrative Lieutenant.
 - 6.2.2. If an extension is granted, the Brady/Giglio Liaison must notify the prosecutor that delivery will be delayed, and they must document the notification.
- 6.3. PIB shall follow this procedure of disclosure to the prosecutor regardless of whether the request for a member's disciplinary history is initially generated by an inquiry from a defense lawyer or on the prosecutor's own initiative. The Brady/Giglio Liaison shall document all requests for disclosure, regardless of whether the request comes from the defense or prosecution; however, PIB shall never provide information to the defense unless explicitly directed by Legal Affairs to do so.

First-Line Supervisor

To ensure that BPD members are making timely disclosures of Potentially Exculpatory and Impeachment Evidence to prosecuting authorities, first-line supervisors shall regularly inspect their subordinates' evidence.com uploads in each case for Form 430s and attachments that document members' compliance with disclosure obligations.

TRAINING

All sworn BPD members shall receive training in the required disclosure of Potentially Exculpatory and Impeachment Evidence under this policy.

DISCIPLINE

1. BPD members who fail to comply with this policy, including by withholding Potentially Exculpatory or Impeachment Evidence, shall be subject to discipline, up to and including termination.
2. If any BPD member is impeached as a testifying witness with Potentially Exculpatory or Impeachment Evidence and knowingly provides untruthful testimony in response to such impeachment, the member shall be subject to discipline, up to and including termination.

APPENDIX

- A. Required Court Disclosure Form 430

COMMUNICATION OF POLICY

This policy is effective on the date listed herein. Each employee is responsible for complying with the contents of this policy.

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APPENDIX A

Form 430, Required Court Disclosure Form 430, Page 1



Form 430, Required Court Disclosure Form

Pursuant to our obligations under *Brady v. Maryland* 373 U.S. 83 (1963) and *Giglio v. U.S.* 405 U.S. 150 (1972), every member who has investigated or is expected to testify in any criminal case must complete the following questionnaire and provide it to the trial prosecutor, together with a copy of all case-related Potential Exculpatory and Impeachment Evidence, as defined in Policy 1809, *Exculpatory Evidence Disclosure Requirements*.

Portions of this document and any attached memorandum that reference disciplinary matters, and any attached disciplinary files, including IAPro summaries, are CONFIDENTIAL, as they are personnel records protected under Md. Code Ann., General Provisions, § 4-311.

As far as you are aware:

1. Regardless of outcome or whether the complaint was expunged, have you ever been accused of misconduct or investigated for a violation of a departmental rule or regulation with this Department or any other Department? **YES or NO or I AM NOT SURE**
2. Have there ever been any judicial or administrative findings concerning your lack of truthfulness and/or candor, possible bias or official misconduct, whether expunged or not (e.g., failure to disclose exculpatory information; false testimony; witness coaching; obstruction; manufacturing or altering evidence)? **YES or NO**
3. Have criminal charges, not including minor traffic violations, ever been brought against you in any jurisdiction, whether expunged or not? **YES or NO**
4. Are there any pending investigations of you by Internal Affairs or the Public Integrity Bureau? **YES or NO**
5. Are you being represented by the City Law Department or any attorney in any civil lawsuits? **YES or NO**
6. Are there any pending investigations of you by the State’s Attorney’s Office or U.S. Attorney’s Office? **YES or NO**
7. Are there any pending administrative investigations of you by any agency? **YES or NO**
8. In any pending investigation, have there been any allegations of misconduct that reflect upon your truthfulness or possible bias? **YES or NO**
9. Do you currently have or have you ever had any significant personal relationship with any of the victims, witnesses (including other police officers, social workers, or medical professionals), lawyers, judge, or defendant(s) in this case? A significant personal relationship is a relationship beyond being work colleagues or mere acquaintances that could potentially influence your testimony or create a possible bias toward or against any victim, witnesses, lawyer, judge, or defendant. **YES or NO**

If you answered "yes" to any of the above, please provide details in a separate memorandum and provide it to the trial prosecutor.

10. Are you aware of any Potential Exculpatory Evidence related to this matter? Potential Exculpatory Evidence is favorable to the defendant because it tends to disprove the guilt of the defendant or is likely to show the defendant should receive less severe punishment, including:
 - Information that tends to disprove the defendant’s guilt concerning any count in a criminal case; **YES or NO**
 - Information that tends to cast doubt on the admissibility of evidence that the government plans to offer and that could be subject to a motion to suppress or exclude—for instance, information that tends to undermine probable cause for an arrest or a search; **YES or NO**
 - The failure of any eyewitness to make a positive identification of a defendant or an eyewitness’s identification of another individual as the perpetrator; **YES or NO**

APPENDIX A

Form 430, Required Court Disclosure Form 430, Page 2

- Any statement made by any person that is inconsistent with the testimony of a potential witness for the government regarding the alleged criminal conduct of the defendant, whether or not the inconsistent statement was written or recorded; **YES or NO**
- Information that tends to diminish the degree of the defendant’s culpability, the severity of the offense charged, or the severity of the defendant’s sentence—for instance, information about a defendant’s intellectual or behavioral health disability or minor role in the offense compared to the roles of co-defendants; **YES or NO**
- Any other potentially exculpatory information. **YES or NO**

If any affirmative responses are indicated, please describe the evidence in a separate memorandum and provide the actual evidence or reports detailing the evidence to the trial prosecutor.

11. Are you aware of any Potential Impeachment Evidence related to this matter? Potential Impeachment Evidence is evidence that is favorable to the defendant because it casts doubt on the credibility of a witness for the government, including but not limited to a police officer, an eyewitness, or an informant. Examples of Potential Impeachment Evidence include, but are not limited to:

- Any criminal record or criminal case pending against any anticipated witness for the government; **YES or NO**
- Any formal or informal offer of leniency or favorable treatment made by the government to an anticipated witness in any existing or potential criminal case against that witness—for instance, an offer of immunity, non-prosecution, reduced charges, or a reduced sentence; **YES or NO**
- Any formal or informal request for leniency or favorable treatment made by an anticipated witness in any existing or potential criminal case against that witness—for instance, a request for immunity, non-prosecution, reduced charges, or a reduced sentence; **YES or NO**
- Any benefits, formal or informal, provided by the government to an anticipated witness; **YES or NO**
- Information that tends to cast doubt on the credibility or accuracy of an anticipated witness for the government; **YES or NO**
- An inconsistent statement made by any anticipated witness for the government, whether or not that statement was written or recorded; **YES or NO**
- Information regarding any mental or physical impairment of any anticipated witness for the government that tends to cast doubt on the witness’s ability to testify accurately and truthfully at trial; **YES or NO**
- A finding of misconduct by any court of competent jurisdiction, a BPD trial board or BPD’s Public Integrity Bureau that reflects on the truthfulness, integrity, motive or bias of any BPD member or any other individual who is anticipated to be called as a witness for the government; **YES or NO**
- Evidence of untruthfulness, dishonesty, bias, or misconduct of any BPD member who is anticipated to be called as a witness; **YES or NO**
- Evidence that an anticipated witness for the government, including a BPD member, has a racial, religious, or personal bias against a defendant individually or as a member of a group; Yes or No.
- Any other impeachment evidence; **YES or NO**

If any affirmative responses are indicated, please describe the evidence in a separate memorandum and provide the actual evidence or reports detailing the evidence to the trial prosecutor.

Name & Agency of Trial Prosecutor: _____ **Date Provided:** _____

I hereby certify the above information is true and accurate to the best of my knowledge, information and belief, and that the information identified above was provided to the trial prosecutor listed above.

Member’s Signature: _____

You must retain a copy of this form and all attached memoranda and Potential Exculpatory and Impeachment Evidence.