

Chapter 104	Disclosure of Exculpatory Information	
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104.1.1 PURPOSE AND DEFINITIONS

CALEA 42.1.6 (Exculpatory Evidence)

In the case of *Brady v. Maryland*, 373 US 83, 83 Sct 1194, 10 LEd2d 215 (1963), the US Supreme Court held that “suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” Additionally, the US Supreme Court held in *Strickler v. Greene*, 527 US 263, 119 Sct 1936, 144 LEd2d 286 (1999), that the State is required to provide such information under Brady even absent a request and it includes evidence known only to the police and not the prosecutor. This rule applies in all criminal cases; state or federal, misdemeanor or felony.

Exculpatory Material

Exculpatory material is evidence that may be favorable to the defendant, and which tends to show that the defendant did not commit the crime with which he is charged and any material which tends to impeach the prosecution’s evidence or testimony of prosecution witnesses, including the police employees involved in the investigation of the crime. Exculpatory evidence includes evidence to:

- Support a defendant’s alibi
- Show a person other than the defendant committed the crime
- Discredit a witness
- Chain of custody deficiencies
- Testing or forensics deficiencies, errors, and non-corroborating results

In *Giglio v. United States*, 405 US 150, 92 Sct 763, 31 LEd2d 106 (1972), the US Supreme Court held that when the reliability of any given witness (including law enforcement) may be determinative of guilt or innocence, the prosecution (State) must disclose this information to the defense prior to the trial.

Exculpatory material also includes any Police Department or City records containing evidence that a police employee involved in the investigation of the crime has:

- Been untruthful (including any witness, informant, sworn or unsworn personnel)
- Prejudice or bias
- Committed a crime

The record need not show beyond a reasonable doubt that the involved employee has been untruthful, has a prejudice or bias, or has committed a crime. Rather to be subject to disclosure under this section, the record must contain credible evidence of one or more of the above points.

104.1.2 RESPONSIBILITIES FOR DISCLOSURE TO THE PROSECUTOR**CALEA 42.1.6 (Exculpatory Evidence)**

For current/active investigations, any exculpatory information or impeachment evidence in the possession of the Police Department is to be provided to the prosecutor, immediately upon discovery or request. Exculpatory information or impeachment evidence obtained following a conviction, should be immediately investigated by an investigator not previously involved in the case. Upon completion of the investigation, the information should be documented in a supplemental report and provided to the District Attorney's office immediately upon completion. Claims or allegations of potential exculpatory information or impeachment evidence that arise post-conviction will be investigated and documented in a supplemental report. The findings and any corresponding evidence will be turned over to the District Attorney's office immediately.

Employee

Any employee witness who has knowledge of exculpatory information must provide that information to the prosecutor prior to offering any sworn testimony or statement in the case. Employees will prepare a copy or summary of exculpatory information they disclose and must furnish this information to the prosecutor. The employee shall also maintain a copy of a detailed list of items turned over to the prosecutor. The employee should obtain a dated, signed receipt from the prosecutor and complete a corresponding supplemental report.

All employees will attend training on the constitutional mandate to disclose exculpatory information and the effect failure to disclose exculpatory evidence has on the civil defense of qualified immunity.

Any employee who fails to properly disclose information or respond to requests from the prosecutor shall be subject to disciplinary action.

Department

The Police Department shall, on its initiative, send to the prosecutor the name of any officer whose personnel file contains exculpatory/impeaching information that is required to be provided to a criminal defendant as BRADY or GIGLIO material. Upon receipt of a request from the prosecutor, the Police Department will give the prosecutor all the exculpatory information in any case in which the prosecutor believes the named officer is a material witness. At the request of the Prosecutor or the Police Department, the Assistant City Attorney or paralegal, will conduct such inquiries as may be necessary to establish the existence of such records. All employees will promptly and completely respond to any requests for information made by the Assistant City Attorney.

The possible presence of exculpatory information in a particular file, standing alone, does not require an agency to alter its records retention schedule.

All information the Police Department provides to the prosecutor shall contain the following provisions:

- This information is confidential personnel information, the improper disclosure of which is prohibited by North Carolina General Statute 160A- 168.
- The Police Department has provided this information to the prosecutor in a manner and for a purpose allowed by law.
- Any dissemination of this material not authorized by law is a misdemeanor. Examination by any person not authorized by law to examine this material is a misdemeanor.

Assistant City Attorney

The Assistant City Attorney or paralegal will provide assistance, upon request, in conducting inquiries or reviews of materials that are BRADY or GIGLIO materials. Any material disclosed to the Assistant City Attorney or paralegal will be provided to the officer in charge of the investigation who will provide to the Prosecutor and obtain receipt for such materials from the Prosecutor.

104.1.3 REQUESTS FOR DISCLOSURE BY DEFENSE COUNSEL**CALEA 42.1.6 (Exculpatory Evidence)**

Any requests for reports, tests, photographs or any other evidence in an ongoing investigation or pending trial shall be forwarded to the Assistant City Attorney/paralegal for review and preparation of response. This includes but is not limited to verbal, written or a request made by subpoena and applies to any federal or state action involving felonies or misdemeanors.

Responses to requests made by subpoena have a limited time in which to respond or object. Contact the Assistant City Attorney immediately upon receipt of a subpoena for criminal investigations, reports, data, photographs, or any other evidence relating to a pending criminal investigation or complaint.

If a request for disclosure is made involving a closed case and where the trial has been completed, contact the Assistant City Attorney upon receipt. Statutory limitations exist on the disclosure of any criminal investigation including completed and closed cases.

104.1.4 REPORT REQUIREMENT RELATED TO GIGLIO MATERIAL (G.S. 17C-16)**CALEA 42.1.6 (Exculpatory Evidence)**

In accordance with NC G.S. 17C-16, any sworn personnel, who is notified in writing or open court by judicial official that they may not be called to testify at trial based on bias, interest, or lack of credibility, must report and provide a copy of that notification to the Criminal Justice Standards Division and to the Chief of Police within (30) thirty days of receiving the notification. Within (30) thirty days of the notification receipt from the GPD employee, the Chief of Police is to also make a written report to the Criminal Justice Standards Division. If the aforementioned notification is rescinded by the issuing judicial official, the Greenville Police Department personnel shall report the rescinding notification to the Criminal Justice Standards Division and copy the Office of Internal Affairs.