



**Chapter:** Investigations and Enforcement Operations  
**Subject:** 07-19 – Disclosure of Exculpatory Evidence  
**Effective:** October 29, 2024  
**Supersedes:** N/A  
**Distribution:** Department Members

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#### **07-19-1 POLICY**

The department and its members have an obligation to protect the Constitutional rights of all persons. This obligation includes protection of rights related to fairness in judicial proceedings, including access to potentially exculpatory information or evidence. Therefore, it is the policy of the department that members ensure, consistent with the requirements of this Order, that all exculpatory evidence or information is collected and/or documented in a department incident report and disclosed to the prosecuting official handling the case.

#### **07-19-2 DEFINITIONS**

- A. **Material:** Evidence or information is material if there is a reasonable probability that disclosing it will change the outcome of a criminal proceeding.
- B. **Reasonable Probability:** A probability sufficient to undermine confidence in the outcome of the trial or sentencing in a criminal case.
- C. **Exculpatory Evidence:** Any evidence or information that may reasonably be deemed to be favorable to a suspect; is material to the guilt, innocence, or punishment of the suspect or that may impact the credibility of any government witness, including a law enforcement officer. Exculpatory evidence or information includes the following:
  - (1) Information that could prove a suspect's innocence or cast doubt on a suspect's guilt concerning any charge.
  - (2) Information that could cast doubt on the admissibility, accuracy, or authenticity of evidence.
  - (3) Criminal history records of, or pending criminal charges against, a material witness.
  - (4) Inability of a victim or witness to make a positive identification of a suspect.
  - (5) Information that casts doubt on the credibility of a witness.
  - (6) Any inconsistent statement made orally or in writing by a victim or witness.

- (7) Statements made orally or in writing by any person that are inconsistent with any statement of a victim or witness regarding the allegations against a suspect.
- (8) Information regarding any mental or physical impairment of any witness that would cast doubt on their ability to testify accurately and truthfully during court proceedings.
- (9) Information that tends to diminish the degree of a suspect's culpability.
- (10) A finding by any court that reflects on a victim or witness's truthfulness, bias, or moral turpitude.
- (11) Information that a witness has a racial, religious, or personal bias against a suspect individually or as a member of a group.
- (12) Any statement or evidence indicating someone other than the suspect committed a crime being investigated.

### 07-19-3 REQUIRED DISCLOSURES

- A. Except as otherwise noted in this Order, members involved in the investigation of any criminal matter shall ensure that all known exculpatory evidence is documented in a department incident report and disclosed to the prosecutor at the time an arrest or search warrant is requested, or as soon as practical after a warrant is requested if exculpatory evidence or information is discovered after the warrant request. Members shall consult with the prosecutor as necessary to determine whether potential evidence or information constitutes exculpatory evidence.
- B. Member misconduct that may constitute exculpatory evidence is not required to be documented in a department incident report but shall be disclosed consistent with department written directives.
- C. Nothing in this Order should be interpreted as requiring members to actively seek or obtain exculpatory evidence or information not discovered during the normal course of an investigation.

DIRECTOR

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**Annual Review Responsibility:** Transparency and Accountability Division

**Accreditation Standards:** CALEA 42.1.6