

PROCEDURE MANUAL

14-05



MICHIGAN STATE POLICE

Disclosure of Potential Impeachment Information Related to Member Misconduct

Purpose: The purpose of this manual is to establish procedures for disclosing to prosecutors potential Brady information related to department member conduct.

In *Brady v. Maryland*, *Giglio v. United States*, and related cases, the United States Supreme Court clarified that prosecutors have certain obligations to disclose potentially exculpatory information. These obligations include requirements to disclose information that may be used to impeach government witnesses, including police officers. These obligations may be collectively referred to as Brady obligations, Brady material, or Brady information.

As part of the prosecution team, the department and its members have a Constitutional duty to ensure that prosecuting officials have available to them all information material to a case during criminal proceedings, including Brady information.

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Definitions:

None

Section 1: Disclosable Misconduct

1.1 Disclosable Misconduct

Prosecutors are responsible for determining whether potential Brady information is exculpatory and/or has impeachment value. Consistent with the requirements of this manual, members shall notify prosecutors of potential Brady information related to member conduct. For the purposes of this manual, member conduct is considered potential Brady information upon a final determination by the department that a member has engaged in any of the following misconduct:

- a. Commission of a crime, regardless of whether the member was formally charged or convicted
- b. Making intentional false statements, including any of the following:
 - i. Filing incident reports or department forms containing misstatements of facts
 - ii. Omitting material facts from a department report or form
 - iii. Committing perjury in any legal proceeding or having been found by a judge to have intentionally made false or misleading statements during a court proceeding
 - iv. Making material, work-related false statements to a supervisor
 - v. Being untruthful during an internal affairs investigation
- c. Mishandling of evidence, including:
 - i. Intentional failure to follow established forensic protocols
 - ii. Intentionally failing to secure or document evidence in a criminal case

- iii. Intentional destruction of a department record, earlier than permitted by established retention and disposal schedules, when such record is material to a criminal matter investigated by the department
- d. Expression of bias against any group or protected class as described in department written directives related to bias-free service and discriminatory harassment
- e. Intentional violation of laws governing search and seizure or laws of arrest
- f. Any other member conduct that could reasonably be expected to negatively affect the member's credibility or reliability as a witness

For the purposes of this manual "final determination" refers to determinations made during discipline conferences, appeals panels, or other hearings at which corrective action is determined. Decisions of arbitrators or other final step hearing officers do not negate disclosure responsibilities outlined in this manual. However, written opinions of arbitrators or hearing officers should be provided to prosecutors for consideration as part of their evaluation of potential Brady information.

Section 2: Procedures for Disclosure

2.1 Disclosure Prior to a Final Determination

- a. When a member has been charged with a crime, or suspended pending the completion of a criminal investigation, the member's worksite commander shall notify, as soon as practical, the elected prosecutor of the county or counties for which the member's worksite has enforcement responsibility. When the member is assigned to a worksite having statewide responsibility, notification shall be made to the executive director of the Prosecuting Attorney's Coordinating Council (PACC) by the affected member's division commander.
- b. The notification provided under this section shall include the name and rank or classification of the affected member(s) and the crime(s) charged or being investigated.

2.2 Disclosure Upon Final Determination

- a. Initial Disclosure
 - i. Upon a final determination that a member has engaged in disclosable misconduct, the commander of the Human Resources Division (HRD) or their designee shall notify by letter, sent by first class mail, the elected prosecutor of the county or counties for which the member's worksite has enforcement responsibility, along with the Michigan Attorney General.
 - ii. In cases in which a member's worksite has statewide responsibility (e.g., Forensic Science Division, Special Operations Division, district Special Investigation Sections), the commander of the HRD or their designee shall notify by letter, sent by first class mail, the executive director of the PACC with a request that they notify all prosecutor's offices.
 - iii. The letter required by this section shall include the following:
 - 1. Name, rank or civil service classification, and worksite of the affected member
 - 2. Summary of the disclosable misconduct

3. The date the final determination was made
 4. A description of procedures for the prosecutor to obtain additional details of the misconduct
- b. Follow-up Disclosures
- i. In the event a prosecutor requests information beyond the initial letter, the commander of the HRD or their designee may provide additional details by phone conversation or by providing the following documents, as needed:
 1. A copy of the charging document (e.g., statement of charges, written reprimand, written warning, counseling memorandum)
 2. Arbitrator's opinion or written determination by a hearing officer
 3. Settlement agreements
 4. Department administrative investigation reports
- c. Notice to Members
- i. Members found to have engaged in disclosable misconduct shall be notified by the commander of the HRD or their designee, in writing, when initial disclosures are made to prosecutors.
 - ii. The commander of the HRD or their designee shall provide additional notification to members, in writing as required by the Bullard-Plawecki Employee Right to Know Act, on or before the day follow-up disclosures are made.

2.3 Periodic Requests

- a. Prosecutors may periodically request that the department report potential Brady information concerning members assigned to their counties. Such requests shall be forwarded to and processed by the commander of the HRD or their designee.
- b. The commander of the HRD or their designee shall respond to periodic requests in the same manner as for initial disclosures (i.e., by letter) after having reviewed appropriate HRD files for information about members assigned to worksites with statewide responsibility or responsibility for the requesting prosecutor's county. At a minimum, the commander of the HRD or their designee shall review relevant files for members assigned to the following:
 - i. The post covering the requesting prosecutor's county
 - ii. Forensic Science Division
 - iii. Special Investigation Sections for each district
 - iv. Multijurisdictional task forces regularly working in the requesting prosecutor's county
 - v. Special Operations Division
 - vi. Intelligence Operations Division
- c. Periodic requests shall only be accepted by letter (sent by mail or email) on agency letterhead and signed by the elected prosecutor or other head of the prosecuting agency.

2.4 Individual Case Requests

- a. Prosecutors may request that the department report potential Brady information concerning members scheduled to testify in specific court proceedings. Such requests shall be forwarded and processed by the commander of the HRD or their designee in the same manner as disclosures after final determination as outlined in this manual. Responses to individual case requests shall include notice that a member has been charged with a crime, or suspended pending the completion of a criminal investigation, even when a final determination has not been made.
- b. Individual case requests shall only be accepted by letter (sent by mail or email) on agency letterhead and signed by the elected prosecutor or a prosecuting official handling the case.

2.5 Member Transfers

- a. When a member transfers to a worksite covering a county not covered by their previous worksite, the commander of the HRD or their designee shall notify the new county prosecutor in the same manner as a disclosure after final determination, along with the affected member and the member's new worksite commander.

2.6 Member Responsibilities

- a. Members who have been found responsible for disclosable misconduct as described in Section 1.1 of this manual shall disclose that information to the prosecutor prior to testifying in a criminal matter.
 - i. Members who have notified the elected county prosecutors within their assigned area, or who have received notice that a member of the HRD has notified the prosecutor, are not required to make additional notifications for individual court cases.
 - ii. Members who testify in a case handled by a prosecutor outside their assigned area, the Michigan Attorney General's Office, or a United States Attorney's office shall notify the attorney handling the case of the disclosable misconduct.
 - iii. Members shall not provide prosecutors with department records as part of a disclosure required by this section. If a prosecutor requests department records related to a disclosure required by this section, the member shall notify the commander of the HRD of the request.
- b. Members who transfer to a worksite with prosecutors they have not previously notified of disclosable misconduct shall notify the elected prosecutor as soon as practical.

2.7 Commander Responsibilities

- a. District, division, or worksite commanders who receive a request for potential Brady information from a prosecutor shall not respond to the request but shall immediately forward the request to the commander of the HRD. The commander shall notify the prosecutor's office that the request has been forwarded to the HRD.
- b. Worksite commanders who are notified by the HRD that a member of their command has been found to have committed disclosable misconduct shall assist the member with notifying prosecutors as required by this manual, and with scheduling meetings between the member and prosecutors as necessary.

- c. Commanders shall not provide prosecutors with department records related to disclosable misconduct. If a prosecutor requests department records related to a disclosure required by this section, the member shall notify the commander of the HRD of the request.

2.8 Headquarters Responsibilities

- a. The HRD has overall responsibility for providing prosecuting officials with Brady information as required by this manual. The commander of the HRD shall consult with the commander of the Transparency and Accountability Division prior to providing potential Brady information when any of the following circumstances exist:
 - i. When it is unclear whether a particular act of misconduct is reportable under Section 1.1 of this manual.
 - ii. When requests are made for information not reportable under Section 1.1 of this manual, or when requested information or documents are outside the scope of the requirements of this manual.
 - iii. When repeated requests for the same information are received.
- b. The commander of the HRD shall establish an electronic file in which any new record received or created as required by this manual (e.g., letters to prosecutors, requests for disclosures) shall be stored in accordance with the applicable retention and disposal schedule.
- c. Prior to releasing any record pursuant to this manual, the commander of the HRD or their designee shall provide the record to the commander of the Records Resource Section (RRS). The commander of the RRS or their designee shall review the record and redact any information prohibited from release by law or department written directives. The commander of the HRD shall ensure that only those records reviewed and redacted by the commander of the RRS or their designee are released.
- d. The commander of the Transparency and Accountability Division shall assist members of the HRD with interpreting and applying the requirements of this manual.

Review Responsibility:	Human Resources Division; Transparency and Accountability Division
Accreditation Standards:	CALEA 42.1.6