

PARKER POLICE DEPARTMENT POLICY AND PROCEDURE MANUAL

2.33	EFFECTIVE: October 1, 2017	James Tsurapas, Chief of Police
	REVISED: March 15, 2023	
SUBJECT: DISCLOSURE OF STATUTORILY REQUIRED INFORMATION AND/OR EXCULPATORY EVIDENCE TO PROSECUTORS AND/OR TO THE P.O.S.T. BOARD IN CERTAIN SETTINGS		
CALEA: 42.1.6		PAGE: 1 of 6

2.33.1 PURPOSE

This policy helps assure that the Department and its members are consistent with the requirements under state law, to establish uniform and consistent standards requiring law enforcement agencies to disclose specific information to district attorneys (and any other entity as required by law) that may impact the credibility of a peace officer in a criminal prosecution. With respect to the Department's requires disclosures, Colorado State law also requires uniform procedures for district attorneys to timely disclose such information to the defense under the Colorado Rules of Criminal Procedure and to increase transparency to allow members of the public to access information concerning peace officers who are subject to a credibility disclosure notification.

2.33.2 POLICY

As required by law, the Department and its members will disclose to prosecutors in criminal cases any evidence or material information that could reasonably be viewed as exculpatory in respect to the criminal defendant. Additionally, as required by Colorado statute, the Department will disclose such information that is required under statute to be disclosed to the District Attorney's Office (and any other prosecutor's office as required by law) provided such information is not prohibited from disclosure by superseding legal authority, and/or to the P.O.S.T. Board, also as required by Statute.

2.33.3 DISCUSSION

In *Brady v. Maryland* (1963) and *Giglio v. United States* (1972), the United States Supreme Court created the mandatory disclosure requirements stated in the Purpose statement of this policy. As a result, if law enforcement officials know of evidence or material information that would be favorable to the defense in a criminal prosecution, those officials must disclose the information to the prosecutor, whether or not the defense has requested the information. <42.1.6>

Additionally, Colorado Revised Statutes require a finding of an officer's failure to intervene to prevent the unlawful use of physical force by another commissioned officer, from an administrative law judge or internal investigation, to be presented to the District Attorney's office for a determination of whether charges should be filed against the officer. Absent superseding legal authority prohibiting the same, the Department shall provide such information as required by Statute.

2.33.4 DEFINITIONS <42.1.6>

Credibility Disclosure Notification – means the notification described in C.R.S. 16-2.5-502(2)(c) and described in this policy.

Brady Material – includes, but is not limited to, material information that would bear negatively on the credibility of a material government witness, including members of the Department who may testify in the case. Specifically, this includes any conclusive information establishing a record of untruthfulness, bias, and/or commission of crimes. It does not include mere allegations, rumors, or other inconclusive information. In the case of prior untruthfulness on the part of a department member, the duty of disclosure extends only to untruthfulness in police business or matters, or in any sworn testimony, not to one's entire life history. Disclosure of commission of crimes committed by commissioned Department members refers to crimes committed that would adversely affect commissioned officer's POST certification and status; regardless of when the crime was committed. In short, if the "government" knows that its material witness is untruthful, biased, and/or has committed a crime, as described here, with respect to the defendant, the evidence or material information supporting that belief must be disclosed by police to prosecutors, and by prosecutors to the defense.

Exculpatory Evidence - refers to evidence or material information that, if believed, would tend to be materially favorable to the defense - that is, could cause or contribute to reasonable doubt as to the defendant's guilt - and is consequently subject to the mandatory disclosure requirement stated above.

Knowing Misrepresentation - as provided by C.R.S. § 24-33.5-114, as amended, - includes a sustained violation of misrepresentation in the following:

- (a) In any testimony or affidavit relating to the arrest or prosecution of a person or to a civil case pertaining to the peace officer or to the peace officer's employment history; or
- (b) During the course of any internal investigation by a law enforcement agency, which investigation is related to the peace officer's alleged criminal conduct; official misconduct, as described in C.R.S. §§ 18-8-404 or 18-8-405; or use of excessive force, regardless of whether the alleged criminal conduct, official misconduct, or use of excessive force occurred while the peace officer was on duty, off duty, or acting pursuant to a service contract to which the peace officer's employing agency is a party.

In addition, C.R.S. § 24-33.5-114 requires disclosure of knowing misrepresentation by a peace officer in certain other settings.

Official Criminal Justice Record – means any handwritten or electronically produced report or documentation that a law enforcement agency requires a peace officer to complete as part of the peace officer's official duties, for the purpose of serving as the agency's official documentation of an incident, call for service, response to an alleged or suspected crime, a use of force, or during a custodial arrest or the direct supervision of a person who is in custody. Official criminal justice records also include any other reports or documents that an agency requires a peace officer to complete as part of the peace officer's official duties where the peace officer knows or should know the information included may be relevant to an ongoing or future criminal or administrative investigation.

P.O.S.T. Certification Suspension/Revocation – as provided by:

- (a) C.R.S. § 24-31-305(2.5), as amended, any untruthful statement, knowingly made by a member, concerning a material fact or any material fact, knowingly omitted by a member, on an official criminal justice record, while testifying under oath or during an internal affairs investigation or administrative investigation and disciplinary process;

(b) C.R.S. § 24-31-305(2.7), as amended, the P.O.S.T. Board may revoke the certification of a peace officer who fails to satisfactorily complete peace officer training required by the P.O.S.T. Board.

(c) C.R.S. § 24-31-904, if any peace officer is convicted of or pleads guilty or nolo contendere to a crime involving the unlawful use or threatened use of physical force, a crime involving the failure to intervene in the use of unlawful force, or is found civilly liable for the use of unlawful physical force, or is found civilly liable for the failure to intervene in the use of unlawful force, the P.O.S.T. Board shall permanently revoke the peace officer's certification.

(d) C.R.S. § 18-8-802(1.5) (f), as amended, when an administrative law judge hearing officer, or internal investigation finds that a peace officer failed to intervene . . . in an incident resulting in serious bodily injury or death to any person . . . the P.O.S.T. Board shall permanently decertify the peace officer upon receipt of notice of the peace officer's discipline.

Sustained Finding – means a final determination by the Department, following an administrative investigation and reviewing alleged misconduct by a peace officer.

Untruthfulness or Dishonesty - means conduct that involves a knowing misrepresentation, including but not limited to intentionally untruthful statements, knowing omissions of material information, and knowingly providing or withholding information with an intent to deceive or mislead.

2.33.5 PROCEDURE

A. Internal Identification of “Knowing Misrepresentation”, “Untruthfulness”, or “Dishonesty”

1. Identification of knowing misrepresentation, untruthfulness, or dishonesty will occur at the conclusion of an internal investigation that sustains a violation as described in the Definitions of this section. In the event that a member resigns prior to the conclusion of an internal investigation, the Chief of Police or designee may authorize the completion of the internal investigation, including the disclosure of a violation as described in the Definitions of this section.
2. Upon the identification of knowing misrepresentation, untruthfulness, or dishonesty, the OPS commander or designee shall make notification to the Chief of Police in writing.

B. Department's Obligation to Provide Commissioned officer Credibility Disclosure Notification

1. After all internal disciplinary appeal rights provided by the Department and the Town have been exhausted and upon verification of the findings, the Chief of Police or designee shall promptly direct the disclosure of the knowing misrepresentation, untruthfulness, or dishonesty to the District Attorney's Office, in writing within seven (7) days after a sustained finding where a commissioned officer:
 - a. Knowingly made an unlawful statement concerning a material fact;
 - b. Demonstrated a pattern of bias based on race, religion, ethnicity, gender, sexual orientation, age, disability, national origin, or any other protected class;
 - c. Tampered with or fabricated evidence;

- d. Been convicted of any crime involving dishonesty or has been charged with any felony or any crime involving dishonesty;
 - e. Violated any policy of the law enforcement agency regarding dishonesty.
- 2. Additionally, the Department shall notify the District Attorney's Office as soon as practicable when a commissioned officer is under a criminal or administrative investigation that, if sustained, would require disclosure outlined in Section (B)(1) of these procedures, and where it also meets both of the following circumstances:
 - a. The commissioned officer is a potential witness in a pending criminal prosecution in which a criminal defendant has been formally charged; and
 - b. The criminal or administrative investigation of the commissioned officer involves an allegation related to the commissioned officer's involvement in the defendant's pending criminal case.
- 3. For disclosures made pursuant to Section (B)(2) of these procedures, the Department shall promptly notify the District Attorney's Office once the Department has completed the administrative process for investigating and evaluating the allegations on the merits.

If the Department determines that the allegations are not sustained based on the merits, along with the prompt notification to the District Attorney's Office, the Department or the involved commissioned officer may request that the District Attorney's Office remove the credibility disclosure notification from its records.

- 4. Prior to making any credibility disclosure notification required under Sections (B)(1) or (B)(2) of these procedures, the Department must give the involved commissioned officer at least seven (7) calendar days' notice of the Department's intent to send a credibility disclosure notification to the District Attorney's Office.

If seven (7) days' notice is not practicable due to an impending trial date, the Department shall provide as much notice to the involved commissioned officer as is practicable under the circumstances.

C. Credibility Disclosure Notification Procedures

- 1. The Department shall include the following information in the credibility disclosure notification to be provided in writing to the District Attorney's Office:
 - a. The commissioned officer's name;
 - b. The name of the law enforcement agency that employs or employed the peace officer at the time of the sustained findings or at the time of the criminal or administrative investigation;

- c. The following statement: “This notification is to inform you that there is information in the Parker Police Department’s possession regarding [name of commissioned officer] that may affect the commissioned officer’s credibility in court.”
 - d. The applicable statutory provision identifying the basis for the credibility disclosure notification, including whether the notification is based on a sustained finding pursuant to Section (B)(1) or whether the notification relates to an open criminal or administrative investigation pursuant to Section (B)(2).
 2. The Department shall send the required credibility disclosure notification in writing, either electronically or by mail, to the contact(s) designated by the District Attorney’s Office.
- D. Internal Identification of “Exculpatory Evidence” <42.1.6>
 1. Any Department member who realizes the existence of exculpatory evidence or material information in any current criminal investigation, current prosecution, or post-conviction of any suspect, which suggests a suspect’s innocence, shall report that belief to a supervisor in the Office of Professional Standards (OPS) by the end of their current shift. If a member of OPS is not available, the member shall report their belief to a member of command staff.
 2. Any claim of omitted exculpatory evidence from a Department member or a member of the public will be investigated by the OPS as soon as practicable.
 3. The OPS will assign a tracking number, thoroughly investigate and document all details of the exculpatory evidence report, to include when the information was received and who received it, in the approved OPS investigation tracking software.
- E. If OPS determines that the evidence or information may in fact be “Exculpatory Evidence”, the OPS will cause the disclosure of that evidence or material information to the prosecutor in charge of the affected case as soon as practicable. This disclosure will at minimum be completed through the discovery process without delay. Internal Identification of “Brady Material”
 1. The OPS commander or designee shall make all reasonable efforts to become aware of any Department member whose record would be “Brady Material” if that member were to be a material witness in a criminal prosecution and shall promptly report any such circumstances to the Chief of Police.
 2. The Chief of Police will then, by conferral with prosecutors and the Town Attorney’s Office, determine whether any potential “Brady Material” regarding the Department member is so serious that the member is unable to render credible testimony in a court of law. If so, the Chief of Police may determine the member to be unfit for duty (because of inability to testify effectively in court) and may take appropriate administrative action, including termination.
 4. Prior to disclosure from the Department to the prosecutor in charge of the affected case, the member has a right to request a “Name-Clearing Hearing” as outlined below in the section entitled Name-Clearing Hearing.
- F. Internal Identification of “P.O.S.T. Certification Suspension/Revocation Material”
 1. Identification of P.O.S.T. Certification Suspension/Revocation Material will occur at the conclusion of an internal investigation that sustains a violation as described in the Definitions

of this section. In the event that a member resigns prior to the conclusion of an internal investigation, the Chief of Police or designee shall authorize the completion of the internal investigation, including the disclosure of a violation as described in the Definitions of this section.

2. Upon the identification of P.O.S.T. Certification Suspension/Revocation Material, the OPS commander or designee shall make notification to the Chief of Police in writing.
3. After all internal disciplinary appeal rights provided by the Department and the Town have been exhausted and upon verification of the findings, determined by a clear and convincing standard of evidence, the Chief of Police or designee shall direct the disclosure of any instances of P.O.S.T. Certification Suspension/Revocation Material to the Colorado P.O.S.T. Board as provided by C.R.S. § 24-31-305(2.5), as amended.

G. Name-Clearing Hearing

1. Both current and terminated members, whom have been identified as meeting the criteria outlined in the Brady Material section that may be publicly stigmatized by release to the public of negative information concerning the member, have the right to a public name-clearing hearing.
2. This hearing shall be requested by the member within in ten days of being informed of the Departments determination that the member is unable to render credible testimony in a court of law. Such a hearing, if requested, will be scheduled within ten (10) days of the request.
3. The member will be given the opportunity to present any information he or she may feel is necessary to clear their name. This information will be filed in OPS, in the member's internal affairs file, and shall be retained following the Town of Parker Records Retention Schedule.
4. The Chief of Police or designee will conduct the hearing. In addition, a witness, usually a person of supervisory rank, will be present to observe the proceedings. The Chief of Police or designee will select this witness.
5. This hearing is for the benefit of the member. It provides the member an opportunity to put into the official record any information that they feel may serve to clear their name. This hearing will not affect the member's employment status and is not an appeal to the termination or other discipline, if applicable.
6. A recording of the hearing will be made. This recording will be placed in the member's internal affairs file and retained pursuant to the Town of Parker Records Retention Schedule.
7. If the member presents new information or evidence not previously known to the Department, the investigation may be re-opened at the discretion of the Chief of Police.
8. Following the conclusion of the Name-Clearing Hearing, the Department will determine a verification of the findings and a final disposition.