

SALINA POLICE DEPARTMENT			Number
GENERAL ORDER			M1107-2
SUBJECT: INTERNAL AFFAIRS/EXCULPATORY AND IMPEACHMENT INFORMATION REGARDING DEPARTMENT EMPLOYEES			
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## **POLICY**

Pertinent United States Supreme Court decisions such as *Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. United States*, 405 U.S. 154 (1972); and subsequent cases require the prosecution to provide all 'favorable' and 'material' exculpatory and impeachment evidence of which a defendant is not aware, or which the defendant cannot access through reasonable diligence. The policy below has been drafted to ensure that sufficient disclosures are made to allow a prosecuting attorney to comply with *Brady* obligations while also preserving the confidentiality of Department affairs, to the extent permissible.

## **DEFINITIONS**

- D1 Crimes of Dishonesty - Crimes which cannot be committed without an act of dishonesty or a false statement.<sup>1</sup> Crimes requiring the deprivation of another's property also qualify as crimes of dishonesty.
- D2 Exculpatory Information - Information tending to directly establish a criminal defendant's innocence.
- D3 Impeachment Information - Information tending to undermine a person's credibility, the integrity of evidence associated with that person, or the admissibility of evidence associated with that person.

### **1. Content and Procedure of Disclosure to Prosecuting Attorney**

- 1.1. **Impeachment Information Regarding Department Employees:** Except where otherwise provided, when disclosure is triggered for impeachment information regarding a Department employee, the Chief of Police or his designee will notify the prosecuting attorney, in writing, of the existence of potential impeachment information with a general description of the information and where it is stored. Such disclosure is made with the understanding that the prosecuting attorney will notify the appropriate parties to trigger an *in camera* review of the Department employee's personnel file and other pertinent information in fulfillment of the prosecuting attorney's *Brady* obligations.
- 1.2. **All Other Information:** When disclosure is triggered regarding other information, such as exculpatory information or impeachment information not involving Department employees, that information shall be disclosed directly to the prosecuting attorney.
- 1.3. **Timing of Disclosures:** Once the obligation to disclose information to the prosecuting attorney is triggered, such disclosures shall be made as soon as reasonably possible to assist the prosecuting attorney with making informed decisions about how to prosecute the case.

**2. Exculpatory Information**

- 2.1. All information which could be exculpatory shall trigger disclosure to the prosecuting attorney.

**3. Impeachment Information Concerning Department Employees**

- 3.1. Impeachment information concerning Department employees that does not otherwise qualify as exculpatory shall be addressed as provided below.

3.1.1. Allegations and Impeachment Information Prior to the Resolution of Internal Investigations:

- a. Truthfulness, Bias, or Integrity of Evidence - Allegations or information about the truthfulness, integrity, or bias of a Department employee; the integrity of evidence generated or handled by a Department employee; the admissibility of evidence generated or handled by a Department employee; or other facts undermining a Department employee's account of the facts of a case shall trigger disclosure prior to the resolution of an internal investigation, as provided below:

3.1.2. Allegations of Information from the General Public

- a. Without Corroboration - Allegations or information from the general public shall not trigger disclosure prior to the resolution of an internal investigation when corroborating, independent indications of reliability do not exist in support of the allegations or information.
- b. With Corroboration - Allegations or information from the general public shall trigger disclosure prior to the resolution of an internal investigation when corroborating, independent indications of reliability exist in support of the allegations or information.

3.1.3. Allegations from Other Sources

- a. Allegations or information from a law enforcement agent or other credible source shall trigger disclosure prior to the resolution of an internal investigation.

3.1.4. Other Types of Allegations or Information

- a. General - Allegations or information that do not concern the truthfulness, integrity, or bias of a Department employee; the integrity of evidence generated or handled by a Department employee; the admissibility of evidence generated or handled by a Department employee; or other facts undermining a Department employee's account of the facts of a case shall not trigger disclosure.
- b. Criminal Charges Exception - If, however, allegations or information appear to be credible and the consequences that may result from such allegation may result in criminal charges, such allegations or information shall trigger disclosure prior to the resolution of the investigation relating to such allegations or information.

**4. Findings and Concluded Investigations****4.1. 'Sustained Findings'**

4.1.1. 'Sustained' findings are made when a Department investigation clearly proves the allegation against a Department employee.

- a. Disclosure - 'Sustained' findings that reflect upon the truthfulness, integrity, or bias of a Department employee, or the integrity of evidence generated or handled by a Department employee, shall trigger disclosure.

**4.2. 'Unfounded' or 'Exonerated' Findings**

4.2.1. 'Unfounded' findings are made when a Department investigation clearly proves a) that the alleged incident giving rise to the investigation did not occur, or b) that the Department employee against whom the allegations were made was not involved in the alleged incident.

4.2.2. 'Exonerated' findings are made when a Department investigation clearly proves a) that the alleged incident giving rise to the investigation occurred, but b) that the conduct of the Department employee during the alleged incident was justified, lawful, and proper.

- a. Disclosure - 'Exonerated' or 'Unfounded' findings may be directly disclosed to the prosecuting attorney if the allegations giving rise to the investigation have already been disclosed to a prosecuting attorney.

**4.3. 'Not Sustained' Findings**

4.3.1. 'Not sustained' findings are made when a Department investigation does not support a 'sustained,' 'exonerated' or 'unfounded' finding due to a lack of sufficiently clear information in favor or against the allegations or information leading to the investigation.

- a. 'Not sustained' findings shall not trigger disclosure, unless:
  - 1. The allegations leading to the 'not sustained' finding reflect upon the truthfulness, integrity, or bias of a Department employee, or the integrity of evidence generated or handled by a Department employee; and
  - 2. Corroborating, independent indications of reliability exist which support the allegations, or a law enforcement agent or other credible source made the allegations leading to the investigation.

**4.4. 'Sustained Against Policy' Findings**

4.4.1. 'Sustained against policy' findings are made when Department policies and procedures are found to be flawed.

- a. Disclosure - 'Sustained against policy' findings shall trigger disclosure according to the policies above that would have been applicable had the policy not been flawed.

**5. Adult Criminal Matters and Juvenile Matters****5.1. Crimes of Dishonesty**

- 5.1.1. All adult criminal charges, adult criminal convictions, juvenile charges, and juvenile adjudications against a Department employee for a crime of dishonesty will trigger disclosure.

**5.2. Other Crimes**

- 5.2.1. Juvenile Charges and Adjudications: Juvenile charges and adjudications against a Department employee other than for a crime of dishonesty shall not trigger disclosure.

**5.2.2 Adult Criminal Charges and Convictions**

- a. Before Employment - Adult criminal charges and convictions other than for a crime of dishonesty against a Department employee that were pending or entered prior to the time the person was employed by the Department shall not trigger disclosure.
- b. During Employment - Adult criminal charges and convictions against a Department employee that are pending or entered while a person is a Department employee shall trigger disclosure.

**5.3. Federal Cases**

- 5.3.1. Disclosure obligations relating to a Department employee's history of juvenile or adult criminal matters are different in federal cases due to a substantially different rule for admissibility of such information into evidence. The Chief of Police or his designee shall consult with the prosecuting attorney on a federal matter regarding the disclosures required to be made to comply with *Brady* obligations on those cases.

**6. Impeachment Information Concerning Other Witnesses**

- 6.1. Impeachment information known to Department employees and not otherwise addressed above regarding any witness supporting the prosecuting attorney's case shall trigger disclosure. However, disclosure obligations do not extend to providing witness criminal history information, as prosecuting attorneys generally have access to that information.

**7. Retention Policy**

- 7.1. Exculpatory Information - Exculpatory information triggering disclosure will be retained in accordance with the Department's otherwise applicable retention procedures.
- 7.2. Impeachment Information - Impeachment information triggering disclosure will be retained indefinitely.

8. **Unique Circumstances**

- 8.1. Regardless of the policies established above, there may be unique facts or case-specific circumstances that require a disclosure or that require the protection of confidential information when such actions are not generally permitted or addressed. In those circumstances, the Chief of Police will work with the prosecuting attorney to disclose what is necessary while protecting the confidential interests of the Department and its employees to the extent possible.

BY ORDER OF

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CHIEF OF POLICE

## ATTACHMENT A

### Bibliography

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<sup>1</sup> Such crimes include but are not limited to the following offenses (and attempts under K.S.A. 21-5301), as provided by the 2016 Kansas Statutes Annotated:

- Adding dockage to foreign material to grain: K.S.A. 21-5837;
- Arson or aggravated arson with intent to defraud: K.S.A. 21-5812(a)(1)(B), (a)(1)(D), or (b);
- Bribery: K.S.A. 21-6001;
- Burglary or aggravated burglary with the intent to commit theft or a felony involving dishonesty or false statement: K.S.A. 21-5807;
- Counterfeiting: K.S.A. 21-5825;
- Criminal damage to property with the intent to defraud: K.S.A. 21-5813(a)(2);
- Criminal use of a financial card: K.S.A. 21-5828;
- Deceptive commercial practice: K.S.A. 21-6503;
- Destroying a written instrument: K.S.A. 21-5826;
- False identification documents, dealing in: K.S.A. 21-5918;
- False impersonation and aggravated false impersonation: K.S.A. 21-5917;
- False information, making of: K.S.A. 21-5824;
- Forgery: K.S.A. 21-5823;
- Identity theft and fraud: K.S.A. 21-6107;
- Impairing a security interest: K.S.A. 21-5830;
- Interference with the judicial process: K.S.A. 21-5905;
- Intimidation of a witness or victim or aggravated intimidation of a witness or victim: K.S.A. 21-5909;
- Perjury: K.S.A. 21-5903;
- Rape through knowing misrepresentation: K.S.A. 21-5503;
- Robbery or aggravated robbery: K.S.A. 21-5420;
- Simulating legal process: K.S.A. 21-5907;
- Tampering with a landmark: K.S.A. 21-5816;
- Theft: K.S.A. 21-5801;
- Theft of property lost, mislaid, or delivered by mistake: K.S.A. 21-5802;
- Unauthorized delivery of stored goods: K.S.A. 21-5832;
- Unlawful acts concerning computers by way of unauthorized access or exceeding access authorization for the purpose of modifying, altering, copying or taking possession of a computer, computer system or any other property: K.S.A. 21-5839(a)(1);
- Unlawful acts concerning computers for the purpose of executing a scheme with the intent to defraud: K.S.A. 21-5839(a)(2);
- Unlawful acts concerning odometers: K.S.A. 21-5835;
- Unlawful acts involving theft detection shielding devices: K.S.A. 21-5805;
- Unlawful manufacture or disposal of false tokens: K.S.A. 21-5829;
- Unlawful use of recordings: K.S.A. 21-5806;
- Warehouse receipt fraud: K.S.A. 21-5831;
- Worthless check: K.S.A. 21-5821; and
- Worthless check, causing an unlawful prosecution for giving: K.S.A. 21-5822.