

WOONSOCKET POLICE DEPARTMENT

THOMAS F. OATES, III
CHIEF OF POLICE



| TYPE OF ORDER | NUMBER/SERIES | ISSUE DATE | EFFECTIVE DATE |
|------------------------------|---------------|-------------------------|----------------|
| General Order | 130.04 | 3/14/2024 | 3/24/2024 |
| SUBJECT | | PREVIOUSLY ISSUED DATES | |
| Police Witness Disclosure | | 7/31/2014, 6/15/2020 | |
| ACCREDITATION | | RE-EVALUATION DATE | |
| RIPAC: 5.11 CALEA: 42.1.6 | | 12/7/2023 | |
| INDEX | | DISTRIBUTION | |
| Internal Department Controls | | All Personnel | |

POLICE WITNESS DISCLOSURE

I. PURPOSE

The purpose of this policy is to inform department personnel of our duty to disclose exculpatory evidence and the procedures to be followed. The policy emphasizes the obligation of individual officers and civilian police employees to inform prosecutors of potential impeachment information before providing a sworn statement or testimony in any criminal investigation or case. The United States Supreme Court, in its “Giglio Ruling”, held that the failure to disclose evidence regarding the credibility of witnesses is a violation of due process and grounds for a new trial.

II. POLICY

It is the policy of the Woonsocket Police Department to follow disclosure requirements consistent with the law, including identifying and providing to the prosecution, upon their request, any exculpatory material that would have a reasonable probability of altering the results in a trial, any material that could reasonably mitigate the sentencing of a defendant, and any material relevant to the credibility of government witnesses, including, but not limited to, law enforcement officers.

III. DEFINITIONS

RI 5.11(a) *Brady v. Maryland:* This U.S. Supreme Court Ruling held that the government must disclose any potentially exculpatory evidence to the defendant in a criminal proceeding. Failure to do so is a violation of the Defendant’s Due Process Rights under the Fifth and

Fourteenth Amendments and may result in an overturned conviction, mistrial, or otherwise new trial.

Exculpatory Evidence: Any evidence which may be viewed as favorable to the accused, or that tends to excuse, justify, or absolve the defendant of fault or guilt in a criminal proceeding.

Duty to Disclose: The Constitutional requirement of the government to provide all evidence to the defendant that is material to the guilt, innocence, or punishment during a criminal proceeding.

Giglio v. United States: The U.S. Supreme Court Ruling held that irrespective of good or bad faith, failure to disclose evidence regarding the credibility of a witness is a violation of the defendant's due process rights.

Material Evidence: Evidence that is determined to be relevant and tends to make a fact more or less probable. Evidence questioning the credibility of a witness will always be considered material because if a witness's testimony cannot be believed, the development of facts will be significantly altered.

Impeachment Information: While the exact parameters of potential impeachment information are not easily determined, it is generally defined as impeaching information that is material to the defense, including but not limited to:

- Specific instances of the witness conduct that may be used to attack the witnesses' credibility or character for truthfulness.
- Prior inconsistent statements.
- Information that may be used to suggest that the witness is biased.
- Disciplinary action that was sustained regarding truthfulness or possible bias.
- Active internal affairs investigations into allegations of untruthfulness on the part of the witness officer or civilian police employee.

IV. PROCEDURES

A. Impeachment Information

1. Because of the diversity of circumstances surrounding any given case, the determination of what affects an employee's credibility in a specific case can be difficult to determine. The following are examples of information that is potential exculpatory material and must be disclosed.
 - a. Crimes committed - Not every crime affects credibility. However, crimes committed by an employee that are the subject of an internal investigation that involves disciplinary action up to and including termination of employment, or even prosecution, are generally included as material.

Reference must be made to the most recent legal findings, with emphasis on the cases and evidentiary rules of the agency's jurisdiction, to determine what is considered to affect credibility in that jurisdiction.

- b. Incidents involving untruthfulness - There is a broad range of conduct that may be considered material. Lying under oath, whether subject to a perjury conviction or not, and filing a false report are examples of material conduct. Lying even about small matters raises questions about the employee's credibility and may be used by the defense in certain circumstances. The issue of covering up or failing to report serious violations by others within the agency can also reflect on an employee's integrity.
 - c. Incidents involving dishonesty - Acts not considered sufficiently significant to be treated as crimes but that bring an employee's honesty and/or integrity into question may be within the disclosure rule. However, there is a significant variety of acts, large and small, that may be regarded as dishonest. Further, the dividing line between "crimes," "untruthfulness," and "dishonesty" may be indistinct, creating a further problem for an agency trying to determine what does or does not fall within the disclosure requirement. Whatever an agency determines to be relevant may be less important than an employee's understanding that truthfulness and honesty in all matters are essential if they are to avoid the potential career problems that can result from disclosures.
 - d. Use of excessive force and other employee misconduct - Instances of what is broadly termed "employee misconduct" not falling directly into one of the previous categories may require disclosure. For example, any history of use of excessive force by an employee may be disclosable.
 - e. Matters indicating bias - Matters revealing bias on the part of a witness are almost universally regarded as proper subjects for impeachment. Where the bias is related to some aspect of the current case, disclosure may be necessary, but bias reflected in past deeds can also have serious consequences.
 - f. Statements made by a defendant or defense witness that may affect employee credibility - Disclosable information includes statements or actions by the employee, but also statements made by a defendant or other person that, if true, could affect employee credibility. This may include statements made by a defendant or defense witness that:
 - 1) Contradict statements made by a law enforcement officer or other material prosecution witness;
 - 2) Indicate that a material law enforcement employee or witness used excessive force; or
 - 3) Allege that a law enforcement employee made statements exhibiting racial, religious, or other bias. Such statements, although not made by an agency employee, nevertheless may be material to employee credibility and must be considered when the agency is determining what is to be disclosed.
2. Whether a matter is disclosable may also depend upon the degree to which the matter has been substantiated. Substantiated allegations falling into any of the

aforementioned categories are almost certainly subject to disclosure. Allegations that cannot be substantiated, are not credible, or have resulted in an individual's exoneration are generally not considered to be potential impeachment information. However, even these may be subject to the disclosure requirement if they go to the truthfulness of the employee.

3. Unsubstantiated rumors about an employee and matters not involving law enforcement business might not fall under the disclosure requirement. However, it is often difficult to state with certainty that any matter is exempt from disclosure.
4. One of the most troubling questions about the disclosure rules is the issue of whether matters that are unrelated to the employee's official duties are subject to disclosure. Incidents of untruthfulness related to law enforcement duties may be within disclosure requirements, but incidents of untruthfulness that arise solely in the context of an employee's private life might not be subject to the same requirements. (For example, if an employee is having an extramarital affair and lies about it, must this be disclosed?)
5. Additional examples of materials that are potentially exculpatory material and may require disclosing include but are not limited to the following:
 - a. Information that would directly negate the defendant's guilt concerning any count in an indictment.
 - b. Information that would cast doubt on the admissibility of evidence that the government plans to offer could be subject to a motion to suppress or exclude.
 - c. Any criminal record or criminal case pending against any witness whom the prosecution anticipates calling.
 - d. The failure of any proposed witness to make a positive identification of a defendant.
 - e. Information that casts doubt on the credibility or accuracy of a witness or evidence.
 - f. An inconsistent statement made orally or in writing by any proposed witness.
 - g. Statements made orally or in writing by any person that are inconsistent with any statement of a proposed government witness regarding the alleged criminal conduct of the defendant.
 - h. Information regarding any mental or physical impairment of any governmental witness that would cast doubt on their ability to testify accurately and truthfully at trial.
 - i. Information that tends to diminish the degree of the defendant's culpability or the defendant's offense level under state or federal sentencing guidelines.
 - j. An official finding of misconduct that reflects on the witness's truthfulness, bias, or moral turpitude.
 - k. Evidence that a proposed witness has a personal bias against a protected class.
6. While the exact parameters of potential impeachment information are not easily determined, it is generally defined as impeaching information, which is material to the defense, including but not limited to:

- a. Specific instances of the witness's conduct that may be used to attack the witness's credibility or character for truthfulness;
- b. Prior inconsistent statements;
- c. Information that may be used to suggest that the witness is biased;
- d. Disciplinary action, which was sustained regarding truthfulness or possible bias; and
- e. Active Office of Professional Standards (OPS) investigations into allegations of untruthfulness on the part of the witness officer or civilian police employee.

B. REQUEST FOR IMPEACHMENT MATERIAL

RI 5.11(b)

1. The request for impeachment material shall be made directly to the OPS.
2. Upon receipt of a request for potential impeachment material, the OPS shall review the identified officer's personnel and/or disciplinary file and within twenty-one (21) calendar days shall advise the requesting prosecutor and the Chief of Police of:
 - a. Any finding of misconduct that reflects upon the truthfulness or possible bias of the officer or employee;
 - b. Any past or pending criminal charge against the officer or employee; or
 - c. Any credible allegation of misconduct that reflects upon truthfulness that is the subject of a pending investigation.
3. When there is a question of whether information may be used for impeachment purposes, the OPS shall provide the information. The OPS will forward the information to the requesting prosecutor along with a notice that the allegation was unsubstantiated, not credible, or resulted in exoneration.

C. RECORDS MAINTENANCE

The Office of the Rhode Island Attorney General and the Office of the United States Attorney for the District of Rhode Island shall protect the confidentiality of the impeachment material by limiting access to the material on a "need to know" basis. All information and documentation received from the Woonsocket Police Department shall be locked in a secure area and handled only following the prescribed protocols of the agency in possession of the impeachment material.

D. CONTINUING DUTY TO DISCLOSURE

1. Although the request for impeachment material will ordinarily be made at or near the time of trial, once a request for potential impeachment material has been made, the OPS shall advise the requesting prosecutor of any additional impeachment information that arises after the initial request and during the time frame of the specific criminal case or investigation.
 - a. The duty for disclosure ceases upon the conclusion of the specific case or investigation.

E. EMPLOYEE OBLIGATION

Officer adherence to Departmental policy and rules in all matters is an imperative of their office. Breaches of such rules and policies related specifically to honesty and veracity may have a direct bearing on their ability to continue serving as law enforcement officers.

1. Whether or not requested by the prosecution, before testifying each officer or civilian employee shall advise the prosecutor of:
 - a. Any potential impeachment information, including but not limited to, any disciplinary action which was sustained regarding truthfulness or possible bias.
 - b. Any criminal charges pending or criminal convictions.

F. TRAINING

RI 5.11(c)

1. The department will provide initial training to all employees regarding exculpatory material disclosure requirements and their potential impact on employment. The training will provide employees with information regarding the impact that violations of policies involving integrity, honesty, credibility, veracity, and related matters. They should be familiar with which items are subject to disclosure requirements and the requirements regarding notification by individual employees.
2. Supervisory personnel should be provided with training to ensure they have a clear understanding of their role in identifying potential exculpatory material connected with any criminal proceedings for which they have oversight.
3. All employees should be informed of the potential disciplinary actions including termination for violations that may be subject to disclosure requirements.

G. RECORDS RETENTION

1. Consistent with the current collective bargaining agreements with department personnel the removal of disciplinary actions from personnel files, under certain circumstances and with approval by the Chief of Police, is permitted. Although the material may be removed from the personnel file, it will be maintained in the Internal Affairs file as it may require disclosure as exculpatory material.
2. The Rhode Island State Records Retention Schedule specific to law enforcement allows for the destruction of prescribed records related to Internal Affairs Investigations and Use of Force Investigations with the approval of the Secretary of State's Office. This will not exempt the department from disclosure of exculpatory material. Although a request for the destruction of these records is allowed, this agency will retain these records as they remain subject to disclosure as exculpatory material.

Per order,

Thomas F. Oates, III

Chief of Police

Written directives published within PowerDMS are in full force and effect on the referenced dates and have been approved by the Chief of Police