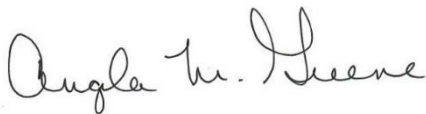
	LEXINGTON POLICE DEPARTMENT POLICY AND PROCEDURE GENERAL ORDER	Distribution	General Order Number
		ALL PERSONNEL	4.10
		Original Issue Date	Reissue/Effective Date
		01/06/2024	01/06/2024
Order Title: BRADY / GIGLIO DISCLOSURE POLICY	Accreditation Standard:	Section	
		4	
		Rescinds:	
Section Title DISCIPLINARY PROCESS		 Angela M. Greene, Chief of Police	

This General Order is for departmental use only and does not apply in any criminal or civil proceeding. This General Order should not be construed as creation of a higher legal standard of safety or care in an evidentiary sense with respect to third party claims. Violations of this General Order will only form the basis for departmental administrative sanctions. Violations of law will form the basis for civil and criminal sanctions in a recognized judicial setting.

I. PURPOSE

The purpose of this General Order is to provide Lexington Police Department personnel with clear procedures and protocols for compliance with the reporting and testimonial requirements mandated under U.S. Supreme Court decisions including *Brady v. Maryland* 373 U.S. 83 (1963) and *Giglio v. U.S.* 405 U.S. 150 (1972).

II. POLICY

The members of the Lexington Police Department have a duty and a legal obligation to disclose and identify both exculpatory and impeachable information associated with the prosecution of a criminal case. To that end information favorable to the defense must be provided.

III. DEFINITIONS

Material Evidence: Exculpatory evidence is “material” if there is a reasonable probability that disclosing it will change the outcome of a criminal proceeding. A “reasonable probability” is a probability sufficient to undermine confidence in the outcome of the trial or sentencing of a criminal case.

Exculpatory Evidence/Brady Material: *Brady* violations are, by definition, violations of an individual’s 14th Amendment right to due process of law. Exculpatory evidence is evidence that is favorable to the accused; is material to the guilt, innocence, or punishment of the accused; and that may impact the credibility of a government witness, including a police

officer. Impeachment material is included in the *Brady* disclosure requirements.

Duty to Disclose: The affirmative constitutional duty of the police to notify the prosecutor of any *Brady* material.

IV. PROCEDURES

A. Chief of Police Responsibilities

The Chief of Police has an affirmative duty to report to the Commonwealth's Attorney and or the United State's Attorney's office, dependant on who is prosecuting the criminal case, any of the following information:

1. Officer(s) whose history regarding integrity, honesty, credibility, veracity, and related matters has negative bearing on their professional reputation which may be subject to *Brady* disclosure requirements.
2. Individual officer(s) who may have informed their superior officer of any elements of their employment as a police officer, information contained in investigative reports, or evidence connected with a criminal indictment or trial that they reasonably believe may be subject to *Brady* disclosure.
3. If supervisory officer(s) acting with due diligence have identified any potential *Brady* material connected with any criminal proceeding for which they have oversight to believe the material should be brought to the attention of the prosecutor in a timely manner through established reporting procedures.
4. Employee personnel files maybe disclosable to the prosecutor for review if consistant with a *Brady* issue.

B. Examples of *Brady*/*Giglio* material:

1. The following list is illustrative in nature and should not be considered a complete list but serve only as examples of possible situtaions subject to *Brady* / *Giglio* disclosure requirements.
 - a. Information that would directly negate the defendant's guilt concerning any count in an indictment or prosecution.
 - b. Information that would cast doubt on the admissibility of evidence that the government plans to offer that 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. A finding of misconduct by the Department that reflects on the witness's truthfulness, bias, or moral turpitude. This includes employees under suspension.
- k. Evidence that a proposed witness has a racial, religious, or personal bias against a defendant individually or as a member of a group.
- l. An officer's excessive use of force, untruthfulness, dishonesty, bias, or misconduct in conjunction with his or her service as a law enforcement officer.

C. Commonwealth's Attorney Review

- 1. The Commonwealth's Attorney's office will review material evidence and exculpatory evidence / Brady material from various sources as follows:
 - a. Employer disciplinary finding of dishonesty.
 - b. Qualifying criminal conviction of the witness.
 - c. Conduct observed by the Commonwealth's Attorney's Office.
 - d. Finding of dishonesty or false statement by a court.
 - e. Other means or sources.

D. Disciplinary Action

1. Officers who are knowingly and intentionally untruthful, are otherwise dishonest in the course of their employment, or use excessive force are subject to impeachment of testimony at trial. Such officers are also subject to disciplinary action up to and including termination of employment.

E. Training

1. All sworn officers of this department shall receive training in *Brady / Giglio* disclosure requirements.