
Brady Material Disclosure

612.1 PURPOSE AND SCOPE

This policy establishes guidelines for identifying and releasing potentially exculpatory or impeachment information ("PID Material," sometimes referred to elsewhere as "Brady material") to the Vancouver City Prosecutor and the Clark County Prosecuting Attorney ("Prosecutor").

612.1.1 DEFINITIONS

Definitions related to this policy include:

Brady material – from *Brady v. Maryland*, 373 U.S. 83 (1963), in which the Supreme Court ruled that suppression by the prosecution of evidence favorable to a defendant who has requested it violates due process. Evidence known to the prosecution that is favorable to a defendant's case and material to the issue of guilt or to punishment and that the prosecution is obligated to disclose to the defense.

Potential Impeachment Disclosure (PID) Material - Information known or possessed by the Vancouver Police Department that is both favorable and material to the accused, either because it is exculpatory, or it is impeaching.

Exculpatory - Information that clears or tends to clear someone from alleged fault or guilt.

Impeaching - To raise doubts about; discredit or disparage: impeach a witness's credibility; impeach someone's character.

612.2 POLICY

The Vancouver Police Department (VPD) will conduct fair and impartial investigations and will provide the prosecution with both incriminating and exculpatory evidence, to include information that may adversely affect the credibility of a witness for the State. In addition to reporting all evidence of guilt, VPD will assist the prosecution by complying with its obligation to disclose information that is both favorable and material to the accused. The Department will identify and disclose PID Material to the prosecution as provided in this policy.

612.3 DISCLOSURE OF INVESTIGATIVE INFORMATION

Officers must include in their investigative reports adequate investigative information and reference to all material evidence and facts that are reasonably believed to be either incriminating or exculpatory to any individual in the case. If an officer learns of potentially incriminating or exculpatory information any time after submission of a case, the officer or the handling investigator must prepare and submit a supplemental report documenting such information as soon as practicable. Supplemental reports shall be promptly processed and transmitted to the prosecutor's office.

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If information is believed to be privileged or confidential (e.g., informant or attorney-client information, attorney work product), the officer should discuss the matter with a supervisor and/or prosecutor to determine the appropriate manner in which to proceed.

Evidence or facts are considered material if there is a reasonable probability that they would affect the outcome of a criminal proceeding or trial. Determining whether evidence or facts are material often requires legal or even judicial review. If an officer is unsure whether evidence or facts are material, the officer should address the issue with a supervisor.

Supervisors who are uncertain about whether evidence or facts are material should address the issue in a written memo to an appropriate prosecutor. A copy of the memo should be retained in the Department case file.

612.4 INVESTIGATING BRADY AND PID ISSUES

If the Department receives information from any source that a member may have engaged in any conduct listed in section 612.6, the information shall be investigated and processed in accordance with the Department Policy 1004.

612.5 BRADY AND PID PROCESS

The Chief of Police shall select a member of the Department to coordinate requests for Brady or PID information. This person shall be directly responsible to the Administration Division Commander or the authorized designee. RCW 10.93.180, the protocol for potential impeachment disclosures, requires the local county prosecuting attorney to develop guidance for:

- (a) The types of conduct that should be recognized as potentially exculpatory or as creating potential impeachment material.
- (b) How information about an officer or officer conduct should be shared and maintained.
- (c) What circumstances an officer's information or name may be removed from any list of potential impeachment disclosures.

612.5.1 BRADY/PID COORDINATOR RESPONSIBILITIES

The Department designated coordinator of Brady/PID information disclosures shall:

- (a) Comply with RCW 10.93.180 (Protocol for potential impeachment disclosures).
- (b) Within 10 days of discovery of the following information, notify the prosecuting authority of any jurisdiction in which the officer may testify as a witness:
 - 1. Any sustained findings regarding an act by the officer that may be potentially exculpatory to a criminal defendant.
 - 2. Any sustained finding of misconduct that the officer has engaged in that affects his or her credibility.
 - 3. Newly hired officers with prior PID material from a previous law enforcement agency.
- (c) Implement the protocols adopted by the county prosecutor under RCW 10.93.180.

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- (d) Maintain a current list of members who have Brady/PID information in their files or backgrounds:
 - 1. Updating this list whenever potential Brady/PID information concerning any department member becomes known to the Department or is placed into a personnel or internal affairs file.
 - 2. If a Department member is cleared of allegations involving potential Brady information, removing the officer's name from the Department list, consistent with the County prosecutor's protocols.
 - 3. Notify and keep subject members apprised of any Brady/PID designation, inquiry or release of materials. If Brady/PID material is sent to the prosecutor's office, the employee shall be notified within 7 days of the information being disseminated.
 - 4. If information about a pending IA or criminal investigation is communicated to the prosecutors' officer under this Policy and/or the County protocols adopted pursuant to RCW 10.93.180, notify the prosecutors' offices of the finding for the investigation once complete.

612.5.2 PROSECUTING ATTORNEY'S LIST OF PID MATERIAL

The Clark County Prosecuting Attorney's Office has published local protocols for Brady/PID material which requires local law enforcement to report. This material must be reported to the local prosecutor within 10 days:

- (a) Sustained findings for:
 - 1. Truthfulness (as described in policy 339)
 - 2. Demonstrating bias (as described in policy 402)
 - 3. Racial profiling (as described in policy 402)
 - 4. Malicious harassment (RCW 9A.36.080: Hate crime offense—Definition)
 - 5. Excessive force (as defined by policy 300)
- (b) Criminal convictions pursuant to CrR 4.7 (Washington State Courts - Court Rules)
- (c) Summary of any pending Investigations for allegations of:
 - 1. Truthfulness (as described in policy 339)
 - 2. Bias (as described in policy 402)
 - 3. Criminal conduct
 - 4. Excessive force (as defined by policy 300)
 - 5. For those employees who provide expert witness testimony such as Drug Recognition Experts (DRE), Crash Analysis Reconstruction Experts, Forensic Scientists, specifically related to their area of expertise, any Competent Performance or Neglect of Duty issues that compromise an expert's conclusions (as described in policy 339).

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612.6 SUBPOENA PROCESSING

The individual processing subpoenas (or the supervisor of the subpoenaed member) shall check the subpoenaed member's name against the current list of those who are known to have Brady information in their files or background and shall alert the coordinator if a person on the list is subpoenaed.

612.7 LAW ENFORCEMENT DISCIPLINARY ACTIONS – POTENTIAL IMPEACHMENT LIST

Any disciplinary actions taken as a result of an employee being placed on a Brady impeachment list will be consistent with current Guilds contractually binding agreements (CBAs) and VPD Policy 1004.