

GREENVILLE POLICE DEPARTMENT POLICY AND PROCEDURES MANUAL

Chapter 104	Disclosure of Exculpatory Information	
Date Initially Effective: 10/01/99	By the Order Of: <p style="text-align: center;">Mark Holtzman, Chief of Police</p>	
Date Revised: 01/10/18	Date Reissued: 03/01/18	Page 1 of 3

104.1.1 PURPOSE AND DEFINITIONS

In the case of *Brady v. Maryland*, 373 US 83, 83 Sct 1194, 10 LEd2d 215 (1963), the US Supreme Court held that “suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” Additionally, the US Supreme Court held in *Strickler v. Greene*, 527 US 263, 119 Sct 1936, 144 LEd2d 286 (1999), that the State is required to provide such information under Brady even absent a request and it includes evidence known only to the police and not the prosecutor. This rule applies in all criminal cases; state or federal, misdemeanor or felony. The policy of the Greenville Police Department is to provide the prosecutor, upon receipt of his request, any exculpatory information in the possession of the Police Department. Further, any Department employee, sworn or unsworn, who has personal knowledge of the existence of exculpatory information, is responsible for providing that information to the prosecutor as early as possible. In all cases, the employee must make the disclosure before offering any sworn statement or testimony, irrespective of whether the prosecutor has requested the information.

Exculpatory Material

Exculpatory material is evidence that may be favorable to the defendant and which tends to show that the defendant did not commit the crime with which he is charged and any material which tends to impeach the prosecution’s evidence or testimony of prosecution witnesses, including the police employees involved in the investigation of the crime. Exculpatory evidence includes evidence to:

- Support a defendant’s alibi
- Show a person other than the defendant committed the crime
- Discredit a witness
- Chain of custody deficiencies
- Testing or forensics deficiencies, errors, and non-corroborating results

In *Giglio v. United States*, 405 US 150, 92 Sct 763, 31 LEd2d 106 (1972), the US Supreme Court held that when the reliability of any given witness (including law enforcement) may be determinative of guilt or innocence, the prosecution (State) must disclose this information to the defense prior to the trial.

Exculpatory material also includes any Police Department or City records containing evidence that a police employee involved in the investigation of the crime has:

- Been untruthful (includes any witness, informant, sworn or unsworn personnel)
- Prejudice or bias
- Committed a crime

The record need not show beyond a reasonable doubt that the involved employee has been untruthful, has a prejudice or bias, or has committed a crime. Rather to be subject to disclosure under this section, the record must contain credible evidence of one or more of the above points.

The Prosecutor is defined as the person charged with the responsibility to prosecute the case, the United States Attorney, and the District Attorney.

104.1.2 RESPONSIBILITIES FOR DISCLOSURE TO THE PROSECUTOR

Employee

Any employee witness who has knowledge of exculpatory information must provide that information to the prosecutor prior to offering any sworn testimony or statement in the case. Employees will prepare a copy or summary of exculpatory information they disclose and must furnish this information to the prosecutor. The employee shall also maintain a copy of a detailed list of items turned over to the prosecutor. To establish that the employee disclosed the material in a timely manner and specifically what items were turned over, the employee should obtain a dated, signed receipt from the prosecutor. Employees who provide or turn over to the prosecution evidence, exculpatory, and/or impeachment evidence will obtain a receipt from the Prosecutor acknowledging the matters received and place such receipt within the department files.

All employees will attend training on the constitutional mandate to disclose exculpatory information and the effect failure to disclose exculpatory evidence has on the civil defense of qualified immunity.

Any employee who fails to properly disclose information or respond to requests from the prosecutor shall be subject to disciplinary action.

Department

The Police Department shall, on its initiative, send to the prosecutor the name of any officer whose personnel file contains exculpatory/impeaching information that is required to be provided to a criminal defendant as BRADY or GIGLIO material. Upon receipt of a request from the prosecutor, the Police Department will give the prosecutor all the exculpatory information in any case in which the prosecutor believes the named officer is a material witness. At the request of the Prosecutor or the Police Department, the Assistant City Attorney will conduct such inquiries as may be necessary to establish the existence of such records. All employees will promptly and completely respond to any requests for information made by the Assistant City Attorney.

The possible presence of exculpatory information in a particular file, standing alone, does not require an agency to alter its records retention schedule.

All information the Police Department furnishes to the prosecutor shall contain the following provisions:

- This information is confidential personnel information, the improper disclosure of which is prohibited by North Carolina General Statute 160A- 168.
- The Police Department has provided this information to the prosecutor in a manner and for a purpose allowed by law.
- Any dissemination of this material not authorized by law is a misdemeanor. Examination by any person not authorized by law to examine this material is a misdemeanor.

Assistant City Attorney

The Assistant City Attorney will provide assistance, upon request, in conducting inquiries or review of materials that are BRADY or GIGLIO materials. Any material disclosed to the Assistant City Attorney will be provided to the officer in charge of the investigation who will provide to the Prosecutor and obtain receipt for such materials from the Prosecutor.

104.1.3 REQUESTS FOR DISCLOSURE BY DEFENSE COUNSEL

Any requests for reports, tests, photographs or any other evidence in an ongoing investigation or pending trial shall be forwarded to the Assistant City Attorney for review and preparation of response. This includes but is not limited to verbal, written or a request made by subpoena and applies to any federal or state action involving felonies or misdemeanors.

Responses to requests made by subpoena have a limited time in which to respond or object. Contact the Assistant City Attorney immediately upon receipt of a subpoena for criminal investigations, reports, data, photographs, or any other evidence relating to a pending criminal investigation or complaint.

If a request for disclosure is made involving a closed case and where the trial has been completed, contact the Assistant City Attorney upon receipt. Statutory limitations exist on the disclosure of any criminal investigation including completed and closed cases.