

PROVIDENCE POLICE DEPARTMENT

 HEADQUARTERS
 COLONEL OSCAR L. PEREZ
 CHIEF OF POLICE

| TYPE OF ORDER | NUMBER/SERIES | ISSUE DATE | EFFECTIVE DATE |
|----------------|--------------------|-------------------------|----------------|
| General Order | 130.05 Series 2023 | 10/2/23 | 2/6/2024 |
| SUBJECT TITLE | | PREVIOUSLY ISSUED DATES | |
| Brady/Giglio | | N/A | |
| REFERENCE | | RE-EVALUATION DATE | |
| CALEA 42.1.6 | | As Needed | |
| SUBJECT AREA | | DISTRIBUTION | |
| Administration | | All Personnel | |

PURPOSE

The purpose of this policy is to establish procedures for the transmittal of necessary personnel information to the Department’s criminal prosecution as required by law, including the obligation of individual officers and civilian police employees to inform prosecutors of potential impeachment information prior to providing a sworn statement or testimony in any criminal investigation or case.

POLICY

It is the policy of the Providence Police Department to implement appropriate procedures for the disclosure of potential impeachment information to the Department of the Attorney General, City Solicitor, and the U.S. Attorney’s Office to ensure that prosecutor’s receive sufficient information to meet their obligation under:

- Giglio v. U.S., 405 U.S. 150 (1972)
- Brady v. Maryland, 373 U.S. 87 (1963)
- Kyles v. Whitley, 514 U.S. 419 (1995)
- U.S. v. Henthorn, 931 F. 2d 29 (Cir.1990)

DEFINITIONS

Duty to disclose: The affirmative duty of law enforcement to notify the prosecutor of any exculpatory material.

Exculpatory evidence: Evidence that is favorable to the accused; is material to the guilt, innocence, or punishment of the accused; and/or may impact the credibility of a

government witness, including a law enforcement officer or other agency employee. Impeachment material is included in the disclosure requirements.

I. PROCEDURE

A. GIGLIO RULING

1. In its “Giglio Ruling”, the United States Supreme Court held that the failure to disclose evidence regarding the credibility of witnesses is a violation of due process and grounds for a new trial.

B. IMPEACHMENT INFORMATION

1. While the exact parameters of potential impeachment information is 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’ conduct that may be used to attack the witness’ credibility or character for truthfulness
 - b. Prior inconsistent statement
 - c. Information that may be used to suggest that the witness is biased
 - d. Disciplinary action which was sustained pertaining to truthfulness or possible bias
 - e. Active internal affairs investigations into allegations of untruthfulness on the part of the witness officer or civilian police employee.

C. REQUEST FOR IMPEACHMENT MATERIAL

1. The request for impeachment material shall be made directly to the Office of Professional Responsibility (OPR).
2. Upon receipt of a request for potential impeachment material, OPR shall review the identified officer’s personnel and/or disciplinary file and within twenty-one (21) calendar days shall advise the requesting prosecutor of:
 - a. Any finding of misconduct that reflects upon the truthfulness or possible bias of the officer or employee, including a lack of candor during an internal

- administrative inquiry;
- b. Any past or pending criminal charge against the officer or employee;
 - c. Any credible allegation of misconduct that reflects upon truthfulness that is the subject of a pending investigation.
3. Allegations that cannot be substantiated, are not credible or have resulted in the exoneration of the officer or employee, are not considered impeachment material.
 4. When there is a question whether information may be used for impeachment purposes, OPR shall provide the information thereby, forwarding the information to the requesting prosecutor, along with a notice that the allegation was unsubstantiated, not credible or resulted in exoneration.

II. RECORDS MAINTENANCE

1. To ensure that special care is taken to protect the privacy interests and confidentiality of officers' files, OPR shall request that the prosecutor expeditiously return all information and documentation that was provided to him/her. Prosecutors are permitted to keep motions, court orders and supporting documents that relate to the police officer's file.
2. The Attorney General's Office and the City Solicitor 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 a police department shall be locked in a secure area and handled only in accordance with the Attorney General's Office and the City Solicitor's Office.

III. DUTY TO DISCLOSE

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, OPR shall advise the requesting prosecutor of any additional impeachment information that arises after the initial request and during the pendency of the specific criminal case or investigation.
2. The duty to disclosure ceases upon the conclusion of the specific case or investigation.

IV. AGENCY RESPONSIBILITY

1. During the course of a criminal investigation should the agency become aware of any potential exculpatory evidence, which suggests a suspect's innocence during an investigation, the agency should ensure the information and evidence is provided to the prosecuting authority when the agency becomes aware of the information.

V. EMPLOYEE OBLIGATION

1. Whether or not requested by the prosecution, prior to 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 pertaining to truthfulness or possible bias;
 - b. Any criminal charges pending or criminal convictions.

VI. TRAINING

1. All Sworn members will receive initial training on this policy.

APPROVED:



**COLONEL OSCAR L. PEREZ
CHIEF OF POLICE**