



Policy Number: 603 – Brady Disclosure
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Approved By: Brandon Gatlin, Interim Chief of Police

603.1 PURPOSE AND SCOPE

This policy establishes guidelines for the Montana State University Billings Police Department (Department) in identifying and releasing potentially exculpatory or impeachment information (so-called “*Brady* information”) to a prosecuting attorney.

603.1.1 DEFINITIONS

Definitions related to this policy include:

Brady information - Information known or possessed by the Department that is both favorable and material to the current prosecution or defense of a criminal defendant.

603.2 POLICY

This Department will conduct fair and impartial criminal investigations and will provide the prosecution with both incriminating and exculpatory evidence, as well as information that may adversely affect the credibility of a witness. In addition to reporting all evidence of guilt, the Department will assist the prosecution by complying with its obligation to disclose information that is both favorable and material to the defense. The Department will identify and disclose to the prosecution potentially exculpatory information, as provided in this policy.

603.3 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 assigned 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.

If information is believed to be privileged or confidential (i.e. informant or protected personnel files), 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, 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.

603.4 BRADY PROCESS

The Chief of Police, or their designee, shall coordinate requests for *Brady* information. The responsibilities of the coordinator include, but are not limited to:

1. Working with the appropriate prosecutors' offices and the City Attorney's office to establish systems and processes to determine what constitutes *Brady* information and the method for notification and disclosure.
2. Maintaining a current list of officers who have *Brady* information in their files or backgrounds.
 - a. Updating this list whenever potential *Brady* information concerning any officer becomes known to the Department, or is placed into a personnel or internal affairs file.

603.5 DISCLOSURE OF REQUESTED INFORMATION

If potential *Brady* information is located, the following procedure shall apply:

1. In the event that a motion has not already been filed by the criminal defendant, or other party, the prosecuting attorney and Department member whose file is related to the motion shall be notified of the potential presence of *Brady* information.
2. The prosecuting attorney, or City Attorney, should be requested to file a motion in order to initiate an in-camera review by the Court.
 - a. If no motion is filed, the Chief of Police, or their designee, should work with the appropriate counsel to determine whether the records should be disclosed to the prosecutor.
3. The Chief of Police, or their designee, will accompany all relevant personnel files during an in-camera inspection. The Chief of Police, or their designee, will address any issues or questions raised by the court in determining whether any information contained in the files is both material and favorable to the criminal defendant.
4. If the court determines that there is relevant *Brady* information contained in the files, only that information ordered released will be copied and released to the parties filing the motion.
 - a. Prior to the release of any information pursuant to this process, a protective order should be requested from the court limiting the use of such information to the involved case and requiring the return of all copies upon completion of the case.
5. If a court has determined that relevant *Brady* information is contained in an officer's file, the prosecutor should be notified of that fact in all future cases involving that officer.

603.6 INVESTIGATING BRADY ISSUES

If the Department receives information from any source that an officer may have issues of credibility or dishonesty, or has been engaged in an act of moral turpitude or criminal conduct, the information shall be investigated and processed in accordance with Department Policy 1004 - Personnel Complaints.

603.7 TRAINING

Department personnel should receive periodic training on the requirements of this policy.