

# GREELEY POLICE DEPARTMENT

**General Order 420.00**

**Reviewed: 03/19**

## **420.00 BRADY DISCLOSURE**

### **420.01 PURPOSE**

It is the purpose of this policy to provide Greeley Police Officers with the information necessary to properly fulfill 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).

### **420.02 POLICY**

The Brady decision and subsequent rulings have made it a duty of all law enforcement agencies to (1) identify and provide to the prosecution any exculpatory material that would have a reasonable probability of altering the results in a trial, or any material that could reasonably mitigate the sentencing of a defendant and (2) any material relevant to the credibility of government witnesses, including, but not limited to, police officers. It is the policy of this police department to follow Brady disclosure requirements consistent with the law.

### **420.03 DEFINITIONS**

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

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.

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.

### **420.04 PROCEDURES**

A. General Provisions of Disclosure

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1. Affirmative Duty to Report – This department shall exercise due diligence to ensure that material of possible Brady relevance is made available to the office of the prosecutor.
2. Although the defense is not required to request potential Brady material; it is this department's responsibility to disclose such material as soon as reasonably possible to the district attorney's office, or in time for effective use at trial. Responsibility for disclosing such material extends from indictment through the trial and sentencing process.
3. It is the district attorney's office responsibility to establish whether material disclosed by this department must be provided to the defense.
4. Suppression of evidence favorable to an accused violates due process when the evidence is material either to guilt or to punishment, irrespective of good or bad faith. There is no distinction between "impeachment evidence" and "exculpatory evidence" for Brady disclosure purposes.
5. Allegations that cannot be substantiated, are not credible, or have resulted in an individual's exoneration are generally not considered to be potential impeachment information.

### B. Examples of Brady material

1. Examples of Brady material that may be subject to disclosure include, but may not be limited to, the following:
  - a. Information that would directly negate the defendant's guilt concerning any count in an indictment.
  - 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.

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- 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 his or her 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.
2. Officer personnel files that are related to matters stated above may be provided or open to the prosecution or defense as part of a Brady disclosure, as is consistent with the law. When appropriate, the Greeley Police Department will require a court order and/or a protective order prior to disclosure of personnel files.

### C. Duty to Report

Officer adherence to departmental policy and rules in all matters is an imperative of his or her office. Breaches of such rules and policies related specifically to honesty and veracity may have direct bearing on his or her ability to continue serving as a law enforcement officer.

- 1. Officers whose history regarding integrity, honesty, credibility, veracity, and related matters has negative bearing on their professional reputation may be subject to Brady disclosure requirements.
- 2. It is the obligation of individual officers to inform 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.

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3. Supervisory officers are equally responsible for ensuring that they act with due diligence in identifying any potential Brady material connected with any criminal proceeding for which they have oversight and for bringing such material to the attention of the prosecutor in a timely manner through established reporting procedures.

### D. Departmental Response to Officer Testimonial Impeachment

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 shall also be subject to disciplinary action up to and including termination of employment.

### E. Training

All sworn law enforcement officers of the Greeley Police Department shall receive training in Brady disclosure requirements.

### F. Process for Notification of the Prosecutor's Office

1. When a Greeley Police employee becomes aware of Brady information through the process of a criminal investigation he/she will notify the prosecutor's office through the normal criminal investigation reporting process and notify his/her supervisor. The supervisor will ensure the officer's information has been relayed to the prosecutor's office.
2. When a Greeley Police employee becomes aware of Brady information relating to an employee the following process will be followed:
  - a. The employee will notify his/her direct supervisor,
  - b. The supervisor will notify the chief of police, through the Chain of Command.
  - c. The Chief of Police or designated Deputy Chief will notify the prosecutor's office.
  - d. Required documentation will be provided through the City Attorney's Office.

### G. Records Retention

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All Greeley Police Department criminal justice and personnel records will be retained in accordance with the Colorado Municipal Records Retention Schedule adopted by City of Greeley Council Resolution.

This policy has been adapted from the International Association of Chiefs of Police model policy. Used with permission.

<b>General Order 420.00</b>	<b><u>BRADY DISCLOSURE</u></b>	<b>Reviewed: 03/19</b>
<b>Authorized by Mark Jones, Police Chief</b>		
<b>Effective Date: March <u>14</u>, 2019</b>		
_____	<b>Date:</b>	_____ <b>March 14, 2019</b>
<b>Signature</b>		