

Brady Information

605.1 PURPOSE AND SCOPE

Best Practice

This policy establishes guidelines for identifying and releasing potentially exculpatory or impeachment information (so-called “*Brady* information”) to a prosecuting attorney.

605.1.1 DEFINITIONS

Best Practice

Definitions related to this policy include:

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

605.2 POLICY

Best Practice

The Syracuse Police 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 Syracuse Police 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.

605.3 DISCLOSURE OF INVESTIGATIVE INFORMATION

Best Practice NYSLEAP- 8.7 - 51.6

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.

If information is believed to be privileged or confidential (e.g., informant, 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, the officer should address the issue with a supervisor.

Syracuse Police Department

Policy Manual

Brady Information

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.

605.4 BRADY PROCESS

Best Practice MODIFIED

The Chief of Police shall select a member of the Department to coordinate requests for *Brady* information. This person shall be directly responsible to the Chief of Police or the authorized designee.

The responsibilities of the coordinator include but are not limited to:

- (a) Working with the appropriate prosecutors' offices and the Corporation Counsel's office to establish systems and processes to determine what constitutes *Brady* information and the method for notification and disclosure.
- (b) Maintaining a current list of members who have *Brady* information in their files or backgrounds.
 1. Updating this list whenever potential *Brady* information concerning any department member becomes known to the Department or is placed into a personnel or internal affairs file.

605.5 DISCLOSURE OF REQUESTED INFORMATION

State MODIFIED

If *Brady* information is located, the following procedure shall apply (CPL § 245.20):

- (a) The coordinator should notify the prosecuting attorney and department member whose file contains the potential *Brady* information.
- (b) The coordinator should seek appropriate counsel to review the file and determine whether any further court review would be appropriate before sensitive, confidential, or immaterial information within the file is released.
 - (a) The Brady Coordinator shall accompany all relevant personnel files during any court hearing and address any issues or questions raised by the court in determining whether any information contained in the files is discoverable to the criminal defendant (CPL § 245.70).
 - (b) 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.
- (c) If a court has determined that relevant *Brady* information is contained in a member's file in any case, the coordinator should notify the prosecutor of that fact in all future cases involving that member.
- (d) If no court review is requested or pending, the coordinator should work with the appropriate counsel to determine which records should be disclosed to the prosecutor.

Syracuse Police Department

Policy Manual

Brady Information

- (e) 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.

605.6 INVESTIGATING BRADY ISSUES

Best Practice

If the Department receives information from any source that a member 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 the Personnel Complaints Policy.

605.7 SUBPOENA PROCESSING

Best Practice

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.

605.8 TRAINING

Best Practice

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