

Brady Material Disclosure

605.1 PURPOSE AND SCOPE

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

The following definition applies to this policy:

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

605.2 POLICY

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

605.3 DISCLOSURE OF INVESTIGATIVE INFORMATION

Officers shall 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 to the District Attorney's office, 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., confidential informant or information retained in protected personnel files), the officer or handling investigator shall discuss the matter with a supervisor, the Legal Advisor, 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 whether evidence or facts are material, the officer should address the issue with a supervisor immediately.

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.

Santa Ana Police Department

Santa Ana PD Policy Manual

Brady Material Disclosure

605.4 DISCLOSURE OF PERSONNEL INFORMATION

When it is determined *Brady* information is located in the confidential personnel file of a member of the Department who is a material witness in a criminal case, the following procedure shall apply:

- (a) In the event a *Pitchess* motion has not already been filed by the criminal defendant or other party pursuant to Evidence Code § 1043, the prosecuting attorney shall be notified of the potential presence of *Brady* information in the officer's personnel file.
- (b) The prosecuting attorney should then be requested to file a *Pitchess* motion in order to initiate an in camera review by the court.
- (c) Any member who is the subject of such a motion shall be notified in writing that a *Pitchess* motion has been filed.
- (d) The Custodian of Records shall take all relevant files to court for the camera hearing/inspection and 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.
- (e) If the court determines there is relevant *Brady* information contained in the files, only the information deemed relevant by the court and ordered released will be copied and released to the party filing the motion.
 1. Prior to the release of any information pursuant to this process, the Custodian of Records shall request a protective order 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.

605.5 INVESTIGATING BRADY ISSUES

If the Department receives information from any source that a member may have issues of credibility, 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 Administrative Investigation and Personnel Complaints Policy.

605.6 TRAINING

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