

## Brady Information

### 515.1 VERSION

Review Date	Effective Date	Approving Authority
6/2/19	7/9/18	Eric D. English, Chief of Police

### 515.2 POLICY AND PURPOSE

This policy establishes guidelines for identifying and releasing potentially exculpatory or impeachment information (so-called “*Brady* information”) to a prosecuting attorney. The Harrisonburg Police Department will conduct fair and impartial criminal investigations and will provide the Commonwealth Attorney 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 Harrisonburg 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 Commonwealth Attorney potentially exculpatory information, as provided in this policy.

### 515.3 ACCOUNTABILITY STATEMENT

All employees are expected to fully comply with the guidelines and timelines set forth in this policy. Responsibility rests with the supervisor to ensure that any violations of policy are investigated and appropriate training, counseling and/or disciplinary action is initiated. This directive is for internal use only, and does not enlarge an employee's civil liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violation of this directive, if proven, can only form the basis of a complaint by this department, and then only in a non-judicial administrative setting.

### 515.4 DEFINITIONS

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

### 515.5 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 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 Office of the Commonwealth's Attorney.

If information is believed to be privileged or confidential (e.g., informant or protected personnel files), the officer should discuss the matter with a supervisor and/or Commonwealth Attorney to determine the appropriate manner in which to proceed.

# Harrisonburg Police Department

## Policy Manual

### *Brady Information*

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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.

#### **515.6 BRADY PROCESS**

The Internal Affairs supervisor shall coordinate requests for *Brady* information.

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

- (a) 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.
- (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.

#### **515.7 DISCLOSURE OF REQUESTED INFORMATION**

If *Brady* information is located, the following procedure shall apply (Va. Sup. Ct. R 3A:11):

- (a) In the event that a motion has not already been filed by the criminal defendant or other party, the Commonwealth's Attorney and the department member whose file is related to the *Brady* information shall be notified of the potential presence of *Brady* information.
- (b) The Commonwealth's Attorney should be requested to file a motion in order to initiate an in camera review by the court.
  1. If no motion is filed, the Internal Affairs supervisor should work with the Commonwealth's Attorney to determine whether the records should be disclosed to the prosecutor.
- (c) The Internal Affairs supervisor shall accompany all relevant personnel files during any in camera 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.
- (d) 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.

# Harrisonburg Police Department

## Policy Manual

### *Brady Information*

---

- (e) If the court denies discovery or inspection following a showing in camera, the entire text of the Commonwealth's statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal by the accused.
- (f) If, after the disposition of the motion, and before or during trial, an officer discovers additional material that is subject to discovery or inspection, he/she shall notify the Commonwealth's Attorney.

#### **515.8 INVESTIGATING BRADY ISSUES**

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 Internal Affairs Policy.

#### **515.9 SUBPOENA PROCESSING**

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.

#### **515.10 TRAINING**

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