



BETHLEHEM POLICE DEPARTMENT

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| Duty to Disclose | See U.S. Supreme Court <i>Brady v Maryland</i> (1963) and <i>Giglio v United States</i> (1972); <i>State v. Laurie</i> (1995) (NH); <i>State v. Theodosopoulos</i> (2006) (NH) |
| <i>This policy is for internal use only and does not enlarge an employee's civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only form the basis of a complaint by this department for non-judicial administrative action in accordance with the laws governing employee discipline.</i> | |
| Applicable New Hampshire Statutes: RSA 105:13-b (2010) Confidentiality of Personnel Files. | |
| CALEA Standard: 42.2.2 | |
| Date Implemented: | Review Date: |

- I. **Purpose:** An agency and its personnel could be subject to liability in federal court for failing to disclose to a prosecutor any evidence that may be favorable to a defendant. The purpose of this policy is to ensure that agency personnel are in compliance with the landmark United States Supreme Court decisions of *Brady v Maryland* (1963) and *Giglio v United States* (1972) and their progeny. The New Hampshire Supreme Court has delineated this issue in *State v. Laurie* (1995) and *In re State v. Theodosopoulos* (2006)
- II. **Policy:** It is the policy of this agency to require that law enforcement personnel provide all potentially exculpatory evidence to prosecutors. Furthermore, it will be the responsibility of the chief or his/her designee to review all officers' files to determine if any officer has a disciplinary history that would impact the officer's credibility as a witness. This information should be made available to the prosecutor for a determination of whether said information is "Brady" material prior to officer appearance.
- III. **Definitions:**
 - A. **Duty to Disclose:** The landmark decision of *Brady v Maryland* (1963) places an affirmative constitutional duty on a prosecutor to disclose exculpatory evidence to a defendant. This duty has been extended to police agencies through case law, requiring law enforcement agencies to notify the prosecutor of any potential exculpatory information.
 - B. **Exculpatory Evidence/Brady Material:** Evidence in the government's possession that is favorable to the accused and that is material to either guilt or punishment, including evidence that may impact the credibility of a witness.
- IV. **Procedure:**
 - A. Officers are required to document all investigative activity involved in an investigation, including exculpatory information.



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- B. All official reports involving an investigation will be submitted to the prosecuting authority prior to actual prosecution of the case. The prosecutor will determine what information contained in the case file will be provided to defense counsel.
- C. The department will meet with the prosecutor's office to establish a procedure whereby the intent of this policy is carried out.
- D. Each employee who is notified to appear as a witness in a criminal case has an individual obligation under this policy to notify the prosecutor on the specific case of any sustained disciplinary history that may impact credibility and qualify as "Brady" material. Under New Hampshire case law, this material specifically includes the officer's confidential personnel file. (In re State v. Theodosopoulos)
- E. The Training Section will ensure that all sworn personnel are familiar with the requirements of this policy and will stress the importance of credibility as an essential requirement of being able to function as a police officer.