
	UVALDE POLICE DEPARTMENT	
	Policy 2.9 Brady Rule	
	Effective Date: 12/18/2013	Replaces: 1994 Policy Manual
	Approved:  Max Westbrook - Chief of Police	
Reference:		

I. POLICY

The United States Supreme Court held in *Brady v. Maryland*, 373 U.S. 83 (1963), commonly called the Brady Rule, that the prosecution has an affirmative duty to disclose to the defendant evidence, including evidence that may be used to impeach officers and other witnesses, discovered during the investigation which is both favorable and material to the guilt and/or punishment of the defendant. Furthermore, effective January 1, 2014, the “Michael Morton Act” codifies the Brady Rule under Article 39.14 of the Texas Code of Criminal Procedure. Therefore, it is the policy of the Uvalde Police Department to comply with these rules and to train its officers in the legal aspects of the Brady Rule.

II. PURPOSE

The purpose of this policy is to establish the recommended department training, documentation, and process for releasing Brady material related to criminal and/or internal investigations; establish processes for releasing potentially exculpatory information (known as Brady material), contained within confidential peace officer personnel files; and establish requirements for compliance with Brady legal requirements, policies and protocols in terms of employment.

III. DEFINITIONS

Exculpatory Evidence - Evidence, such as a statement, tending to negate, excuse, justify, or absolve the alleged fault or guilt of a defendant, or would tend to reduce the punishment for the offense charged.

Officer - Any sworn officer commissioned by the City of Uvalde, Texas.

Brady Rule - The Brady Rule, named for *Brady v. Maryland*, 373 U.S. 83 (1963), requires prosecutors to disclose materially exculpatory evidence in the government's possession to the defense, not known to the defense, favorable to the accused, and material to the defense.

Brady Material - Evidence the prosecutor is required to disclose under the Brady Rule and includes any evidence: favorable to the accused; that goes towards negating a defendant's guilt; that would reduce a defendant's potential sentence, or going to the credibility of a witness.

In camera hearing/review - Latin for "in chambers." A legal proceeding is in camera when a hearing is held before the judge in private chambers or when the public is excluded from the courtroom.

IV. RELEASE OF BRADY MATERIAL – Criminal Investigations

- A. Officers are required to complete written documentation of material information, including exculpatory evidence that might be used to impeach officers and other witnesses, discovered during an investigation.
- B. Written documentation includes department incident reports, memorandums, electronic messages, case notes and any documents related to the investigation.
- C. The written documentation shall be a part of the criminal investigation case file, including the electronic file with any scanned documents.
- D. When there is no Uvalde Police Department incident report, the written documentation of the information to a prosecutor shall include the name of the prosecutor and the date information was turned over to the prosecutor.
- E. Officers are required to secure as evidence any recordings (audio and/or visual) made and considered to be material information, including exculpatory evidence that might be used to impeach officers and other witnesses, discovered during an investigation and to complete evidence processing to preserve and maintain custody of any recording(s).
- F. Recordings must be preserved as evidence in a retrievable format.
- G. The department incident report shall document the existence of the recording, the steps taken to preserve the recording as evidence, the entry of the recording into evidence, and a brief summary of the contents of the recording.

V. RELEASE OF BRADY MATERIAL – Administrative Investigations

- A. Absent a specific investigation of an identified officer(s) or a specific investigation of the police department, or the consent of an involved officer, no confidential information from any officer's personnel file shall be released to the prosecuting attorney or Grand Jury without full compliance with the court process.
- B. Should an officer's credibility or other issues related to an officer's personnel file arise in the context of an officer acting as a witness for the prosecution, access to that officer's personnel file by either the prosecuting attorney or the criminal defendant shall be limited to that which is authorized by the process set forth in court and evidentiary rules.
- C. Certain procedures for the review and release of any officer's personnel file shall be followed. A person or persons designated by the Chief of Police may examine the subject officer's personnel file to determine whether there are Brady materials

contained therein (e.g., evidence which is both favorable and material to the guilt and/or punishment of the defendant).

If Brady material is located, the following procedure will apply:

1. The prosecuting attorney shall be notified of the potential presence of Brady material in the officer's personnel file by the Chief of Police or a designee appointed by the Chief of Police.
 2. The generally accepted practice is for a prosecuting attorney to file a Brady motion in the case to seek an in camera review by the court to determine if the personnel files contain Brady material. In response to a Brady motion, the Chief of Police or the authorized designee shall deliver all relevant personnel files to the judge for an in camera review and shall be available to address any issues or questions raised by the court in determining whether any material contained in the file is both material and favorable to the criminal defendant.
 3. The court will determine if the personnel files contain Brady material that must be provided to the defense.
- D. If the court determines there is relevant Brady material contained in the files, only the material ordered released will be copied and released to the parties pursuant to the court's order following a Brady motion.
- E. Prior to the release of any materials pursuant to this process, the Chief of Police or the authorized designee should forward the request or Brady motion to the City Attorney to evaluate the need for a protective order from the court limiting the use of such materials to the involved cases and requiring return of all copies upon completion of the case.
- F. Reporting of Brady material to the State's attorney upon conclusion of an internal investigation resulting in disciplinary action will be done as follows:
1. The Chief of Police or the authorized designee will provide in writing a summary of the incident and resulting disciplinary action taken to the 38th Judicial District Attorney and the Uvalde County Attorney's Office in cases where potential Brady material exists.
 2. Any information turned over requires a signed acknowledgement from the prosecutor's office for the reception of such materials from the Uvalde Police Department.

VI. COMPLIANCE BY OFFICERS

- A. The Uvalde Police Department has determined that testifying in a court proceeding is a critical job function for police officers.

- B. An officer or employee may be terminated from employment if the prosecutor's office decides misconduct on the officer or employee's part constitutes impeachment evidence that must be turned over to the defense and renders the officer or employee unusable as a witness – even if the misconduct itself does not warrant termination.
- C. Failure to comply can also result in the filing of a civil rights violation by defendants under 42 USC 1983, against the individual officer.
- D. An officer or employee must promptly disclose to the prosecutor's office discovery or existence of any exculpatory, impeaching, or mitigating document, item or information required to be disclosed under the Brady Rule. This duty applies before, during, and after trial.

VII. TRAINING ON BRADY RULE

- A. The department will provide instruction on the Brady rule and the requirement for all sworn personnel and personnel in positions affecting the handling of evidence and police records.
- B. The instruction will include the following:
 - 1. Explanation of the Brady rule and exculpatory evidence;
 - 2. Department policy and procedures for handling exculpatory evidence;
 - 3. Compliance requirements for the Brady rule and employment by the department;
 - 4. Legal consequences for failure to comply (termination, criminal charges, civil rights violations, etc.); and
 - 5. Employee misconduct that may affect the employee's ability to testify and result in possible termination.