

## RENO POLICE DEPARTMENT GENERAL ORDER

This directive is for internal use only and does not enlarge this department's, governmental entity's and/or any of this department's employees' civil or criminal liability in any way. It is not to be construed as the creation of a particular standard of safety or care in an evidentiary sense, with respect to any complaint, demand for settlement, or any other form of grievance or litigation. Violations of this directive, if substantiated, can only form the basis for intra-departmental administrative sanctions.

Chief of Police: Michael Poehlman /s/		
Approving Deputy Chief:		
General Order No: E-370-08	Issued: January 24, 2009	Supersedes: N/A
General Order Title: <b>Brady Material Disclosure</b>		

### I. POLICY

It is the policy of the Reno Police Department to conform to current court rulings regarding disclosure of evidence to defendants. This includes the possible disclosure of information regarding the employees that are involved in the investigation and prosecution of the case. This policy will set the procedure by which such disclosures will be made to the prosecuting attorney.

### II. PURPOSE

- A. The Department recognizes that, in a long line of cases beginning with *Brady v. State of Maryland*, 373 U.S. 83 (1963) and including *Kyles v. Whitley*, 514 U.S. 419 (1995), the United States Supreme Court has held that the prosecutor has an affirmative duty to disclose to the defendant evidence which is favorable to the defendant and which is material to the guilt and/or punishment of the defendant. Evidence which is either exculpatory or can be used for impeachment is *Brady* material. While information regarding dishonesty will always be *Brady* material, relevance of other material will depend on the facts of the case. Such evidence may sometimes be found in the personnel files or internal affairs investigations of involved peace officers.
- B. The Department holds that peace officer personnel records and internal affairs investigations are deemed confidential and will not be made public absent direction from the court having proper jurisdiction.
- C. The purpose of this policy is to establish the conditions under which the District Attorney will be advised about *Brady* material located in peace officer personnel files and internal affairs investigations and/or permitted to inspect those records for *Brady* materials and to establish a policy regarding the release of information from peace officer's files pursuant to subpoena from private attorneys.

### III. PROCEDURE

A. Prosecutor release

1. For purposes of this procedure, the term “personnel file” will include any and all internal affairs investigations.
2. After criminal proceedings have been initiated against a defendant, a prosecutor will ascertain the names and identities of peace officer “material witnesses” to the underlying charges. The timing of this process shall be left to the discretion of the prosecutor. The prosecutor may contact investigating officers of the police agency to obtain assistance in identifying the names of the peace officer material witnesses.
3. The Department shall designate a “Custodian of Records” who shall be responsible for responding to written inquiries from the prosecutor concerning peace officer material witnesses in a case.
4. After the prosecutor has identified material witnesses in a given case, he/she shall initiate a written inquiry to the Custodian of Records. The written inquiry shall request the Custodian of Records to personally prepare a summary listing of all information regarding investigations previously conducted of the identified material witnesses and provide the summary to the requesting prosecutor for review. The custodian of records will complete an affidavit detailing the summary of any and all investigations of the material witness. The prosecutor will determine, based upon the facts of the particular case, what information may be *Brady* material and the Custodian of Records will make that information available for review. Any review shall take place at the Department and files will not be removed from the Department by the prosecutor. Should the prosecutor believe that potential *Brady* material exists, the prosecutor shall initiate an *in camera* review of the specific material.
5. Allegations of misconduct that are part of a pending investigation or one that is being appealed are not to be disclosed. Allegations that are unsubstantiated or result in a finding of “not sustained”, “exonerated” or “unfounded” are not considered impeachable material and shall not be given to the prosecutor.
6. The obligation to provide *Brady* material is ongoing and should new information come to light after the initial request, it is required that the Custodian of Records notify the prosecutor. The Department shall not delay or suspend investigations of peace officers for possible misconduct, or for an allegation involving dishonesty discoverable under this policy, in order to delay or prevent disclosure of information.
7. The written request initiated by the prosecutor shall indicate the agreement of the District Attorney that no information made available for review shall be released to any third parties, including the defendant and/or his or her attorney in the absence of an order of the court. It shall

also acknowledge that the request is specific to the identified court case and that material obtained shall not be warehoused as material that may be relevant and discoverable in one case, may not be in a subsequent case.

8. Should the Court deem that information within a peace officer's personnel file is required to be released, the Custodian of Records will provide notice to the employee that the file will be released, which specific information is to be released, the court case for which it is being released and to whom it is being released. The involved peace officer may contact the Custodian of Records to review any information that has been, or will be, released.

B. Subpoena

1. On occasion, requests for personnel files on individual peace officers will come by way of Subpoena from private attorneys. Such requests shall be provided to the Department Legal Advisor for review. If such information is being requested for purposes of an ongoing criminal prosecution, the Legal Advisor shall file a motion with the court requesting an *in camera* review of the peace officer's file. Should the Court deem that information within a peace officer's personnel file is required to be released, the Custodian of Records will provide notice to the employee that the file will be released, which specific information is to be released, the court case for which it is being released and to whom it is being released. The involved peace officer may contact the Custodian of Records to review any information that has been, or will be, released.