



# NEW ORLEANS POLICE DEPARTMENT OPERATIONS MANUAL

## CHAPTER: 1.2

### TITLE: DISCLOSURE OBLIGATIONS

**EFFECTIVE: 06/27/2021**

**REVISED: New Chapter**

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#### PURPOSE

The purpose of this policy is to provide members with the information necessary to properly fulfill the reporting and testimonial disclosure obligations.

#### POLICY

1. It is the policy of the New Orleans Police Department (NOPD) to follow disclosure requirements concerning exculpatory or favorable evidence and evidence impacting the credibility of government witnesses consistent with the law. This policy is intended to ensure timely disclosure of exculpatory and impeachment information so as to ensure that trials are fair, and to ensure that prosecutors receive sufficient information to meet their disclosure obligations relating to the guilt or innocence of the defendant and the credibility of witnesses for the prosecution.
2. Adherence to NOPD policy and rules in all matters is imperative. Breaches of such rules and policies related specifically to honesty and veracity may have direct bearing on a member's ability to continue serving as a law enforcement officer.

#### DEFINITIONS

**A-Case Officer**—A commissioned member of the NOPD assigned to a District or Division of the Field Operations Bureau who is responsible for ensuring that a complete investigative case file is compiled and presented for all adult State arrests made by officers assigned to that District / Division.

**Brady Disclosure** - The *Brady* decision (***Brady v. Maryland, 373 U.S. 83 (1963)***) and subsequent rulings recognize the duty of all law enforcement agencies to identify and provide to the prosecution any exculpatory evidence and material that would have a reasonable probability of altering the results in a trial, or any material that could reasonably mitigate the sentencing of a defendant and any material relevant to the credibility of government witnesses, including, but not limited to police officers. [Case related.]

**Disciplinary History** - all disciplinary investigations, initiated by public complaint or internal by a supervisor or member, in which the officer is an accused member, regardless of the disposition of each allegation.

**Giglio Disclosure** - The *Giglio* decision (***Giglio v. U.S.*, 405 U.S. 150 (1972)**) and subsequent rulings recognize the duty of all law enforcement agencies to identify and provide to the prosecution any material relevant to the credibility of government witnesses, including but not limited to, police officers. [Witness related.]

**Duty to Disclose** - The affirmative constitutional duty of the police to notify the prosecutor of any exculpatory evidence and *Brady* or *Giglio* material. *U.S. v. Agurs*, 427, U.S. 97 (1976). This is an ongoing duty, requiring NOPD make prosecutors aware of any additional potential impeachment or exculpatory information that arises after specific request from prosecutors or during the pendency of the specific criminal case or investigation to which the additional information relates.

**Exculpatory Evidence** - Evidence that is favorable to the accused or is material to the guilt, innocence, or punishment of the accused.

**Giglio Material** - Evidence that may impact the credibility of a government witness, including a police officer. Impeachment material is included in the *Giglio* disclosure requirements.

**Impeachment material** - testimony about the witness's reputation for having a character for truthfulness or untruthfulness, or by testimony in the form of an opinion about that character. The five basic methods of impeaching a witness are: use of contradiction, proof of bad character, inconsistency, bias, or diminished capacity.

**Kyles material** – cumulative, undisclosed evidence, which, if disclosed to competent counsel, could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict. (*Kyles v. Whitley*, 514 U.S. 419 (1995)).

**Material Evidence** - Evidence is “material” if there is a reasonable probability that disclosing it will change the outcome of a criminal proceeding. A “reasonable probability” is a probability sufficient to undermine confidence in the outcome of the trial or sentencing in a criminal case.

## GENERAL

### General Provisions of Disclosure — Affirmative Duty to Report

3. NOPD shall exercise due diligence to ensure that material which is favorable or exculpatory to the accused, or impacts the credibility of the investigation or government witnesses is made available to the prosecutorial authority (i.e., U.S. Attorney, Orleans Parish District Attorney, Louisiana Attorney General, or City Attorney).

It is NOPD's responsibility to disclose such material as soon as reasonably possible to the prosecutorial authority, or in time for effective use at trial. Responsibility for disclosing such material extends from the initiation of the Department's investigation through the trial and sentencing process.

5. The A-Case Officer shall complete an “Investigative File Certification” form provided by the District Attorney's Office upon submission of a case file. No case file shall be deemed complete without this form.
6. The NOPD has a duty to provide the prosecutorial authority with an up-to-date list of their misconduct allegation history, regardless of outcome of the investigation, unless providing the information would compromise an ongoing, confidential investigation.
7. The list of their misconduct allegation history for all NOPD members, as reflected in PIB records and IAPro, shall be provided to the relevant prosecutorial authority and shall be sent by email in the first week of each month to the OPDA, the US Attorney for the

Eastern District of Louisiana and upon request to any other prosecutorial authority wherein a member of NOPD is a witness in a criminal prosecution.

8. The list of their misconduct allegation history will be supplied by PSAB from an Excel spreadsheet linked to the IAPro data maintained by PIB. The searchable Excel spreadsheet will be current to the date provided. **The list of their misconduct allegation is confidential in its entirety and only for use by the prosecutorial authority for making decisions as to witness information disclosure to the defense.**
9. All members must disclose to the prosecution (*in writing*) and **include in the case file** any, **material which is favorable or exculpatory to the accused, or impacts the credibility of the investigation or government witnesses known to the member** without a specific request by the prosecutor handling a case .
10. All members have an affirmative duty to maintain knowledge of their personnel history including their disciplinary/Public Integrity Bureau (PIB) history.
11. It is the prosecutor's responsibility to establish whether material disclosed by the NOPD is relevant to the case and must be provided to the defense.
12. Examples of *Brady/Giglio* material that may be subject to disclosure include, but may not be limited to:
  - a) Information that would directly negate the defendant's guilt concerning any count in an indictment.
  - b) Information that would cast doubt on the admissibility of evidence that the government plans to offer that could be subject to a motion to suppress or exclude.
  - c) Any criminal record or criminal case pending against any witness whom the prosecution anticipates calling.
  - d) The failure of any proposed witness to make a positive identification of a defendant.
  - e) Information that casts doubt on the credibility or accuracy of a witness or evidence.
  - f) An inconsistent statement made orally or in writing by any proposed witness.
  - g) Statements made orally or in writing by any person that are inconsistent with any statement of a proposed government witness regarding the alleged criminal conduct of the defendant.
  - h) Information regarding any mental or physical impairment of any governmental witness that would cast doubt on his or her ability to testify accurately and truthfully at trial.
  - i) Information that tends to diminish the degree of the defendant's culpability or the defendant's offense level under state or federal sentencing guidelines.
  - j) A finding of misconduct by PIB or in any court of competent jurisdiction that reflects on the witness's truthfulness, bias, or moral turpitude. This includes employees under suspension.
  - k) An officer's untruthfulness, dishonesty, bias, or misconduct in conjunction with his or her service as a law enforcement officer.
    - l) Benefits provided to witnesses including:
      - i. Dropped or reduced charges
      - ii. Immunity
      - iii. Expectations of downward departures or motions for reduction of sentence
      - iv. Assistance in a state or local criminal proceeding
      - v. Considerations regarding forfeiture of assets
      - vi. Stays of deportation or other immigration status considerations
      - vii. S-Visas
      - viii. Monetary benefits

- ix. Non-prosecution agreements
  - x. Letters to other law enforcement officials (e.g. state prosecutors, parole boards) setting forth the extent of a witness's assistance or making substantive recommendations on the witness's behalf
  - xi. Relocation assistance
  - xii. Consideration or benefits to culpable or at risk third-parties
  - m) Other known conditions that could affect the witness's bias such as:
    - i. Animosity toward defendant
    - ii. Animosity toward a group of which the defendant is a member or with which the defendant is affiliated
    - iii. Relationship with victim
    - iv. Known but uncharged criminal conduct (that may provide an incentive to curry favor with a prosecutor)
13. Officer personnel files that are related to matters stated above may be provided or opened to the prosecution or defense as part of a *Brady/Giglio* disclosure when specifically requested, as is consistent with the law.

#### **DEPARTMENTAL RESPONSE TO OFFICER ACTIONS**

14. Members who are knowingly and intentionally untruthful, or otherwise dishonest in the course of their employment, or use excessive force undermine the credibility of their testimony at trial. Such members are also subject to disciplinary action up to and including termination of employment.

#### **EXCLUDED EVIDENCE OR REFUSAL OF CASES BY OPDA SCREENING**

16. The Orleans Parish District Attorney's Office will provide to PSAB the following information:
- a. Determinations of no probable cause made by judges and commissioners will be forwarded via email within 24 hours.
  - b. The granting of any motion to suppress evidence or statements will be forwarded via email within 24 hours of the granting of the motion by the court whether or not the State intends to seek supervisory review.
  - c. Notice of any cases refused or dismissed for any "Law Enforcement" reason will be forwarded via email within 72 hours of the refusal or dismissal. There are five specific codes that the DA uses for Law Enforcement based refusals:
    - i. 350 - NO PROBABLE CAUSE FOR ARREST
    - ii. 351 - UNLAWFUL SEARCH NO WARRANT
    - iii. 352 - UNLAWFUL SEARCH WITH WARRANT
    - iv. 356 – MOTION TO SUPPRESS EVIDENCE GRANTED
    - v. 431 - INCOMPLETE POLICE INVESTIGATION
    - vi. 433 - LAW ENFORCEMENT ISSUES (for example inappropriate or illegal conduct and issues relating to officer veracity).
17. Upon refusal or dismissal of a case due to law enforcement issues, the District Attorney 's Office will alert PSAB and PIB, the A-Case Officer, the arresting officer, the arresting officer's supervisor, the District Captain, the First Assistant District Attorney, the OPDA Chief of Case Management, and the designated Department of Justice Official via email with the pertinent information regarding the refusal or dismissal.

18. The Assistant District Attorney making the determination to refuse or dismiss a case for “law enforcement issues” will be available to discuss the case with PSAB if further explanation is needed.
19. To prevent refusals or dismissals for “Incomplete Police Investigation”, the OPDA will:
  - a. notify NOPD’s Professional Standard’s and Accountability Bureau via email when an incident report and arrest report are not received within 10 days of an arrest.
  - b. notify NOPD’s Professional Standards and Accountability Bureau via email when a complete case file (see **Chapter 42.15 – Arrest Case Management and District Attorney Screening**) is not received within 28 days of an arrest.
  - c. notify NOPD’s Professional Standards and Accountability Bureau when a complete case file is received by issuing a receipt of complete case file.
  - d. notify NOPD 's Professional Standards and Accountability Bureau of the prosecution decision of a submitted complete case file by submitting a "Buck Slip" to the A Case Officer.
  - e. notify NOPD's Professional Standards and Accountability Bureau when the DA's Office learns of any information of officer misconduct affecting an investigation or information impugning officer veracity whether or not an arrest is made or a completed case file is presented to the District Attorney.
20. Where a final judicial ruling at any criminal proceeding has determined through a Motion to Suppress or similar filing that the evidence, statement or confession shall be excluded or suppressed on the grounds of a constitutional violation by an NOPD member, the member who learns of the ruling shall notify his/her commander. The Commander shall ensure the Motion to Suppress is documented in INSIGHT. If an INSIGHT threshold is met it shall be assigned to the appropriate supervisor for follow-up in INSIGHT.
21. When the Orleans Parish District Attorney’s Office decides to decline prosecution due to the credibility on the part of one or more NOPD members involved in a case, or declines prosecution due to a member’s actions that negatively impact seized evidence or statements, the reason(s) for the case refusal shall be noted on the District Attorney’s screening action form and noted in the Orleans Parish District Attorney Prosecution Data Extract file, a part of the INSIGHT Source System (see **Chapter 35.1.9 - INSIGHT**). If an INSIGHT threshold is met it shall be assigned to the appropriate supervisor for follow-up in INSIGHT.
22. The A-Case Officer shall document a reason for every case screening refusal for officer reasons, as received from the Orleans Parish District Attorney’s Office, forward the information to the DIU commander and the involved officer(s)’s supervisor for corrective action and copy the Performance Standards Section (PSS) for tracking and follow-up.
23. If the supervisor determines during his/her review of an incident that NOPD should revisit policy, tactics, training, or strategy related to the incident, the supervisor shall document that in a PRR Form #358. The supervisor submitting a PRR form #358 is responsible for thoroughly completing the form’s “Request” section. The supervisor shall make a digital copy of the form and email it to PSAB@nola.gov . The supervisor shall make an earnest effort to provide information to facilitate the review of the request. Supervisors shall be available to the reviewer and respond to follow-up questions the PSAB reviewer may have .
24. If PSS, after reviewing the corrective action, disagrees or has issues with the corrective action taken, they shall notify the Captain of PSAB in writing, outlining the issues and

concerns. The PSAB Captain shall review the information and if the PSAB Captain concurs with the PSS assessment, shall contact the Deputy Chief of PSAB in writing concerning the findings and recommendation. The PSAB Deputy Chief, shall consult with the Bureau Chief of the involved member(s) over the final corrective actions.

## TRAINING

25. All members **and employees** of the NOPD shall receive training in disclosure requirements as new hires and as NOPD determines through its In-Service training needs assessment.

**NOTE: THE FOLLOWING SECTIONS SHOULD BE READ IN CONJUNCTION WITH 42.15 OR OTHER SECTIONS BUT NOT INCLUDED WITH DISCLOSURE OBLIGATIONS.**

## FEEDBACK ON SUBMITTED CASES BY OPDA SCREENING AND TRIAL DIVISIONS

26. In an effort to improve the investigative work product and promote efficiency, the NOPD has requested that the Orleans Parish District Attorney's Office (OPDA) task all Assistant District Attorneys in the Screening Division and Trial Division to provide the following information which may negatively impact the proper and timely screening, charging and prosecution of cases to the NOPD in a timely manner both by email and during regularly scheduled Charge Conferences (weekly):
- a. Individual officer issues such as:
    - i. Late or incomplete reports that delay screening, charging and prosecution decisions.
    - ii. Late crime lab reports that delay screening, charging and prosecution decisions.
    - iii. Deficient reports that prevent timely screening, charging and prosecution decisions.
    - iv. Refusals
    - v. No Probable Cause including reductions
    - vi. Failure of officers to respond to inquiries from prosecutors
    - vii. Granting of motions to suppress
    - viii. Conflicts between what is shown on body cameras and stated in reports
    - ix. Poor or disinterested testimony by members of NOPD
      - x. Any untruthfulness, written or spoken, relating to the investigation or case.
      - xi. Inadequate/insufficient statements of Probable Cause for warrants
      - xii. Failure to appear in court when notified or served.
      - xiii. Timeliness / punctuality of attendance for court or scheduled meetings on case.
    - xiv. Unprofessional conduct.
  - b. Systemic and administrative issues are those that the OPDA feels are organizational or administrative. Wide scale policy violations or where the NOPD policy creates a dysfunction in the process itself.
27. These issues will be communicated by email to:
- i. The Deputy Chief of PSAB - Systemic and Administrative issues only.
  - ii. The Staff Captain for FOB – all.
  - iii. The PSAB - Performance Standards Section – all.
  - iv. The Assistant United States Attorney – all.

**CORRECTIVE ACTION ON FEEDBACK BY OPDA**

28. All feedback provided by the OPDA to NOPD shall be reviewed by the involved members' chain-of-command for corrective measures. At a minimum, all corrective measures shall be documented in the Supervisors Feedback Log (SFL) indicating what action(s) were taken to correct the indicated issue(s). If formal disciplinary action was initiated, the PIB Control number shall be indicated in the SFL entry. Every issue noted by the OPDA shall be noted in the SFL within 48 hours of being communicated to the involved members' immediate supervisor.
29. The Staff Captain for FOB shall be responsible for communicating, the appropriate Captain within FOB, all issues noted by the OPDA concerning members of his/her command within 72 hours of receipt from the OPDA Office and shall ensure that the appropriate SFL entry is initiated within the required time.
30. The PSAB – PSS supervisor responsible for receiving the email notifications from the OPDA Office shall be responsible for communicating, the appropriate Captain within the noted members' Bureau, other than FOB, all issues noted by the OPDA concerning members of his/her command within 72 hours of receipt from the OPDA Office and shall ensure that the appropriate SFL entry is initiated within the required time.
31. PSAB shall be responsible for performing periodic reviews of the email notifications from OPDA and the SFL entries to ensure that all required processes are being followed and corrective measures are being taken in a timely and appropriate manner.
32. If PSS, after reviewing the corrective action, disagrees or has issues with the corrective action taken, they shall notify the Captain of PSAB in writing, outlining the issues and concerns. The PSAB Captain shall review the information and if the PSAB Captain concurs with the PSS assessment, shall contact the Deputy Chief of PSAB in writing concerning the findings and recommendation. The PSAB Deputy Chief, shall consult with the Bureau Chief of the involved member(s) over the final corrective actions.
33. PIB is solely responsible for reviewing, classifying and assigning investigations of corrective measures forwarded to them for formal disciplinary action and may also review SFL entries for appropriateness. (see: **52.1.1 – Misconduct Intake and Complaint Investigation**).
34. In the case of either suppression of evidence or declination of prosecution based on an NOPD officer's alleged misconduct, a constitutional violation or credibility the member who learns of the ruling shall notify his/her commander or PIB. The informed commander shall initiate a formal disciplinary investigation (see **52.1.1 – Misconduct Intake and Complaint Investigation**) if not already initiated

**APPENDIX “A”** – List of recordings, documents and evidence relating to, surrounding or pertaining to the case that, if possessed by the officer or NOPD, must be provided to the prosecutor when the case is presented for screening and/or charging. Below are examples.

- Recordings of events surrounding arrests in both video and audio format
  - Body worn camera (BWC) recordings
  - In Car Camera (ICC) recordings, including interior of police unit
  - ECW (Taser) discharge recordings
  - Crime camera recordings reviewed or copied which MAY record activity of evidentiary value
  - Audio recorded statements
  - Video recorded statements
  - 911 phone call recordings
  - OPCD dispatch recordings
- Photos
- Cell phones
- Forensic lab reports (NOPD- SCIS, LSP or any other lab)
- Requests, even if not processed, for scientific testing
- Evidence and Property receipts
- Photographic lineups, both front and back of photos including:
  - Negative identifications
  - Failure or unable to identify
  - Tentative identifications, and
  - Positive identifications
- Confirmation photographs, both front and back of photos including:
  - Negative identifications
  - Failure or unable to identify
  - Tentative identifications, and
  - Positive identifications
- Crime Bulletins and NopdAll / NopdPIO BOLO's
- Warrant Applications, both Arrest and Search, whether signed by a Judge, executed or not
- Orders of Search (Search Warrants) or Arrest and the Return
- Written statements of ANY person
- Internal reports, including:
  - Canine
  - EMS
- Reports from / by other agencies
- Other case documentation, including:
  - Notes
  - handwritten recordings
  - Interim reports
  - Drafts
  - Morphs
  - Dailies
  - Logs
- Other issued violation documentation including:
  - Traffic citations
  - Summons
  - Other citations
- Any other written documentation or recording of ANY information of ANY type including mental impressions

- Any information that could be used to demonstrate a bias or to impugn the integrity or veracity of ANY witness including:
  - open or pending criminal charges,
  - any open or pending administrative or disciplinary findings of “untruthfulness” or failure to adhere to law made against any law enforcement witness.