



POLICY 613 Disclosing Potential *Brady* Information to the Prosecution

In order to formalize policy consistent with the current law, the Department has created Policy 613, Disclosing Potential *Brady* Information to the Prosecution.

This policy outlines circumstances and protocols in which the Department will disclose potential *Brady* information pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963).

Department members may find references to a *Brady* disclosure or letter to be unclear. This bulletin addresses common questions and provides definitions to help clarify the department's legal obligations.

WHAT YOU WANT TO KNOW:

What constitutes *Brady* information?

Brady is a legal determination that will ultimately be made by the prosecutor or the court handling the case. *Brady* information relates to information that is favorable to a defendant because it is either exculpatory or impeaching, and material to the prosecution or defense of a criminal defendant. The Department has a legal duty to notify the prosecution if there is potential *Brady* information contained in an employee's personnel records.

Is my personnel file just handed to OCDA or the defense attorney in a case?

No. In the interest of protecting the privacy of personnel records of employees and unless the records are subject to disclosure under Penal Code section 832.7(b), information contained in employee's personnel records will not be disclosed without an appropriate motion to the court, appropriate court hearings (for example, in-camera review of Peace Officer personnel records by the court), and a court order.

What type of motion is heard in court?

A Pitchess Motion will be filed in court when a sworn department member's personnel records are requested, outside Penal Code section 832.7(b). As always, you will be notified when a Pitchess Motion is filed, and you will be notified if any records are released subject to Penal Code 832.7(b).

A subpoena is required for a professional staff member's personnel records because Pitchess Motions are not applicable to these records.

Do I have to appear in court to protect the release of my personnel file?

No, County Counsel will appear at these court hearings to make all relevant objections to disclosure in an





effort to limit information to what is material to the case and to protect personnel information. Furthermore, County Counsel will request a protective order from the court limiting the use of any disclosed information to the involved case.

I am a supervisor now. Does Pitchess still apply to me?

Yes. As of January 1, 2020, AB 1600 amended the Pitchess statutes to include supervisors if a supervisorial officer had direct oversight of a peace officer or custodial officer and issued command directives or had command influence over the circumstances at issue.

In these circumstances, a supervisor's personnel records could be disclosed if: 1) the peace officer or custodial officer under supervision was present during the arrest; 2) had contact with the party seeking disclosure from the time of the arrest until the time of booking; or 3) was present at the time the conduct at issue is alleged to have occurred within a jail facility.

If, after the Pitchess hearing, a disclosure under *Brady* occurs, OCDA will open an investigation and they will send the department member a *Brady* Letter.

If the court discloses portions of my personnel file after the in camera hearing, does that mean the jury gets my personnel file too?

Whether the information disclosed to the prosecution or defense is actually admitted in a criminal trial will be determined by the judicial officer hearing the trial in accordance with the California Rules of Evidence. If admitted, evidence will be limited to what is relevant in the particular case. Oral courtroom testimony is the primary way the evidence is produced.

Will I be able to promote?

There will be no punitive action or denial of promotion against any employee solely because that employee's name or the contents of the employee's personnel file may be subject to disclosure pursuant to law.

Does this mean I can never testify in court?

No, you can and likely will still testify in court. The first step is for the DA to disclose the information and address whether the information is relevant in the case before the court. The second step is for the court to determine whether or not to admit the evidence. The third step requires the DA to question you about the circumstances on the witness stand and question you about whether the defendant's case has been impacted.

How will this affect my ability to make arrests and/or conduct investigations?

Whether or not OCDA decides to make a *Brady* disclosure will not change your role or ethical duty to protect public safety. You are expected to perform your job duties fully and completely.

Will I be unable write a Search Warrant?

There is no legal barrier for you to be the affiant in a search warrant. It is possible that OCDA will not accept a Search Warrant written by a sworn department member who they believe has credibility issues.





Will a **Brady** letter from the OCDA affect my chances of working in assignments like Investigations, Gangs, etc.?

OCSD will assess each situation on a case-by-case basis. For operational and management needs the department member may be transferred.

If you have any questions or concerns please contact S.A.F.E. at [REDACTED]

