**Collin County District Attorney Policy Regarding Disclosure of Potential Exculpatory/Impeachment Information Involving Law Enforcement Officers**

Summary

The prosecutor’s duty is to see that justice is done. A practical understanding of what that means must account for new laws as well as more recent interpretations of our long-established constitutional duties. These laws impose on the prosecutor a legal duty to disclose to the defense not just *exculpatory evidence*, but also any *information* *that could impeach the credibility of any State’s witness,* including law enforcement officers, and sooner than in the past. This Policy recognizes the legitimate interests of our law enforcement partners to safeguard the privacy of information in their personnel files. Likewise, this Policy ensures that legally required information flows from law enforcement agencies to prosecutors and to the defense.

Duty to Disclose

The District Attorney and its law enforcement partners must comply with the Supreme Court’s holding in *Brady v. Maryland*, 373 U.S. 83 (1963), and the Michael Morton Act (Texas Code of Criminal Procedure Article 39.14). *Brady* and the Michael Morton Act require that we disclose to the defense any evidence which is exculpatory or any evidence that could lead to exculpatory evidence. Exculpatory evidence includes information that could impeach the credibility of any State’s witness, including law enforcement officers.

*Brady* evidence is evidence that: (1) tends to exculpate or mitigate charges against a defendant; or (2) impeaches a prosecution witness. Evidence of conduct involving dishonesty, improper use of force, or tending to show bias, which occurs in the course of exercising peace officer powers and while interacting with the public or when engaging in investigatory functions, may be deemed *Brady*.

Texas’s Michael Morton Act incorporates the *Brady* Supreme Court decision in a broader context using the term “information” instead of “evidence” when referencing exculpatory, mitigating or impeachment issues. The legal obligations under *Brady* and the Michael Morton Act apply to any state’s witness, including law enforcement.

Additionally, prosecutors are bound to abide by Texas Code of Criminal Procedure Article 2.01 which states: “It shall be the primary duty of all prosecuting attorneys…not to convict, but to see that justice is done. They shall not suppress facts or secrete witnesses capable of establishing the innocence of the accused.” Further, Rule 3.09(d) of the Texas Disciplinary Rules of Professional Conduct requires that a prosecutor “make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor….”

A critical concern is whether information about a particular law enforcement officer contained in a personnel file might constitute exculpatory/impeachment information such that disclosure to the defendant would be required.

Responsibilities of the Law Enforcement Agency

The District Attorney requests each Chief of Police or agency head to conduct an audit in a timely manner of the personnel files for all current law enforcement officers (or any other current employee who has or might reasonably be expected to testify in a criminal case) or any other former officer who is a witness in a pending criminal case. The audit shall be conducted to identify any potential exculpatory/impeachment information contained within those personnel files. General Guidelines regarding the types of potential exculpatory/impeachment information is attached to this policy. If in doubt about whether the information potentially requires disclosure, the agency is encouraged to report the information to the District Attorney.

Once this audit is complete, the Chief of Police or agency head shall notify the District Attorney of the name, ID/badge number, employment status of the employee along with a concise summary of the events forming the basis of the notification. Do not provide any documents with the notification other than the summary. A Notice Form is attached for agencies to make the required notifications pursuant to this Policy.

Notifications are expected to include sustained disciplinary allegations of misconduct involving the categories listed in the General Guidelines. The District Attorney is not generally seeking unsubstantiated disciplinary allegations of misconduct; however, if potential exculpatory/impeachment information does exist, please provide a summary. The District Attorney will rely on the due process provided by the professional police organization to its officers through disciplinary proceeding and will not re-litigate any of its findings.

The responsibility of each agency to make appropriate notifications pursuant to this Policy is on-going.

Should an officer or employee be relieved of their duties because of a pending complaint of misconduct involving the categories listed in the general guidelines, the agency shall immediately notify the District Attorney of the pending allegation and change in employee status.

Agencies are encouraged to designate an employee as their point of contact, to audit personnel files and to keep the District Attorney apprised of required notifications under this Policy in the future.

Responsibilities of the District Attorney

The District Attorney shall establish a committee tasked with reviewing all information received from law enforcement agencies pursuant to this Policy. This committee will make a determination regarding any issue related to this Policy. Issues related to disclosure shall be resolved in favor of disclosure to the extent practicable. This committee will maintain a disclosure database containing the names and summaries of information approved by the committee pursuant to this Policy. Decisions whether to sponsor a witness in the disclosure database will be made on a case-by-case basis by this committee, and in consultation with the trial prosecutor when appropriate.

Responsibilities of the Individual Prosecutor

Every Collin County District Attorney prosecutor shall be familiar with the disclosure database on a continual basis. Should any potential witness appear in the disclosure database, the individual prosecutor is responsible for making the required disclosure to defense counsel. Individual prosecutors are encouraged to consult with this committee on any questions concerning disclosures or this Policy.

Individual prosecutors should remember that the duty to disclose is not a stipulation that the disclosed information is admissible. Individual prosecutors should be prepared to argue against the admissibility of the disclosed information when appropriate and after consulting a member of the committee created by this Policy.

Due to the sensitive nature of the information contained in the disclosure database, individual prosecutors shall seek to keep that information confidential except as provided in this Policy.

Closing Statement

The District Attorney will exercise all due diligence in discharging our duties under *Brady*, the Michael Morton Act, and the disciplinary rules. We confidently rely on the professional policing practices of our law enforcement partners in fulfilling our shared obligations to ensure that justice is done, including that all defendants receive a fair trial.

Signed by:

Collin County Criminal District Attorney

GENERAL GUIDELINES

Examples of potential exculpatory/ impeachment information pursuant to this Policy include, but are not limited to, the following:

1. False reports by a prosecution witness.

2. Pending criminal charges against a prosecution witness.

3. Parole or probation status of the witness.

4. Information contradicting a prosecution witness’s statements or reports.

5. Information undermining a prosecution witness’s expertise.

6. Information that a witness has a reputation or character for untruthfulness or has concealed exculpatory or mitigating evidence.

7. Information that a witness has a racial, religious, or personal bias or prejudice against the defendant individually or as a member of a group.

8. Unreported promises, offers or inducements to the witnesses, including a grant of immunity, inducements to gain consent to search, and inducements to gain statements or confessions.

9. A sustained disciplinary finding that reflects on the witness’s truthfulness, bias, or moral turpitude.

10. A sustained disciplinary finding that involves excessive force, the collection or maintenance of evidence, or any violations of a person’s constitutional rights.

11. An employee under pending internal investigation for the herein noted types of misconduct who has been relieved of their duties.

12. A conviction for any felony, theft, or crime of moral turpitude. Moral turpitude includes, but is not limited to, the following:

▪ **Sexual assault of a child:** ***In the Matter of GMP***, 909 S.W.2d 198 (Tex. App. – Houston [14th Dist.] 1995, no pet.).

▪ **Lying to a police officer**: (filing a false report) ***Lape v. State***, 893 S.W.2d 949 (Tex. App. – Houston [14th Dist.] 1994, pet. ref’d); ***Robertson v. State***, 685 S.W.2d 488 (Tex. App. – Fort Worth 1985, no pet.) (“no clear cut criteria” for moral turpitude).

▪ **Mail fraud**: ***State Bar v. Heard,*** 603 S.W.2d 829 (Tex. 1980).

▪ **Tax evasion**: ***In re Humphreys,*** 880 S.W. 2d 402 (Tex. 1994) (whether a case involves moral turpitude is a question of law); ***In the Matter of Birdwell***, 20 S.W.3d 685 (Tex. 2000).

▪ **Prostitution**: ***Holgin v. State***, 480 S.W.2d 405 (Tex. Crim. App. 1972); ***Husting v. State***, 790 S.W.2d 121 (Tex. App. – San Antonio 1990, no pet.).

▪ **Purchase of child: *In the Matter of Thacker*,** 881 S.W.2d 307 (Tex. 1994).

**▪ Indecent exposure**: ***Polk v. State***, 865 S.W.2d 627 (Tex. App. – Fort Worth 1993, pet. ref’d).

▪ **Failure to stop & render aid: *Tate v. State Bar of Texas,*** 920 S.W.2d 727 (Tex. App. – Houston [1st Dist.] 1996, writ denied).

▪ **Theft: *Milligan v. State,*** 554 S.W.2d 192 (Tex. Crim. App. 1977).

▪ **Aggravated assault by man on a woman**: ***Jackson v. State***, 50 S.W.3d 579, 591 (Tex. App. – Fort Worth 2001, pet. ref’d); ***Ludwig v. State***, 969 S.W.2d 22 (Tex. App. – Fort Worth 1998, pet. ref’d); ***Hardeman v. State***, 868 S.W.2d 404 (Tex. App. – Austin 1993), *pet. dism’d*, 891 S.W.2d 960 (Tex. Crim. App. 1995).

▪ **Assault by a male on a female**: ***Trippell v. State***, 535 S.W.2d 178 (Tex. Crim. App. 1976).

▪ **Communicating a false alarm**: ***Op. Tex. Att’y Gen.*** DM 96-140 (1996).

▪ **Murder and indecent exposure: *Polk v. State,*** 865 S.W.2d 627 (Tex. App. – Fort Worth 1993, pet. ref’d).

▪ **Swindling*: Sherman v. State,*** 62 S.W.2d 146 (Tex. Crim. App. 1933).

▪ **Bank fraud: *Searcy v. State Bar of Texas***, 604 S.W.2d 256 (Tex. 1980).

▪ **Theft, shoplifting: *Milligan v. State***, 554 S.W.2d 192 (Tex. Crim. App. 1977).

▪ **Public lewdness: *Escobedo v. State***, 202 S.W.3d 844 (Tex. App. – Waco 2006, pet. ref’d).