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**Frequently Asked Questions: Mandatory Disclosure Notice Concerning Law  
Enforcement Witnesses**

District Attorney Timothy J. Cruz, and the prosecutors in the Plymouth County District Attorney's Office ("PCDAO"), work diligently to adhere to constitutional, ethical, and criminal procedure rules regarding the disclosure of evidence. Every day, prosecutors disclose "any facts of an exculpatory nature," in compliance with the Massachusetts Rules of Criminal Procedure Rule 14. Furthermore, prosecutors, bound by the Massachusetts Rules of Professional Responsibility, make timely disclosures of known evidence that tends to mitigate the offense or negate guilt (Mass. R. Prof. C. 3.8 (d)); pursue evidence that may aid the accused (Mass. R. Prof. C. 3.8 (g)); and disclose post-conviction exculpatory evidence (Mass. R. Prof. C. 3.8 (i)).

Moreover, the PCDAO also recognizes its constitutional duty to disclose exculpatory evidence, including evidence that may impeach the credibility of a government witness, such as a police officer. Disclosure of exculpatory evidence occurs daily for prosecutors and is part of the normal trial process. The following questions and answers are provided to assist in understanding this issue.

**1. What information requires mandatory disclosure?**

The Plymouth County District Attorney's Office has an obligation to "disclose the exculpatory information at issue to unrelated criminal defendants in cases where a petitioner [police officer] is a potential witness or prepared a report in the criminal investigation." See Matter of A Grand Jury Investigation, 485 Mass. 641, 658 (2020); Graham v. District Attorney for the Hampden District, 493 Mass. 348, 364 (2024). To be considered exculpatory, and therefore subject to automatic disclosure, evidence need only tend to diminish a defendant's culpability. The defendant need not request exculpatory material to mandate this disclosure.

In Matter of Grand Jury Investigation, 485 Mass. at 658, the Supreme Judicial Court ruled that:

*Where a prosecutor determines from information in his or her possession that a police officer lied to conceal the unlawful use of excessive force, whether by him- or herself or another officer, or lied about a defendant's conduct and thereby allowed a false or inflated criminal charge to be prosecuted, the prosecutor's obligation to disclose exculpatory information requires that the information be disclosed to defense counsel in any criminal case where the officer is a potential witness or prepared a report in the criminal investigation.*

In Graham, 493 Mass. at 364, the Supreme Judicial Court expanded the Commonwealth's obligation to adverse credibility findings and ruled that:

*Allowing a police officer to take the witness stand with knowledge of a prior determination as to the officer's dishonesty and without making the necessary disclosures of this determination violates the ethical and legal duties of a prosecutor.*

A police officer's arrest and/or conviction for criminal charges also warrants a mandatory disclosure. Pending criminal investigations involving and known to members of the prosecution team require disclosure. Likewise, findings of an officer's misconduct by an internal affairs investigation also require disclosure.

However, pending civil lawsuits are not subject to the prosecutor's automatic disclosure obligations because, until there is finding of civil liability, a pending lawsuit may well be without merit.

## **2. Are Internal Affairs records subject to mandatory disclosure?**

Under Commonwealth v. Wanis, 426 Mass. 639, 644 (1998), if a prosecutor actually possesses police department internal affairs records, the prosecutor must review that material in response to a Mass. R. Crim. P. 14 motion. If a prosecutor does not possess such records, a defendant may obtain the statements of percipient witnesses contained within an internal affairs file via a motion under Mass. R. Crim P. 17. If a defendant desires additional information, a summons for production must be sought and, if opposed, the defendant must make a specific, good faith showing of relevancy to a judge.

**3. Does the Plymouth County District Attorney's Office have discretion in deciding what information to disclose?**

A prosecutor's obligation to disclose exculpatory material is just that — an obligation, not a discretionary decision. In the Matter of a Grand Jury Investigation, 485 Mass. at 650. Therefore, prosecutors cannot, consistent with their obligation to disclose exculpatory information, withhold at their discretion the fact that a judge has determined that an officer's statements were not credible.

Importantly, neither a prosecutor's decision to disclose nor a prosecutor's constitutional obligations are dependent on the ultimate admissibility of the information, but only on their tendency toward exculpating a defendant.

**4. How broad in scope is a prosecutor's duty to disclose?**

A prosecutor's duty to disclose extends to all facts within the possession, custody, or control of a member of the prosecution team. Put differently, a prosecutor's obligations extend to information in possession of a person who has participated in the investigation or evaluation of the case and has reported to the prosecutor's office concerning the case. A prosecutor's duty to disclose necessarily encompasses information that may not even be known to the prosecutor or housed within his or her files, so long as the information is related directly to the crimes at issue and is in the possession of some prosecution team member. That is, prosecutors have a duty to disclose exculpatory evidence in possession of all members of the prosecution team — including police officers on the team. See Graham, 493 Mass. at 361.

As a result, when a prosecutor or any member of the prosecution team learns that police officers either lied to conceal the unlawful use of excessive force or lied about a defendant's conduct and the applicable charges, the prosecutor must disclose the untruthful conduct in any criminal case in which that officer prepared a report or may serve as a witness.

A prosecutor is expected to actively seek out any exculpatory evidence held by the Commonwealth or another member of the prosecution team. Reasonableness is the only limitation on the prosecutor's duty of inquiry. Reasonableness demands, at the very least, that prosecutors ask other members of the prosecution team whether exculpatory information exists, particularly any information specifically requested by defense counsel or required to be disclosed under Mass. R. Crim. P. 14. Commonwealth v. Martin, 427 Mass. 816 (1998).

**5. How is mandatory disclosure material used at trial?**

Whether an officer may be impeached, at a trial or motion hearing, by mandatory disclosure material is determined on a case-by-case basis. Regarding the admissibility of such exculpatory information, the Supreme Judicial Court explained that the trial judge must decide “whether the credibility of a police officer is a critical issue at trial and whether the officer’s prior false statements in a separate matter might have a significant impact on the result of the trial, such that the prior misconduct should be admitted in the interest of justice.” Matter of Grand Jury Investigation, 485 Mass. at 651-52.

A judge has the discretion to decide whether the credibility of a police officer is a critical issue at trial and whether the officer's prior false statements in a separate matter might have a significant impact on the result of the trial, such that the prior misconduct should be admitted in the interest of justice.

A judge, in deciding whether to allow a police officer witness in the interest of justice to be impeached with prior misconduct, may consider the age of the prior misconduct, the strength of the evidence of the prior misconduct and the simplicity of establishing it, and whether the prior misconduct is probative of how the officer conducts police investigations. As to the age of the misconduct, if it happened so long ago that it would not be admissible for impeachment had it resulted in a criminal conviction, Mass. G. Evid. § 609, it would not likely be admissible in the absence of a conviction.

As to the strength of the evidence of the prior misconduct and the simplicity of establishing it, a judge may consider whether admitting evidence of the misconduct will result in a trial within a trial to resolve whether it happened or how it happened. As to whether the prior misconduct is probative of how the officer conducts police investigations, a judge may consider whether the misconduct reflects a willingness to lie to win a conviction or instead involves matters that, although serious, do not bear on the integrity of police investigations, such as taking unauthorized sick time or inflating overtime hours.

**6. How does the PCDAO acquire exculpatory evidence that may impeach the credibility of a police officer?**

The Plymouth County District Attorney's Office has an obligation to "disclose the exculpatory information at issue to unrelated criminal defendants in cases where a petitioner [police officer] is a potential witness or prepared a report in the criminal investigation."

All law enforcement and government agencies are required to inform PCDAO of mandatory disclosure information regarding an officer. Likewise, individual officers are required to disclose such information. The PCDAO has published a Disclosure Policy on our website which outlines the types of information that an agency is required to turn over to PCDAO. In addition to making the Disclosure Policy publicly available, the PCDAO has sent a letter to each police department in Plymouth County, the Plymouth County Sheriff, and the Massachusetts State Police, informing them of the shared constitutional duty to disclose exculpatory and impeachment information, as well as what types of information needs to be disclosed, and how to disclose it to the PCDAO. The PCDAO also may obtain exculpatory evidence from prosecutors who acquire such evidence during the pre-trial and trial process.

**7. Who at the PCDAO is responsible for maintaining mandatory disclosure information related to a police officer, and who is responsible for determining whether such information is disclosed to a defendant?**

Every Assistant District Attorney is responsible for acquiring all exculpatory material in cases assigned to them. All mandatory disclosure information shall be maintained by the Chief of the Conviction Integrity Unit, Assistant District Attorney Arne Hantson, [arne.hantson@mass.gov](mailto:arne.hantson@mass.gov).

All potential mandatory disclosure matters are reviewed by a team of Assistant District Attorneys who ultimately decide as to whether the information provided constitutes material which requires disclosure to the court and the defendant, taking into consideration the constitutional, ethical, and criminal procedure rules regarding the disclosure of evidence.

**8. Does PCDAO maintain a mandatory disclosure list? If so, is it public?**

The PCDAO does track the police officers for whom mandatory disclosures are required. Once the PCDAO learns of any information favorable to the accused (including misconduct or the reliability of a given witness), such information is immediately disclosed to the defense, and in some instances to the court. Such disclosures are handled every day on a case-by-case basis. The disclosure obligation sweeps very broadly and includes not just instances of suspected misconduct, but also any information that may be helpful to the accused.

The public facing data includes officers who have convictions and CWOs. The Supreme Court cases of Brady v. Maryland, 373 U.S. 83 (1963) and Giglio v. United States, 405 U.S. 150 (1972), are often cited as the genesis for the so-called Brady List or Brady/Giglio List. Those cases, however, do not mandate the creation of any such list and do not even reference such a list. In both cases, the Supreme Court addressed the conduct of a prosecutor, not a police officer.

**9. Is notice provided to witnesses prior to the issuance of a mandatory disclosure?**

Prior to the issuance of a mandatory disclosure, we seek to notify the officer involved, and their department of the pending disclosure. The Plymouth County District Attorney's Office is open to meeting and discussing the disclosure with the interested parties, bearing in mind that a prosecutor's obligation to disclose exculpatory material is just that — an obligation, not a decision and Massachusetts prosecutors must err on the side of caution when deciding whether to disclose. See In the Matter of a Grand Jury Investigation, 485 Mass. at 650.