

Comments from the Maryland Office of the Public Defender
Draft Policy 1809 – Exculpatory Evidence Disclosure Requirements
July 2019

Issues of nondisclosure have arguably been among the greatest breakdowns in Baltimore’s criminal justice system. While the Law Enforcement Officer Bill of Rights (LEOBR) and the Maryland Public Information Act (MPIA) may preclude the public disclosure of police personnel records, the constitutional implications of these records in criminal cases mandate that these materials be provided to the defense. The State’s Attorney’s failure to meet this obligation enabled the Gun Trace Task Force members, and other bad acting officers, to act with impunity as their in-court testimony was regularly credited over defendants and other members of the public who accused them of misconduct without documentation of their wrongdoings.

The State’s Attorney’s Office has generally claimed that it was not aware of information within the Baltimore Police Department, despite clear legal precedent attributing such knowledge to their office. *See, e.g., Youngblood v. W. Virginia*, 547 U.S. 867, 869–70 (2006); *Riggins v. State*, 223 Md. App. 40, 56, 115 (2015); *State v. Williams* 392 Md. 194 (2006). Whether prior gaps were due to BPD’s failure to provide information to the SAO or deficiencies within the SAO (or both), the proposed policy has the potential to substantially improve the process and identify where breakdowns occur.

As with many of the BPD’s newly drafted policies, training will be vital to ensure its proper implementation and disciplinary measures for noncompliance need to be developed more fully. Related policies are also implicated, most notably the process for expungement of internal affairs records, and while not addressed in detail here directly relate to the efficacy of this policy. The prosecution of Clayton D. Colkley – whose conviction was reversed based on the nondisclosure of IAD files pertaining to Detectives Kerry Sneed and Darryl Massey, only for the BPD’s law Department to have inexplicably expunged those files prior to the retrial – makes clear the urgency in addressing the expungement policies and practices.

Several of our comments impact wording throughout the policy. So rather than provide language suggestions with each recommendation, we have attached a marked-up version of the proposed policy that shows all of our recommended changes in red.

Recommendation 1: Explicitly reinforce the proactive obligation of sharing impeachment and exculpatory evidence with the prosecution, regardless of admissibility.

Maryland law makes clear that, in general, “the police are an arm of the prosecution,” such that knowledge by a BPD member will be transferred to the prosecution for purposes of disclosure. *Riggins v. State*, 223 Md. App. 40, 56, 115 (2015) (quoting *Robinson v. State*, 354 Md. 287, 304 (1997)). The Purpose refers to the concept, but does not explain what it requires for BPD members to “carefully comply with [its Brady and Giglio] obligation[s].” The Purpose should highlight key principles within compliance. In particular, the Purpose should make clear that all Impeachment and Exculpatory Evidence must be shared with the prosecution, regardless of its admissibility at trial, and that the obligation continues and is ongoing throughout the case.

Recommendation 2: Throughout the policy, ensure that disclosures are not limited to anticipated witnesses but all members of the prosecution team, including members who may not testify.

The prosecution is obliged to disclose all materials and information that may be exculpatory or impeaching, regardless of its admissibility at trial. Md. Court Rule 4-263 (d)(5)-(6). Whether information may be sufficiently beneficial to the defense to amount to exculpatory or impeachment evidence requires a legal analysis that can best be made by the attorneys who are litigating the case, and know how the information may disprove or call into question any component of the prosecution's case.

OPD has repeatedly been faced with nondisclosure of IAD information about BPD members who were a critical part of the investigation but not called to testify. Their history of misconduct allegations could be sufficiently relevant to the defense in the instant case, particularly if it impacted actions by other members and/or civilian witnesses. While that might ultimately a point for litigation in any given case, it is critical that the prosecution have all of the relevant information and materials about every member who was part of the investigation so that it can make its legal arguments and decisions to best comply with the law.

Recommendation 3: In the Exculpatory Evidence definition, include mishandling of evidence in the information that tends to cast doubt on the admissibility of evidence.

The mishandling of evidence in any way, whether intentional (such as tampering) or not (such as insufficient documentation) impacts admissibility and credibility. Nonetheless, this is also an area where information has often not been disclosed. As a result, we recommend explicitly including it in the Potential Exculpatory Evidence definition.

Recommendation 4: In the Potential Impeachment Evidence definition, include all prior misconduct allegations, not just those with a finding of misconduct.

Information may be relevant for impeachment purposes even if it does not meet the burden for proving misconduct in a judicial or administrative proceeding. Disclosure could impact the defense investigation and strategy regardless of admissibility at trial. The prosecution must be provided with all of this information so that they can determine what needs to be disclosed. Consistent with other discussion regarding IAD files, bullet point eight in the Potential Impeachment Evidence definition should be broader than instances where there was a formal finding.

Recommendation 5: Require information to be provided to the prosecution in writing.

The policy should ensure documentation of all information shared with the prosecution, and discourage mere verbal sharing. Required Actions, Members ¶ 1 should clarify that the information is to be shared in writing.

Recommendation 6: Make clear when members are expected to know that a case is filed, rather than explain why they may not know that the prosecutor is pursuing a case.

The proposed policy makes clear that disclosure must take place within five days of learning that the case has been filed, but it then includes a note reinforcing nondisclosure based on lack of knowledge. *See* Draft Policy, Required Actions, Member ¶1 Note. While BPD members' ability to comply with the policy is tied to their knowledge that a case has been filed, the policy messaging would be more consistent and appropriate if it clarified when a BPD must know that a case has been filed (upon receiving a summons) rather than providing a general excuse for an officer to decide not to comply.

Recommendation 7: Be clear that the disclosure obligation applies to all Exculpatory and Impeachment Evidence, even if it relates to a BPD member, and that this obligation continues even if some disclosure was previously provided.

Required Actions, Member ¶ 1.1 and ¶ 1.2 reinforce key principles regarding the obligation to disclose to the prosecution, but limits its application to Potential Impeachment Evidence to anticipated witnesses who are not BPD members. As these obligations apply to all impeachment evidence, including information relating to the credibility of BPD members, that limitation should be removed.

As discussed above, and alluded to elsewhere in the proposed policy, the obligation to disclose information to the prosecution is ongoing throughout the life of the case. OPD has encountered BPD members who have insisted that, because they provided some Exculpatory/Impeachment information earlier, they did not need to provide the prosecutor with any updated information. The policy should make explicit that this obligation continues and may require multiple disclosures as new information is discovered.

Recommendation 8: Define confidential investigations and clearly distinguish confidential investigations from other open investigations that the member can and must disclose.

All investigations must be disclosed to the prosecution, who can then make a legal determination as to what information must be shared with the court and the defense. A BPD member is not obliged to disclose a confidential investigation solely because they are unaware of it. In comparison, open investigations, which may be confidential to the public but are known to the BPD member, must be provided in the member's disclosure information to the prosecution. The policy should clearly distinguish these different types of active investigations, by defining "confidential investigation" to make clear that it is a covert operation that a BPD member does not know is taking place, and reiterate that open investigations need to be disclosed.

Recommendation 9: Expungement problems

As noted in the introductory remarks above, the expungement of internal affairs files, with little documentation or oversight, has created unlawful practices that complicate the ability to fully comply with disclosure obligations. Separate from the proposed policy here, the BPD must revisit its policies and procedures relating to IAD file expungement and ensure that sufficient information is maintained to comply with Brady and Giglio.

Recognizing that this disclosures policy cannot address all of the current problems with expungement practices, it must still account for current deficiencies that impact the ability to comply with constitutional obligations. At a minimum, this requires explicitly creating an ongoing obligation on the part of BPD members to disclose expunged cases, which may not show up in an IAPro summary.

Recommendation 10: Make failure to comply with this policy a reportable internal affairs event.

If a member does not comply with this policy, beyond the disciplinary repercussions for them, that information on its own may be relevant for future cases in which that member may be subject to impeachment. A violation of this policy should therefore be included in the IAD file so that there is sufficient documentation for its disclosure in the future.

Recommendation 11: Include failure to disclose within actions subject to discipline.

Like other policies recently drafted or updated by the BPD, a detailed accounting of the possible disciplinary measures for different levels of violation will need to be developed. This policy, however, should still provide the full range of noncompliance. In addition to providing false information, the failure to provide required information at all should be treated just as seriously.

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By Order of the Police Commissioner

PURPOSE

The purpose of this policy is to ensure the compliance of Baltimore Police Department (BPD) members with their solemn obligation to disclose Potential Exculpatory and Impeachment Evidence in criminal cases. This obligation is established in the United States Constitution and the Maryland Declaration of Rights, and recognized through court decisions, including *Brady v. Maryland*, 373 U.S. 83 (1963), and *Giglio v. United States*, 405 U.S. 150 (1972).

BPD members must carefully comply with this obligation because all knowledge of Potential Exculpatory and Impeachment Evidence in the possession of BPD members is attributed to the prosecuting authority. **This is not limited to evidence that is admissible at trial. BPD and its members have an ongoing affirmative duty to report to the prosecutor all information, including any misconduct allegations of any member involved in any part of the investigation, regardless of the outcome of any IAD investigation.**

If a BPD member fails to disclose Potential Exculpatory or Impeachment Evidence to the prosecutor in a criminal case so that the prosecutor is incapable of disclosing it to the defense, the government's case will be tainted and could be dismissed, and the defendant's constitutional rights may be violated. The prompt disclosure of Potential Exculpatory and Impeachment Evidence preserves the integrity of the criminal justice system. The failure to promptly disclose such evidence undermines it.

POLICY

It is the policy of BPD to identify and provide to the prosecution any Potential Exculpatory and Impeachment Evidence as soon as possible following the initiation of any criminal case in state or federal court.

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This policy requires honesty and transparency from each BPD member and oversight from the Public Integrity Bureau (PIB). Breaches of this policy will adversely affect a member's ability to continue serving as a law enforcement officer.

DEFINITIONS

Potential Exculpatory Evidence — Evidence that is favorable to the accused because it may disprove the guilt of the accused or may show the accused should receive less severe punishment. Examples of Potential Exculpatory Evidence include, but are not limited to:

- Information that tends to disprove the defendant's guilt concerning any count in a criminal case.
- Information that tends to cast doubt on the admissibility of evidence that the government plans to offer and that could be subject to a motion to suppress or exclude—for instance, information that tends to undermine probable cause for an arrest or a search **or sheds light on the mishandling of physical evidence**.
- The failure of any eyewitness to make a positive identification of a defendant or an eyewitness's identification of another individual as the perpetrator.
- Any statement made by any person that is inconsistent with the testimony of a potential witness for the government regarding the alleged criminal conduct of the defendant, whether or not the inconsistent statement was written or recorded.
- Information that tends to diminish the degree of the defendant's culpability, the severity of the offense charged, or the severity of the defendant's sentence—for instance, information about a defendant's intellectual or behavioral health disability or minor role in the offense compared to the roles of co-defendants.

Potential Impeachment Evidence – Evidence that is favorable to the accused because it may cast doubt on the credibility of a witness **or other a member of the prosecution team** for the government, including but not limited to a police officer, an eyewitness, or an informant.

Examples of Potential Impeachment Evidence include, but are not limited to:

- Any criminal record or criminal case pending against any anticipated witness for the government **or other member of the prosecution team**.
- Any formal or informal offer of leniency or favorable treatment made by the government to an anticipated witness **or other member of the prosecution team** in any existing or potential criminal case against that witness—for instance, an offer of immunity, non-prosecution, reduced charges, or a reduced sentence.
- Any formal or informal request for leniency or favorable treatment made by an anticipated witness **or other member of the prosecution team** in any existing or potential criminal case against that

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witness—for instance, a request for immunity, non-prosecution, reduced charges, or a reduced sentence.

- Any benefits, formal or informal, provided by the government to an anticipated witness **or other member of the prosecution team**.
- Information that tends to cast doubt on the credibility or accuracy of an anticipated witness for the government **or other member of the prosecution team**.
- An inconsistent statement made by any anticipated witness for the government **or other member of the prosecution team**, whether or not that statement was written or recorded.
- Information regarding any mental or physical impairment of any anticipated witness for the government **or other member of the prosecution team** that tends to cast doubt on the witness's ability to testify accurately and truthfully at trial.
- **Any allegation finding** of misconduct ~~in by~~ any court of competent jurisdiction, a BPD trial board or BPD's Public Integrity Bureau that reflects on the truthfulness, integrity, motive or bias of any BPD member or any other individual who is **a member of the prosecution team or** anticipated to be called as a witness for the government.
- Evidence of untruthfulness, dishonesty, lack of integrity, motive or bias of any BPD member who is **part of the prosecution team, whether or not they are** anticipated to be called as a witness.
- Evidence that an anticipated witness for the government **or member of the prosecution team**, including a BPD member, has a racial, religious, or personal bias against a defendant individually or as a member of a group.

REQUIRED ACTIONS

Members

1. In any criminal case in which a BPD member is **a member of the prosecution team, including but not limited to** involvement **ment** as an investigator or an anticipated witness for the government, the member shall provide all Potential Exculpatory Evidence known to the member, as well as all known Potential Impeachment Evidence regarding any anticipated witness for the government **or other member of the prosecution team** who is not a BPD member, to the relevant prosecuting authority, whether it be the Office of the State's Attorney (OSA), the United States Attorney's Office (USAO) or another prosecutor's office. The BPD member shall provide such evidence **in writing** to the prosecutor within five business days after learning that the case has been filed and no later than the date of the first court hearing in the case, or if the evidence is not discovered until after the first court hearing, then within five business days after such discovery.

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NOTE: ~~At the latest, a In many cases, particularly misdemeanor cases, the~~ member ~~will may not~~ be aware that the prosecuting authority is pursuing the case ~~until when~~ the member receives a summons for the first court hearing.

- 1.1. The responsibility of BPD members to provide the relevant prosecuting authority with Potential Exculpatory Evidence, as well as Potential Impeachment Evidence ~~regarding any anticipated witness for the government who is not a BPD member~~, exists regardless of whether the prosecutor makes a request for such evidence.
- 1.2. The responsibility of BPD members to disclose to the relevant prosecuting authority Potential Exculpatory Evidence, as well as Potential Impeachment Evidence ~~regarding any anticipated witness for the government who is not a BPD member~~, continues for the duration of a case—from the filing of charges through trial and appeal, until the defendant has completed serving their sentence. This continuing duty requires updating information regarding Impeachment and Exculpatory Evidence as it is generated or discovered, even if disclosure of other information was previously provided.
2. In any criminal case in which a BPD member is part of the prosecution team, such as by being involved as an investigator or an anticipated witness for the government, the member shall request from PIB an up-to-date IAPro summary of the member's disciplinary history. The member shall make this request to PIB within five business days after learning that the case has been filed and no later than the date of the first court hearing in the case. The member shall then furnish the IAPro summary to the relevant prosecuting authority within five business days after receiving it from PIB.
 - 2.1. Disciplinary history summaries shall include all investigations of a member regardless of outcome, including expunged matters that are able to be identified and open investigations, with the exception of any ongoing confidential investigation.

NOTE: A Confidential investigation is an investigation conducted in a covert manner in order to safeguard its integrity. Not all open investigations are confidential and members must disclose any investigation which they know is being or was conducted.

- 2.2. Each member has an affirmative duty to maintain knowledge of their own personnel history, including the full disciplinary/internal affairs history available to the member, which includes any open investigation, any closed matter, and any expunged matter that is able to be identified.

NOTE: When a prosecutor asks a member about their disciplinary history, the member should disclose all allegations they are aware of, regardless of whether the records related to the complaint or allegation have been expunged, sustained, or not sustained.

NOTE: A member may or may not have received notice of the expungement of a matter. Historically, some members have followed a practice of requesting expungements for any eligible matter at

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regular intervals, which may have resulted in matters being expunged without notice to the member. If a member has followed this practice, they should disclose that fact to the prosecutor.

2.3. If there is a disciplinary violation or investigation that a member has not been made aware of (because it was or is being conducted in a covert manner in order to safeguard its integrity), the member does not have a duty to find out about or disclose such investigation. **This exception is limited to confidential investigations. Members must still disclose any current or prior investigation that they know about, regardless of its outcome.**

2.4. The responsibility of BPD members to provide the relevant prosecuting authority with summaries of their disciplinary histories exists regardless of whether the prosecutor makes a request for such information.

3. When disclosing Potential Exculpatory and Impeachment Evidence to the relevant prosecuting authority, each member shall complete and provide to the prosecutor any and all required discovery forms, including Required Court Disclosure Form 430 (Appendix A), without a specific request from the prosecutor.
4. In order to properly document disclosure of Potential Exculpatory and Impeachment Evidence in any case in which a BPD member makes a disclosure, the member shall keep in the BPD investigative case folder all material disclosed to the prosecutor, including but not limited to a copy of the Required Court Disclosure Form 430 and any disciplinary history summary furnished by PIB.
5. In fulfilling their disclosure obligations under this policy, BPD members shall not attempt to predict which evidence the prosecutor will use at trial or which evidence the defense will use in its investigation or at trial. **BPD members are required to provide to the prosecutor all Potential Exculpatory and Impeachment Evidence, without exception. It is the prosecutor's decision—not the decision of any BPD member—to determine which evidence to disclose to the defense.**

Public Integrity Bureau

1. PIB shall assign one or more members, civilian or sworn, to serve as the Criminal Discovery Liaison(s) for prosecutorial authorities.
2. Within five business days of receiving a request from a member, the Criminal Discovery Liaison shall provide the member with a copy of the member's IAPro summary.
3. To properly fulfill requests from prosecuting authorities:
 - 3.1. Upon the submission by a prosecutor of a request to the Criminal Discovery Liaison to inspect the disciplinary history of any member, the Criminal Discovery Liaison shall electronically send to the prosecutor within five business days, unless good cause is shown for an extension (see 3.2. below), the records reflecting such history, which shall

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include any and all disciplinary investigations, whether closed or active, regardless of outcome.

- 3.1.1. The Criminal Discovery Liaison shall provide the prosecutor with the member's complete disciplinary history, which includes the complete case file in all disciplinary cases in which the member was accused of violating Departmental rules. Thus, in fulfilling a prosecutor's request for the disciplinary history of the member, the Criminal Discovery Liaison shall ensure that the member's IAPro file contains all materials from every case in which the member was or is a subject of an investigation. In the event the member's IAPro file does not contain all materials from every case, the Criminal Discovery Liaison shall search the hardcopy of the member's disciplinary case files for all such materials. The Criminal Discovery Liaison shall then provide to the prosecutor all hardcopy materials that have not been uploaded to IAPro, as well as all materials that have been uploaded to IAPro.
- 3.1.2. IAPro may contain materials from expunged matters. However, to the extent materials regarding an expunged matter are not captured in IAPro, it may be impossible for the Criminal Discovery Liaison to locate materials from that matter, because the materials may no longer exist or may be incapable of being located in hardcopy. **To ensure reliability of reporting, members have ongoing duty to report to the prosecution expunged matters to the best of their ability.**
- 3.1.3. PIB shall ensure that any request from the prosecutor contains the name and sequence number of the BPD member who is the subject of the request.
- 3.2. If the PIB Criminal Discovery Liaison is unable to fulfill the request within five business days, they must show good cause for delay in a written extension request. No extension shall be for more than five business days.
 - 3.2.1. An extension request must be made in writing by the Criminal Discovery Liaison, and either granted or denied by the PIB Administrative Lieutenant.
 - 3.2.2. If an extension is granted, the Criminal Discovery Liaison must notify the prosecutor that delivery of the history will be delayed, and they must document the notification.
- 3.3. PIB shall follow this procedure regardless of whether the request for a member's disciplinary history is initially generated by an inquiry from a defense lawyer or on the prosecutor's own initiative.
4. PIB has the obligation to inform the relevant prosecuting authority about any on-going confidential investigation regarding any BPD member who is **part of the prosecution team, including but not limited to members who are** involved in a criminal case as an investigator or an anticipated witness for the government, given that the members are not informed about such confidential investigations.

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- 4.1. Upon identifying the existence of a confidential investigation involving a member about which a request is received, the PIB Criminal Discovery Liaison will notify, via their chain of command, the Deputy Commissioner of PIB.
- 4.2. The Deputy Commissioner of PIB will communicate directly with the Chief of the Police Integrity Unit of the relevant prosecuting authority to disclose the existence of a confidential investigation involving the member in question.

First-Line Supervisor

To ensure that BPD members are making timely disclosures of Potentially Exculpatory and Impeachment Evidence to prosecuting authorities, first-line supervisors shall regularly inspect their subordinates' case folders for Form 430s and attachments that document members' compliance with disclosure obligations.

TRAINING

All sworn BPD members shall receive training in the required disclosure of Potentially Exculpatory and Impeachment Evidence under this policy.

DISCIPLINE

1. **Noncompliance with this policy is a reportable internal affairs event.** BPD members who fail to comply with this policy shall be subject to discipline.
2. If any BPD member is impeached as a testifying witness with Potentially Exculpatory or Impeachment Evidence and knowingly provides untruthful testimony in response to such impeachment, **or is found to have withheld Potentially Exculpatory or Impeachment Evidence,** the member shall be subject to discipline, up to and including termination.

APPENDIX

- A. Required Court Disclosure Form 430

COMMUNICATION OF POLICY

This policy is effective on the date listed herein. Each employee is responsible for complying with the contents of this policy.

APPENDIX A

Form 430, Required Court Disclosure Form 430, Page 1



Form 430, Required Court Disclosure Form

Pursuant to our obligations under *Brady v. Maryland* 373 U.S. 83 (1963) and *Giglio v. U.S.* 405 U.S. 150 (1972), every member who has investigated or is expected to testify in any criminal case must complete the following questionnaire and provide it to the trial prosecutor, together with a copy of all case-related Potential Exculpatory and Impeachment Evidence, as defined in Policy 1809, *Exculpatory Evidence Disclosure Requirements*.

Portions of this document and any attached memorandum that reference disciplinary matters, and any attached disciplinary files, including IAPro summaries, are CONFIDENTIAL, as they are personnel records protected under Md. Code Ann., General Provisions, § 4-311.

As far as you are aware:

1. Have there ever been any judicial or administrative findings concerning your lack of truthfulness and/or candor, possible bias or official misconduct, whether expunged or not (e.g., failure to disclose exculpatory information; false testimony; witness coaching; obstruction; manufacturing or altering evidence)? **YES or NO**
2. Have criminal charges, not including minor traffic violations, ever been brought against you in any jurisdiction, whether expunged or not? **YES or NO**
3. Are there any pending investigations of you by Internal Affairs or the Public Integrity Bureau? **YES or NO**
4. Are you being represented by the City Law Department or any attorney in any civil lawsuits? **YES or NO**
5. Are there any pending investigations of you by the State's Attorney's Office or U.S. Attorney's Office? **YES or NO**
6. Are there any pending administrative investigations of you by any agency? **YES or NO**
7. In any pending investigation, have there been any allegations of misconduct that reflect upon your truthfulness or possible bias? **YES or NO**
8. Do you currently have or have you ever had any significant personal relationship with any of the victims, witnesses (including other police officers, social workers, or medical professionals), lawyers, judge, or defendant(s) in this case? A significant personal relationship is a relationship beyond being work colleagues or mere acquaintances that could potentially influence your testimony or create a possible bias toward or against any victim, witnesses, lawyer, judge, or defendant. **YES or NO**

If you answered "yes" to any of the above, and the matter is addressed in your IAPro summary, submitting the IAPro summary is sufficient. If any of your affirmative responses are not addressed in your IAPro summary, please provide details in a separate memorandum and provide it to the trial prosecutor, along with your IAPro summary.

9. Are you aware of any Potential Exculpatory Evidence related to this matter. Potential Exculpatory Evidence is favorable to the accused because it tends to disprove the guilt of the accused or is likely to show the accused should receive less severe punishment, including:
 - Information that tends to disprove the defendant's guilt concerning any count in a criminal case; **YES or NO**
 - Information that tends to cast doubt on the admissibility of evidence that the government plans to offer and that could be subject to a motion to suppress or exclude—for instance, information that tends to undermine probable cause for an arrest or a search; **YES or NO**
 - The failure of any eyewitness to make a positive identification of a defendant or an eyewitness's identification of another individual as the perpetrator; **YES or NO**
 - Any statement made by any person that is inconsistent with the testimony of a potential witness for the government regarding the alleged criminal conduct of the defendant, whether or not the inconsistent statement was written or recorded; **YES or NO**

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- Information that tends to diminish the degree of the defendant’s culpability, the severity of the offense charged, or the severity of the defendant’s sentence—for instance, information about a defendant’s intellectual or behavioral health disability or minor role in the offense compared to the roles of co-defendants; **YES or NO**
- Any other potentially exculpatory information. **YES or NO**

If any affirmative responses are indicated, please describe the evidence in a separate memorandum and provide the actual evidence or reports detailing the evidence to the trial prosecutor.

10. Are you aware of any Potential Impeachment Evidence related to this matter. Potential Impeachment Evidence is evidence that is favorable to the accused because it casts doubt on the credibility of a witness for the government, including but not limited to a police officer, an eyewitness, or an informant. Examples of Potential Impeachment Evidence include, but are not limited to:

- Any criminal record or criminal case pending against any anticipated witness for the government; **YES or NO**
- Any formal or informal offer of leniency or favorable treatment made by the government to an anticipated witness in any existing or potential criminal case against that witness—for instance, an offer of immunity, non-prosecution, reduced charges, or a reduced sentence; **YES or NO**
- Any formal or informal request for leniency or favorable treatment made by an anticipated witness in any existing or potential criminal case against that witness—for instance, a request for immunity, non-prosecution, reduced charges, or a reduced sentence; **YES or NO**
- Any benefits, formal or informal, provided by the government to an anticipated witness; **YES or NO**
- Information that tends to cast doubt on the credibility or accuracy of an anticipated witness for the government; **YES or NO**
- An inconsistent statement made by any anticipated witness for the government, whether or not that statement was written or recorded; **YES or NO**
- Information regarding any mental or physical impairment of any anticipated witness for the government that tends to cast doubt on the witness’s ability to testify accurately and truthfully at trial; **YES or NO**
- A finding of misconduct by any court of competent jurisdiction, a BPD trial board or BPD’s Public Integrity Bureau that reflects on the truthfulness, integrity, motive or bias of any BPD member or any other individual who is anticipated to be called as a witness for the government; **YES or NO**
- Evidence of untruthfulness, dishonesty, bias, or misconduct of any BPD member who is anticipated to be called as a witness; **YES or NO**
- Evidence that an anticipated witness for the government, including a BPD member, has a racial, religious, or personal bias against a defendant individually or as a member of a group; Yes or No.
- Any other impeachment evidence; **YES or NO**

If any affirmative responses are indicated, please describe the evidence in a separate memorandum and provide the actual evidence or reports detailing the evidence to the trial prosecutor.

Name & Agency of Trial Prosecutor: _____ **Date Provided:** _____

I hereby certify the above information is true and accurate to the best of my knowledge, information and belief, and that the information identified above was provided to the trial prosecutor listed above.

Member’s Signature: _____

You must retain a copy of this form and all attachments (including IAPro summaries, memoranda, and Potential Exculpatory and Impeachment Evidence) in your investigative case folder.