



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE
DISTRICT ATTORNEY FOR THE ESSEX DISTRICT
SALEM NEWBURYPORT LAWRENCE

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August 28, 2014

Andrew Quemere
P.O. Box 5171
Framingham, Massachusetts 01701

Dear Mr. Quemere,

Thank you for your request for documents under the Massachusetts Public Records Law, G.L. c. 66, § 10, received in this Office on August 18. Each request is addressed in turn:

- 1. "a copy of your office's 'Brady list' which refers to a list of police officers who have been dishonest in the past and whose history must be disclosed to defendants in criminal cases per [Brady v. Maryland, 373 U.S. 83 (1963)]"**

This Office does not compile or maintain any so-called "Brady list." See Guide to the Massachusetts Public Records Law, pp. 7, 29 (2013) (public records law does not require creation of a new a record in response to a request). This Office makes required disclosures on a case by case basis.

- 2. "copies of any policies, procedures, and training documents related to [Brady v. Maryland, 373 U.S. 83 (1963)] and/or the Brady list."**

As required both as a condition of employment and as members of the Massachusetts Bar, prosecutors in this Office are cognizant of their obligations to disclose potentially exculpatory material. Those obligations are derived not only from Brady, a case interpreting the federal constitution, but also from the state constitution, the Massachusetts Rules of Criminal Procedure, and the Massachusetts Rules of Professional Conduct. See Connick v. Thompson, 131 S.Ct. 1350, 1361-1364 (2011) ("Prosecutors



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are not only equipped but are also ethically bound to know what Brady entails and to perform legal research when they are uncertain"). Among other resources, this Office provides Office staff access to: 1) the court and professional conduct rules; 2) on each prosecutor's desktop computer, the Massachusetts Prosecutor's Guide, which includes a comprehensive section on discovery obligations ("A Prosecutor's Guide to Discovery") with links to pertinent caselaw; and 3) updates/memoranda issued by the Massachusetts District Attorneys Association on ethical issues and pertinent case law, (See appended example "Discovery Responsibilities; Exculpatory Evidence"). We also provide both comprehensive training for newly-hired prosecutors and ongoing training for all prosecutors on these matters, within a wider range of training, both within and outside the Office.

Most recently, earlier this summer, two of our prosecutors conducted a presentation in Salem, MA, for the National District Attorneys Association covering this issue. The main text for the Brady portion of this presentation is a memorandum issued in 2010 by the Department of Justice entitled "Guidance for Prosecutors Regarding Criminal Discovery," available at <http://www.justice.gov/dag/discovery-guidance.html>). We are scheduled to issue this DOJ publication to all Essex prosecutors within the coming weeks.

Thank you for your inquiry.

Sincerely,

David F. O'Sullivan
Assistant District Attorney



Discovery Responsibilities

Exculpatory Evidence

The prosecutor "is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape nor innocence suffer." Justice George Sutherland

Our State and Federal Constitutions, common law, rules of procedure and professional conduct all share a common thread when it comes to a prosecutor's responsibility relative to exculpatory evidence: the suppression of material evidence which is favorable to the accused is a denial of due process. This note defines the phrase and offers some of the parameters related to its application.

The Commonwealth shall disclose to the defense exculpatory evidence in the possession, custody or control of the prosecutor, persons under the prosecutor's direction and control, or persons who have participated in investigating or evaluating the case and either regularly report to the prosecutor's office or have done so in the case. The SJC has defined exculpatory evidence as that which provides some significant aid to the defendant's case, calls into question a material, although not indispensable, element of the prosecution's version of the events, or challenges the credibility of a key prosecution witness.

Thus, "exculpatory" in this context is not a narrow term connoting alibi or other complete proof of innocence, but rather comprehends all evidence which tends to negate the guilt of the accused or, stated affirmatively, supporting the innocence of the defendant. The prudent prosecutor will resolve doubtful questions in favor of disclosure

Questions related to specific cases, instances of conduct and your offices' policies, should be directed to your supervisor. Thanks.