February 13, 2025

Ron Thomas
Chief
Denver Police Department
1331 Cherokee St
Denver, CO 80204

RE: Procedures for Law Enforcement Agency Credibility Disclosure Notifications

Dear Chief Thomas,

As you may know, Rule 16 of the Colorado Rules of Criminal Procedure and the Due Process Clause of the U.S. Constitution require a prosecution attorney to disclose to the defense "any material or information within his or her possession or control which tends to negate the guilt of the accused as to the offense charged or would tend to reduce the punishment therefore." This is also commonly known as exculpatory or "Brady material" in reference to a United States Supreme Court case called Brady v. Maryland, 373 U.S. 83 (1963).

Brady material includes information in the possession of partner law enforcement agencies, including your agency. This information is deemed constructively in possession of the prosecuting attorney. People v. Lucero, 623 P.2d 424 (Colo. App. 1980); Rule 16 Part I(b)(4). Brady material also includes information bearing on a prosecution witness's credibility. Giglio v. United States, 405 U.S. 150 (1972); People v. District Court, 793 P. 2d 163 (Colo. 1990).

To provide notice of potentially exculpatory information in your agency's personnel or internal affairs files, the District Attorney must rely on notification from your agency. As such, my office requires that law enforcement agencies provide notification of exculpatory material involving agency employees.[*] Any credibility disclosure notification need not include the underlying internal affairs and personnel records. Transmittal of those records should only occur upon specific request by the Denver District Attorney or by a court order.

[*] For the purpose of this request, "agency employee" means an employee of a law enforcement agency, both peace officers and civilians, whose duties could reasonably include testimony in a court of law.

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Procedures for Law Enforcement Agency Credibility Disclosure Notifications

Pursuant to C.R.S. § 24-33.5-114(4) and C.R.S. § 16-2.5-502 the Denver District Attorney requests that your agency transmit credibility disclosure notifications as provided below.

<u>C.R.S. § 24-33.5-114(4)</u>

Sustained findings of a "knowing misrepresentation" must be disclosed to the District Attorney as follows:

(a) A state or local law enforcement agency shall notify the local district attorney whenever the agency determines there is a sustained finding that any peace officer of the agency has made a knowing misrepresentation:

(I) in any testimony or affidavit relating to the arrest or prosecution of a person or to a civil case pertaining to the peace officer or the peace officer's employment history; or

(II) during the course of any internal investigation by a law enforcement agency, which investigation is related to the peace officer's alleged criminal conduct; official misconduct as described in C.R.S. 18-8-404 or 18-8-405; or excessive use of force, regardless of whether the alleged criminal conduct, official misconduct, or excessive use of force occurred while the peace officer was on duty, off duty, or acting pursuant to a service contract to which the peace officer's employing agency is a party.

This notice must be provided to the District Attorney not more than seven (7) days after the agency determines there is a sustained finding that a peace officer of the agency has made a knowing misrepresentation as described above. C.R.S. § 24-33.5-114(4)(b).

<u>C.R.S. § 16-2.5-502</u>

In addition, C.R.S. § 16-2.5-502 sets forth mandatory procedures for law enforcement agencies to notify the District Attorney not only of sustained findings of certain misconduct, but also of pending investigations into allegations of such misconduct. Consistent with C.R.S. § 16-2.5-502 and the Peace Officer Credibility Disclosure Notifications Model Policy, the Denver District Attorney requires that partner law enforcement agencies such as yours provide prompt notification:

I. Of any pending investigation where an agency employee:

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A. Knowingly made an untruthful statement concerning a material fact, knowingly omitted a material fact in an official criminal justice record, or knowingly omitted a material fact while testifying under oath or during an internal affairs investigation or administrative investigation and disciplinary process C.R.S. § 16-2.5-502(2)(c)(1)(A);

B. Demonstrated a bias based on race, religion, ethnicity, gender, sexual orientation, age, disability, national origin, or any other protected class. C.R.S. § 16-2.5-502(2)(c)(1)(B);

C. Tampered with or fabricated evidence. C.R.S. § 16-2.5-502(2)(c)(1)(C);

D. Has been convicted of any crime involving dishonesty, been charged in a criminal proceeding with any felony or any crime involving dishonesty, or violated any policy regarding dishonesty C.R.S. § 16-2.5-502(2)(c)(1)(D);

E. Committed any offense involving theft, bribery, or destroying or altering reports or records;

F. Engaged in conduct prohibited by law;

G. Has been convicted of or charged with any crime;

H. Violated any policy of the law enforcement agency regarding dishonesty.

II. When an agency employee is under a criminal or administrative investigation, which if sustained, would require disclosure under Section I immediately above, the law enforcement agency shall promptly notify the district attorney's office once the law enforcement agency has completed the agency's administrative process for investigating and evaluating the allegations on the merits.

III. When a new hire or current employee has a criminal conviction for a felony; a theft-related offense; an offense involving false reporting, bias, or deceptive acts; or a criminal offense for which the POST board may deny certification (as set forth in C.R.S. § 24-31-305).

Pursuant to C.R.S. § 16-2.5-502(2)(d)(I) law enforcement agencies such as yours shall include the following information in the credibility disclosure notification to be provided in writing to the district attorney's office:

(A) The agency employee's name;

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(B) The name of the law enforcement agency that employs or employed the agency employee at the time of the sustained findings or at the time of the criminal or administrative investigation;

(C) The following statement: "This notification is to inform you that there is information in the law enforcement agency's possession regarding [name of agency employee] that may affect the employee's credibility in court."

(D) The applicable statutory provision identifying the basis for the credibility disclosure notification as set forth in subsections (2)(c)(I)(A) through (2)(c)(I)(D) of this section.

(E) A case number and jurisdiction or other means of identifying how material related to the conviction, sustained finding, or pending investigation may be requested from the agency or other authority.

These notifications from your agency should be sent to the following district attorney employees:

Margarita Villa Intake Unit Supervisor MRV@denverda.org 720-913-9091	Zach McCabe Senior Chief Deputy District Attorney ZEM@denverda.org 720-913-9255

Notification to Colorado Peace Officer Standards and Training board (POST),

C.R.S. 16-2.5-501, et seq. mandates that District Attorneys report credibility disclosures to the Colorado Peace Officer Standards and Training board (POST), and that a database of those disclosures will be maintained. The law enforcement agency must notify the District Attorney's Office that a peace officer has information relevant to these obligations in their personnel or internal affairs file.

Notification to Defendants

The District Attorney must make timely notifications of credibility disclosures to defendants. C.R.S. § 16-2.5-502(3)(d). Providing this notice gives defendants the opportunity to request agency records relevant to the witness. Prior to admission in court, a judge should conduct an *in camera* review of the material under Martinelli v. District Court, 612 P.2d 1083 (Colo. 1980) to determine whether the information is admissible. The fact the Denver District Attorney has made a notification to a defendant is not a determination by the Denver District Attorney as to an agency employee's future viability as a witness, the person's reputation, or the person's ability to serve in his or her current capacity.

Denver DA
JOHN WALSH District Attorney

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The information should be disclosed to my office irrespective of its expected effect on the outcome of the proceedings. If you or your designated representatives are unsure of whether information falls in one of these categories, please contact me or simply disclose the information to me.

Professional Rule of Conduct 3.8(d)

Finally, Professional Rule of Conduct 3.8(d), requires prosecutors to make timely disclosure requests to agencies involved with a case, for all information that "tends to negate the guilt of the accused or mitigate the offense," or that "would affect a defendant's decision about whether to accept a plea disposition." Because of the new rule, our office may contact your employees, primarily your detectives, over the course of each case. I also ask that you make your employees aware that these requests will be made and ask that your employees continually provide this information to my lawyers. We will disclose to the defense any new discoverable information that your agency provides us. The rule also requires us to notify the defense if we are unable to obtain requested information.

Thank you for your continued commitment to an effective, transparent, and just criminal justice system.

Sincerely,

John F. Walsh
Denver District Attorney

CC: Armando Saldate, Manager of Safety