

OFFICE OF CONSTITUTIONAL POLICING AND POLICY

NOTICE

14.1

June 12, 2018

TO: All Sworn Personnel

FROM: Director, Office of Constitutional Policing and Policy

SUBJECT: LOS ANGELES DISTRICT ATTORNEY'S OFFICER AND RECURRENT WITNESS INFORMATION TRACKING SYSTEM (ORWITS)

The purpose of this Notice is to inform Department employees about recent changes to the Los Angeles District Attorney's Office (LADA) systems for tracking exculpatory and impeachment information about Department employees.

The LADA currently maintains two systems containing information about Department employees: the Brady Database and the Officer and Recurrent Witness Tracking System (ORWITS).

The Brady Database contains information known to prosecutors that is exculpatory or may be used to impeach a Department employee, requiring disclosure under Penal Code §1054.1. This type of information includes felony convictions, false statements, and Board of Rights findings regarding dishonesty, etc. Employees affected by these disclosure requirements were, and continue to be, notified through a letter from the LADA commonly known as a "Brady Letter." Being subject to a Brady Letter can, in some instances, affect an employee's ability to testify in court. Attached to this Notice is Office of the Chief of Police Memorandum No. 1, March 20, 2006, titled *Long-Term Duty Restriction of Department Employees*, which details specific criteria of Brady letters and ramifications for Department employees served with a Brady letter.

The ORWITS tracks employee information obtained by the LADA from a variety of open sources and other records including social media postings, divorce records, lawsuits, and publicly available employment records. While this information *may* not have impeachment value, the LADA gathers this information because it may be used by defense attorneys in an attempt to impugn the testimony of a testifying officer or expert. The intent of ORWITS is to prevent unfair surprise and improper cross-examination of Department employees. Furthermore, if the prosecuting attorney is aware of this information before trial, Evidence Code § 402 allows prosecutors to move to exclude information from trial and prohibit its use by a defense attorney.

The Department does not routinely provide information about administrative investigations to the LADA. Additionally, information in ORWITS may not constitute misconduct or require a complaint investigation, nor is entry of the information into ORWITS an endorsement of its validity. Finally, employees may appeal information entered into ORWITS.

OFFICER AND RECURRENT WITNESS TRACKING SYSTEM NOTIFICATION

The LADA will notify the Chief of Police via an ORWITS letter that potentially impeaching information has been identified about a Department employee, and as a result, that employee has been entered into the ORWITS. The Office of the Chief of Police will forward the ORWITS letter to Risk Management Division (RMD) and Professional Standards Bureau (PSB).

RISK MANAGEMENT DIVISION RESPONSIBILITIES

Upon receipt of an ORWITS letter, RMD shall:

- Notify the affected employee's commanding officer via an Intradepartmental Correspondence, Form 15.02.00, along with a copy of the ORWITS letter. The Intradepartmental Correspondence, Form 15.02.00, shall contain a receipt of service and outline the process an employee may use to submit an appeal to the LADA Discovery Compliance Unit; and,
- Direct the Area/division commanding officer of the affected employee to address any complaint-related questions to PSB.

PROFESSIONAL STANDARDS BUREAU

Upon receipt at PSB, the ORWITS letter shall be forwarded to the Complaint Classification Unit (CCU). The CCU shall:

- Review the content of the letter for any potential allegation(s) of employee misconduct;
- If any potential allegation(s) of misconduct is identified, determine if a Complaint Form, 01.28.00, has been previously initiated;
- If a complaint has NOT been previously initiated for any potential allegation(s) of misconduct contained in the ORWITS letter, the CCU will initiate a complaint and notify the commanding officer of the affected employee; and,
- Provide an update to the Commanding Officer, Internal Affairs Group.

AREA/DIVISION COMMANDING OFFICER OF AFFECTED EMPLOYEE

Upon receipt of an ORWITS letter from RMD, the Area/division commanding officer shall:

- Ensure the affected employee is served with the ORWITS letter;
- Confirm the supervisor serving the employee signs and dates the receipt of service; and,
- Return a scanned copy of the receipt of service to the RMD email address indicated on the receipt.

APPEAL PROCESS

If an employee feels he or she has been erroneously included in ORWITS, the employee may contact the LADA Discovery Compliance Unit (DCU) and review the documents underlying the DCU's decision to include the employee. The employee may submit an objection letter with supporting documentation at any time disclosing the reasons for the objection.

Note: All submitted materials for review may be discoverable.

Within 60 calendar days of the date of the objection letter, the DCU will review the letter and any supporting documentation. Decisions made by the DCU regarding an employee's ORWITS status will be submitted to the employee in writing. If the DCU determines that the employee remain in ORWITS, the employee may seek final review by a special panel comprised of three head deputies designated by the LADA legal bureau directors.

Any questions regarding this may be referred to Captain Jennifer Thomas, Commanding Officer, Risk Management Division, at (213) 486-8279.



ARIF ALIKHAN, Director
Office of Constitutional Policing and Policy

APPROVED:



SEAN W. MALINOWSKI, Deputy Chief
Chief of Staff
Office of the Chief of Police

Attachment

DISTRIBUTION "D"

OFFICE OF THE CHIEF OF POLICE

MEMORANDUM NO. 1

March 20, 2006

SUBJECT: LONG-TERM DUTY RESTRICTION OF DEPARTMENT EMPLOYEES

This Memorandum notifies employees of the possible legal and departmental consequences relative to certain types of unacceptable behavior, which may or may not amount to misconduct, and the impact such behavior might have upon their career. The legal consequences of these actions may result in the employee being entered into the District Attorney's *Brady* Alert System. The departmental consequences of these actions may result in the employee being subject to a Long-Term Duty Restriction Letter (formerly known as a *Brady* letter). Both the District Attorney's *Brady* Alert System and the Department's Long-Term Duty Restriction Policy will be discussed separately herein.

Note: An employee's inclusion in the District Attorney's *Brady* Alert System does not mean the employee will automatically be subject to a Long-Term Duty Restriction Letter by the Department.

District Attorney Brady Alert System. The courts, in a series of case decisions beginning with *Brady v. Maryland*, 373 U. S. 83 (1963) and including *In re Brown*, 17 Cal. 4th 873 (1998) and *Kyles v. Whitley*, (1995), identified specific evidence that prosecutors are required to disclose to the defense. This evidence is evidence that is favorable to a defendant by virtue that it is either exculpatory or impeaching and is material to either guilt or punishment. Exculpatory evidence is evidence favorable to the defendant and material to the issue of guilt or punishment. In other words, it tends to prove the innocence of the defendant. Impeachment evidence is that evidence which the court or jury may consider in determining the credibility of a witness during any matter that has any tendency in reason to prove or disprove the truthfulness of his/her testimony at a hearing which includes, but is not limited to, any one of the following:

- * His/her character for honesty or veracity or their opposites;
- * The existence or nonexistence of a bias, interest or other motive; or,
- * A statement made by him/her that is inconsistent with any part of his/her testimony; at the hearing.

And finally, material evidence is generally provided in the context of an appeal from conviction. Evidence is material if there is a reasonable probability that the result of the proceeding would have been different had the evidence been disclosed. A reasonable probability of a different outcome is shown where suppression undermines the confidence of the outcome.

In the *Brady* protocol established by the District Attorney's Office on December 7, 2002, the District Attorney delineates specific criteria upon which if met, a Department employee may be included in their *Brady* Alert System. The policy identified witness impeachment evidence as any matter that has a tendency to prove or disprove the truthfulness of the individual's testimony including, but not limited to, any of the following:

- * False reports by a prosecution witness;
- * Pending criminal charges against a prosecution witness;
- * Parole or probation status of the witness;

- * Evidence contradicting a prosecution witness' statement or reports;
- * Evidence undermining a prosecution witness' expertise (e.g., inaccurate statements);
- * A finding of misconduct by a Board of Rights or Civil Service Commission, that reflects on the witness' truthfulness, bias or moral turpitude;
- * Evidence that a witness has a reputation for untruthfulness;
- * Evidence that a witness has a racial, religious or personal bias against the defendant individually or as a member of a group; or
- * Promises, offers or inducements to the witnesses, including a grant of immunity.

Department Long-Term Duty Restriction Policy. Although the District Attorney's *Brady* Criteria will be taken into consideration when determining whether or not a Long-Term Duty Restriction Letter will be issued to a Department employee, it is not the sole criteria for determining such a restriction. For this reason, the Department no longer uses the term "*Brady Letter*" and instead has employed the term, "Long-Term Duty Restriction Letter (LTDR)." Department employees should understand that the Chief of Police (COP) may seek to restrict an employee's duty status for articulable considerations outside of credibility issues. This ability of the COP to restrict an employee's duty is contained within § 574 of the Los Angeles City Charter and § 4.859 of the Los Angeles City Administrative Code (Authority of the Chief of Police to transfer/reassign employees). For purposes of ease and clarification, Long-Term Duty restrictions for credibility and non-credibility purposes will be discussed separately.

Prior to the Chief of Police deciding whether or not to issue a permanent LTDR, the facts surrounding the involved employee's case and personnel history will be reviewed by the Risk Management Executive Committee (RMEC). This Committee is composed of management personnel selected by the Chief of Police.

Prior to the meeting of the full RMEC, a RMEC subcommittee meeting will take place to conduct an in-depth review of the facts surrounding the employee's personnel history prior to a meeting of the full RMEC.

Any time the RMEC subcommittee refers an officer to RMEC for review for any potential duty restriction, the officer is notified by certified mail that he or she is entitled to; (a) a copy of all the written personnel information relied upon by the RMEC subcommittee to refer the officer for RMEC review, as well as all additional materials forwarded to the full RMEC, if any; and, (b) submit written correspondence to RMEC for its review prior to RMEC's evaluation of the employee for any potential duty restriction. The employee may obtain the assistance of an on-duty Employee Representative as currently defined in Section 10 of the Memorandum of Understanding (MOU), a League representative and/or an attorney to prepare his or her correspondence to RMEC. Written responses must be received by RMEC within 20 calendar days following mailing of a copy of the written personnel information by certified mail. The employee may request a waiver of this time limit for exigent circumstances. The Department will act in good faith when considering the waiver request.

When the full RMEC meets to review an officer's record for a potential duty restriction, after reviewing the personnel profile and the employee's written information, if any, and the full RMEC intends to recommend a duty restriction for a period less than one year for reasons other than credibility issues (a short-term duty restriction), the full RMEC will notify the employee by certified mail of its intent and the specific basis therefore and inform the employee of his or her right to

provide a written response within 20 calendar days following receipt of that notice to the full RMEC, with the assistance of an on-duty Employee Representative as currently defined in Section 10.0 of the MOU, a League representative and/or an attorney, for consideration by the full RMEC before making its final decision to impose the short-term duty restriction. This will constitute the employee's opportunity for an administrative appeal pursuant to Government Code Section 3304(b) with respect to duty restrictions for less than one year other than those that involve credibility issues.

When the full RMEC intends to either; (a) impose a duty restriction for a period of one year or more (a long-term duty restriction); (b) impose a duty restriction based on credibility issues (a short-term or long-term duty restriction); or, (c) to extend a short-term duty restriction, the full RMEC will notify the employee by certified mail of its intention and the specific basis therefore and notify the employee of his or her right to appear before the full RMEC, accompanied, if desired, by an on-duty Employee Representative as currently defined in Section 10.0 of the MOU, a League representative and/or an attorney, to make a presentation. The parties agree that the presentation will be focused on the employee's response to the specific proposed duty restriction, and the reasons for that duty restriction. RMEC will not re-visit the validity of prior disciplinary determinations, including, but not limited to, Boards of Rights determinations. The presentation may take the form of witness statements (but without subpoena power), a statement by the employee, or documentary submissions. RMEC encourages the submission of witness declarations. The RMEC Chair has the discretion to limit the presentation, including the number of witnesses and the length of time given to each speaker. Once the appeal has been completed, the employee will be excused from the full RMEC and will not be present during the full RMEC deliberations. This will constitute the employee's opportunity for an administrative appeal pursuant to Government Code Section 3304(b) with respect to long-term duty restrictions for a period of one year or more, duty restrictions based on credibility issues, or extensions of short-term duty restrictions.

The Department will notify the employee of the recommendation in writing after the full RMEC has decided upon the proposed duty restriction and the Chief of Police has approved the recommendation. The Chief of Police will be the final authority on all long-term duty restriction matters.

Credibility Related Long-Term Duty Restrictions. In previous years, the departmental consequences for credibility related misconduct included the imposition of a duty restriction letter, formerly also known as a *Brady* Letter, wherein the Department employee would be served this letter and reassigned to non-field duties without any mechanism for appeal or review. In some cases, the duty restriction letter would be issued to the employee prior to the adjudication of the involved employee's complaint investigation or Board of Rights hearing. This will no longer be the practice of the Department. The Department will not initiate any permanent reassignments or duty restrictions when an officer has been officially charged with misconduct, until after such time as the officer has completed the process of a hearing before a Board of Rights, or has waived his/her rights to such a hearing or process. The Department will, however, continue its practice of temporarily reassigning employees to non-field assignments if the misconduct alleged is so egregious that leaving an employee assigned to field duties would not be in the best interest of the Department and/or the employee.

In consideration of the District Attorney's *Brady* policy and the Department's desire for its officers to maintain the highest level of integrity, the following credibility related conduct intentionally committed on or off duty may subject an employee to a long-term duty restriction:

Note: The below listed conduct is not intended to be all-inclusive. The Chief of Police reserves the right to deem certain types of employee misconduct credibility related and as such impose a long-term duty restriction for the employee.

- * Dishonesty;
- * Fraud (including but not limited to bankruptcy fraud, insurance fraud, real estate fraud);
- * Certain Felonies;
- * Hit and Run Traffic Collisions (on or off duty); or,
- * Falsification of an Official Document, including but not limited to:
 - * Crime Report
 - * Arrest Report
 - * Any Official Department Report (i.e. Pursuit, Use of Force, Complaint Investigation)
 - * Detective Follow-up Report (Form 3.14)
 - * Traffic Collision Report (on or off duty)
 - * Search or Arrest Warrant Affidavit
 - * Daily Field Activities Report
 - * Overtime Slips
 - * False and Misleading Statements (including statements to both investigators from within and outside the Department)
 - * Failure to report serious misconduct of another Department employee or employees

Non-Credibility-Related Long Term Duty Restrictions. Whenever a specific incident or a pattern of similar incidents presents evidence of unacceptable behavior, in addition to standard disciplinary practices, the Department must evaluate the liability issues posed by the involved employee. This liability evaluation is conducted by the RMEC, which prepares personalized intervention programs designed to either rehabilitate an employee's otherwise endangered career or mitigate any liability issues presented by the employee's continued employment. One of the mitigating measures available to the Department is the imposition of a LTDR by the COP. The imposition of a LTDR will dramatically impact an employee's career and should be avoided at all costs. Additionally, a Non-Credibility-related LTDR may result from a single event or an accumulation of similar events involving any of the following:

- * Moral turpitude;
- * Felony driving under the influence;
- * Sexual or physical abuse of men, women, or children;
- * Pattern of similar misconduct or a singular act of misconduct that causes a significant risk to the community, the Department, or the employee;
- * Internal investigations requiring duty restriction to reduce liability upon the City;
- * Other employee behavior that in the opinion of the Chief of Police creates articulable concerns regarding the employee's ability to perform unrestricted policing functions.

Review of Credibility and Non-Credibility-Related Long Term Duty Restrictions. The RMEC will review all long-term duty restrictions on an annual basis. Unless otherwise noted, the duration of a long-term duty restriction will not exceed a period of five years from the date of the alleged act. In those cases where the duty restriction was imposed as a result of a pattern of continual similar misconduct, the duration of the long-term duty restriction will not exceed a

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period of five years from the date that the long term duty restriction letter was signed by the Chief of Police. The Chief of Police reserves the right to rescind a long term duty restriction at any time if it is determined to be in the best interest of the Department and/or employee.

Note: If an officer's personnel records are sought by the court, prosecutor, defense attorney, or any other entity, the Department will continue to follow current procedures under Evidence Code Section 1043 and 1070 (y) to ensure that all available measures are taken to ensure that an employee's personnel files are protected as required by law.

It is important that employees are aware that although the Department will in most cases release an employee from a long term duty restriction after a period of five years, there will be those extraordinary cases where a long-term duty restriction may remain in effect for the duration of the employee's career with the Department. Generally, these extraordinary cases include, but are not limited to, criminal misconduct on the part of the employee where the employee was not criminally filed upon and/or convicted, or the criminal misconduct was reduced from a felony to a misdemeanor.

CONCLUSION

In summary, each of us is the guardian of the Department's reputation. Our reputation is built upon a foundation of integrity and professional conduct. Every breach of professionalism weakens the foundation of our reputation and diminishes the public's trust in our law enforcement effort. To maintain the public's trust and minimize adverse civil litigation, the Department may find it necessary to place an employee on LTDR until such time as the involved liability issues are resolved. Therefore, one's daily conduct, both on and off-duty, must be stellar. Your career and the Department's reputation are based upon the quality of your integrity and performance. Should your integrity be called into question or the quality of your performance fall to an unacceptable level involving significant liability, your career as well as the Department's reputation could be temporarily or irreparably damaged. It is important that you always "do the right thing," not only for the protection of your career but more importantly for the protection of the community you serve. As was previously stated, all employees are reminded of their obligation to conduct themselves in such a manner that neither their credibility nor their ability to perform their duty is ever brought into question.

Commanding officers shall ensure that all employees in their command are served with a personal copy of this Memorandum and sign the attached Acknowledgement Receipt. Completed Acknowledgement Receipts shall be filed in the divisional package of the concerned employee.



WILLIAM J. BRATTON
Chief of Police

Attachment

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