

OFFICE OF CONSTITUTIONAL POLICING AND POLICY

NOTICE

1.14

May 4, 2022

TO: All Department Personnel

FROM: Director, Office of Constitutional Policing and Policy

SUBJECT: LOS ANGELES DISTRICT ATTORNEY'S OFFICE BRADY DATABASE AND OFFICER AND RECURRENT WITNESS INFORMATION TRACKING SYSTEM - REVISED

The purpose of this Notice is to inform Department employees about the Los Angeles District Attorney's Office (LADA) Brady database and the Officer and Recurrent Witness Information Tracking System (ORWITS). This Notice revises the Office of Constitutional Policing and Policy Notice dated June 12, 2018, titled *Los Angeles District Attorney's Officer and Recurrent Witness Information Tracking System (ORWITS)*.

What is the Brady database?

The LADA's Brady database contains exculpatory or impeachment information known to prosecutors about a Department employee that requires disclosure under Penal Code §1054.1, and the United States Supreme Court's holding in *Brady v. Maryland* and its progeny.

Brady information includes felony convictions, false statements, and Board of Rights findings regarding dishonesty, or other serious misconduct. Employees affected by these disclosure requirements are notified through a letter from the LADA commonly known as a "Brady Letter."

What is ORWITS?

The ORWITS is an informational system used by LADA to track recurring witnesses, including police officers, who *may* have information in their personnel files or history (for non-officer witnesses) that is of impeachment value at trial. The ORWITS is separate from the Brady database.

The ORWITS contains information about significantly more officers than the Brady database because, for example, as shown below, ORWITS contains officers who *may*, but do not necessarily, have exculpatory or impeachment information in their files.

How is ORWITS or Brady information obtained by the LADA?

Both ORWITS and Brady information may be obtained from publicly open sources such as social media postings, divorce records, lawsuits, and publicly available employment records. Publicly

available information also includes records containing information the Department is required to disclose pursuant to Senate Bill (SB) 1421, which went into effect on January 1, 2019. Information disclosable pursuant to SB 1421 includes complaints with sustained allegations of dishonesty, and sexual assault, as well as records related to officer-involved shootings at a person and uses of force resulting in great bodily injury or death, regardless of when the incident occurred.

With regard to employee personnel files, the practice since June 15, 2021, is that the LADA notifies the Department when an employee has been identified as a potential witness in a criminal case. The Department then responds with one of two form letters:

1. That there is no potentially exculpatory or impeachment information in the employee's personnel file; or,
2. That there *may be* potentially exculpatory or impeachment information in the employee's personnel file.

In the latter case, the Department simply advises the LADA that there is a potential such information exists. The Department does not provide the LADA with any specific information from the employee's personnel file.

In order to obtain additional information, the prosecuting Deputy District Attorney (DDA) on the case in which the employee was a witness would have to file or suggest that the defendant file a Pitchess motion. The judge for that case would then decide whether the information in the employee's file is relevant and exculpatory to that particular case. Thereafter, only the prosecuting DDA knows the information. The LADA office does not know the specific information, and so, regardless of the judge's findings, the officer usually remains in ORWITS.

What happens after the Department notifies the LADA that the employee may have potentially exculpatory or impeachment information in his or her personnel file?

The LADA, having learned that exculpatory or impeachment information may exist, but not the nature of that information, enters the involved employee's name into ORWITS. This is so that other DDAs will consider filing or suggesting that the defendant file a Pitchess motion. When the LADA places an employee into ORWITS, the LADA provides correspondence notifying the Department that the concerned employee has been entered into ORWITS. Risk Management and Legal Affairs Division (RMLAD) will forward this correspondence to the concerned employee. Information stored in ORWITS does not necessarily constitute misconduct or require a complaint investigation. Additionally, because information in ORWITS can come from public sources (e.g., social media), entry of the information into ORWITS is not an endorsement of its validity.

Why does the LADA use ORWITS?

While the information retained in ORWITS by the LADA may not have impeachment value, the LADA gathers this information so they can file a Pitchess motion or inform the defense that there may be good cause to file a Pitchess motion to determine if the material is relevant at trial.

The ORWITS prevents 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. Entry into ORWITS is **not** necessarily an indication of any misconduct or wrongdoing and may not be appealed to the LADA.

RISK MANAGEMENT AND LEGAL AFFAIRS DIVISION RESPONSIBILITIES.

Upon receipt of an ORWITS letter, RMLAD shall:

- Forward the letter via electronic mail to the concerned employee and provide an informational copy to the employee's command; and,
- Send a copy of an ORWITS notification to Professional Standards Bureau (PSB) when it is based on information obtained from publicly open sources outside of the Department.

PROFESSIONAL STANDARDS BUREAU RESPONSIBILITIES. Upon receipt of a copy of an open source ORWITS notification letter, the Complaint Classification Unit, PSB, shall:

- Review the content of the letter for possible misconduct; and,
- If any possible misconduct is identified, determine if a Complaint Investigation, Form 01.28.00, was previously initiated. If one was not previously initiated, initiate a complaint for possible misconduct and notify the concerned commanding officer.

AREA/DIVISION COMMANDING OFFICER RESPONSIBILITIES. Upon receipt of a copy of an ORWITS letter from RMLAD, the commanding officer shall:

- Facilitate electronic service of the letter if necessary; and,
- Ensure the concerned employee's duty status is not restricted or modified based solely on the ORWITS letter.

Should further information be required, please contact Captain Robin Petillo, Commanding Officer, RMLAD, at (213) 978-4640.



LIZABETH RHODES, Director
Office of Constitutional Policing and Policy

APPROVED:



DANIEL RANDOLPH, Deputy Chief
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