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TO: ALL BERGEN COUNTY CHIEFS OF POLICE, POLICE DIRECTORS, OFFICERS-IN-CHARGE, AND SHERIFF

FROM: PROSECUTOR MARK MUSELLA

RE: BERGEN COUNTY PROSECUTOR'S OFFICE LAW ENFORCEMENT DIRECTIVE 2020-1 IMPLEMENTING ATTORNEY GENERAL DIRECTIVE 2019-6 ESTABLISHING COUNTY POLICIES TO COMPLY WITH *BRADY V. MARYLAND* AND *GIGLIO V. UNITED STATES*

DATE: FEBRUARY 28, 2020

BACKGROUND

On December 4, 2019, the New Jersey Attorney General issued **Directive 2019-6 ("AG Directive") Establishing County Policies to Comply with *Brady v. Maryland* ("*Brady*") and *Giglio v. United States* ("*Giglio*")** (copy attached as Exhibit A). The AG Directive, which becomes effective March 1, 2020, mandates that all county prosecutors implement a policy to investigate the existence of evidence which might exculpate criminal defendants from the crimes of which they are accused or undermine the credibility of the State's witnesses. Under *Brady* and *Giglio* and the AG Directive, prosecutors must review *Brady/Giglio* information to decide whether the information should be disclosed to the court and defense counsel.

In recognition of the different resources, criminal caseloads, and other relevant circumstances of prosecutors' offices across the State, the AG Directive permits each prosecutor's office to devise its own protocol to implement the overall *Brady/Giglio* policy.

The Bergen County Prosecutor's Office ("BCPO") has elected to implement the *Brady/Giglio* policy by compiling a database ("*Brady/Giglio Database*") of potential *Brady/Giglio*



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information for all Bergen County law enforcement agencies,¹ through the InfoShare Internal Affairs Module and to search that database for potential *Brady/Giglio* information for all criminal cases which the BCPO will retain for prosecution.

DIRECTIVE

I

All Bergen County law enforcement agencies are therefore directed to immediately develop and implement procedures for auditing their Internal Affairs, police personnel files, and all other potentially relevant sources of information to identify potential *Brady/Giglio* information on their law enforcement officers. That information will generally fall into the following categories, as identified in the AG Directive:

1. A sustained finding that an officer has filed a false report or submitted a false certification in any criminal, administrative, employment, financial, or insurance matter in their professional or personal life;
2. A sustained finding that an officer was untruthful or has demonstrated a lack of candor;
3. A pending criminal charge or conviction of any crime, disorderly persons, petty disorderly persons, or driving while intoxicated matter;
4. A sustained finding that undermines or contradicts an officer's educational achievements or qualifications as an expert witness;
5. A finding of fact by a judicial authority or administrative tribunal, which includes a finding that the officer was *intentionally* untruthful in a matter, either verbally or in writing;
6. A sustained administrative or judicial finding, that an officer *intentionally* mishandled or destroyed evidence, including: (1) *intentional* failure to follow legal or departmental requirements for the collection and handling of evidence, obtaining statements, or recording communications; (2) the *intentional* failure to comply with agency procedures for supervising the activities of a cooperating person; and (3) the *intentional* failure to follow mandatory protocols with regard to the forensic analysis of evidence;
7. Any allegation of misconduct bearing upon truthfulness, bias, or integrity that is the subject of a pending investigation;
8. Information that may be used to suggest that an officer is biased for or against a defendant. Generally, bias is a term used to describe the relationship between a party and a witness which might lead the witness to slant, unconsciously or otherwise, his or her testimony in favor of or against a party; and
9. A sustained finding, or judicial finding, that an officer is biased against a particular class of people, for example, based on a person's gender, gender identity, race, or ethnic group.

¹ This Directive does not apply to the New Jersey State Police or the Port Authority of New York and New Jersey Police Department. The BCPO will employ a different protocol to deal with *Brady/Giglio* issues for these agencies.

Please note that all sustained findings must be collected and reported, unless the officer has been exonerated of the charge, such as through an administrative or judicial hearing or where the finding has been administratively or judicially vacated. Therefore, if sustained *Brady/Giglio* charges were dismissed as part of a negotiated settlement, the sustained charges must still be reported.

This search for potential *Brady/Giglio* evidence applies to all current personnel and those officers who have left the department within the last three (3) years. The collected information must then be entered into the recently added *Brady/Giglio* tab of the InfoShare Internal Affairs module by Tuesday, March 31, 2020. Directions on entering the *Brady/Giglio* information are explained in Exhibit B to this Directive.

II

All current and future Internal Affairs investigations must be entered into the InfoShare Internal Affairs Module, analyzed for the presence of *Brady/Giglio* criteria, and memorialized in the Internal Affairs module. In the vast majority of cases, none of the *Brady/Giglio* criteria will be applicable. In these cases, the IA officer conducting the investigation must check the box on the form which indicates that the investigation did not reveal any *Brady/Giglio* criteria, in order to close out the investigation. If the IA investigation did reveal *Brady/Giglio* criteria, the IA officer must check the box(es) that are applicable. Please note that all IA investigations must be closed in InfoShare after all investigative leads are exhausted, even those cases where specific officers cannot be identified as involved in the conduct alleged.

III

Commencing April 1, 2020, every criminal case, including cases emanating from BCPO investigative units will be submitted electronically for review (eScreened) to determine if the BCPO will retain the case for prosecution and to determine if there is any potential *Brady/Giglio* information related to the case. An eScreening User Guide with detailed instructions on inputting required information related to *Brady/Giglio* will be provided prior to April 1, 2020. That guide will detail a procedure for listing all law enforcement officers involved in an investigation, including officers from outside agencies, and each officer's role in the investigation. The guide will also provide instructions on listing civilian victims and witnesses and their pertinent information, including any *Brady/Giglio* information related to these witnesses. Please note that local agencies are not required to conduct *Brady/Giglio* inquiries related to civilian witnesses, but must only report known and obvious information.

IV

When a criminal case is referred to the BCPO and retained for prosecution, the BCPO will analyze the case to identify potential law enforcement witnesses. In order to ensure as strict confidentiality as possible, the names of these witnesses will be referred to the BCPO Confidential Investigations Unit ("CIU") for a search against the *Brady/Giglio* Database. If potential *Brady/Giglio* criteria is indicated for any witness, the criteria will be confidentially reviewed by the BCPO First Assistant Prosecutor, the Assistant Prosecutor Section Chief of CIU, the Chief of Detectives or his designee, and the Assistant Prosecutor assigned to the case to determine if the *Brady/Giglio* information is relevant and must be disclosed to the court and defense counsel. In questionable cases, disclosure may only be made to the court for a review and decision on whether the information is relevant and should be disclosed to defense counsel. However, before any actual

disclosure to the court or defense, the Chief of the relevant department will be advised by emailed letter (copy attached as Exhibit C) which will reference the material to be disclosed. As indicated, the letter will afford the Chief and the officer an opportunity to review the relevant materials and provide additional information. The BCPO will then decide, under the AG Directive and applicable law, if the material should be disclosed and will memorialize the reason(s) for disclosure or nondisclosure in InfoShare.

Case searches against the *Brady/Giglio* Database will be made periodically as a case progresses through the stages of prosecution to capture *Brady/Giglio* criteria which may materialize through the pendency of criminal proceedings.

V

Effective April 1, 2020, the BCPO will commence its searches of the *Brady/Giglio* Database and full implementation of the protocols outlined in this Directive. Until that date, all agencies should inform the BCPO of potential *Brady/Giglio* information on any referred or pending matters by contacting the BCPO Chief of Detectives Robert Anzilotti at 201-226-5651 or ranzilotti@bcpo.net.

VI

Law enforcement agencies have the responsibility to keep their rosters up to date in InfoShare with currently employed personnel. They may not delete officers from their systems unless given express, written permission to do so by the Bergen County Prosecutor or his designee.

This Directive does not modify any requirements set forth in the Attorney General's *Internal Affairs Policy & Procedures*.

As always, I thank you for your cooperation.



MARK MUSELLA
BERGEN COUNTY PROSECUTOR

MM:pms
Attachments



State of New Jersey

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PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

GURBIR S. GREWAL
Attorney General

ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2019-6

TO: All County Prosecutors

FROM: Gurbir S. Grewal, Attorney General

DATE: December 4, 2019

SUBJECT: Directive Establishing County Policies to Comply with *Brady v. Maryland* and *Giglio v. United States*

Federal and State precedent require prosecutors disclose exculpatory and impeachment evidence to defense counsel. The United States Supreme Court in *Brady v. Maryland*, 373 U.S. 83, 87 (1963), held “suppression by the prosecution of evidence favorable to an accused . . . violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” Thereafter, the Supreme Court in *Giglio v. United States*, 405 U.S. 150 (1972), further clarified that exculpatory evidence (or “*Brady* material”) includes evidence that may be used to impeach the credibility of a prosecution witness. “When the reliability of a given witness may well be determinative of guilt or innocence, nondisclosure of evidence affecting credibility falls within th[e] general rule [of *Brady*].” *Giglio*, 405 U.S. at 154 (internal quotations omitted).

Our State Supreme Court followed *Brady* and *Giglio* in *State v. Carter*, 91 N.J. 86, 111 (1982), holding “evidence impeaching testimony of a government witness falls within the *Brady* rule when the reliability of the witness may be determinative of a criminal defendant’s guilt or innocence.” Whether *Giglio* information is determinative of the defendant’s guilt or innocence requires analysis of that information by the prosecutor in light of the circumstances of the case. This is important to note because the failure to disclose *Brady* and *Giglio* material could result in reversal of a defendant’s convictions.

While prosecutors across the State are well aware of their obligations under *Brady* and *Giglio*, there is a great deal of variation among the County Prosecutors’ Offices regarding specific *Brady-Giglio* policies. While some have written policies, others employ a more informal



approach. To ensure compliance and the integrity of criminal prosecutions, however, written guidelines, incorporating the best practices and procedures discussed below, are required.

Therefore, pursuant to the authority granted to me under the New Jersey Constitution and the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 to -117, which provides for the general supervision of criminal justice by the Attorney General as chief law enforcement officer of the State in order to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State, I hereby direct all County Prosecutors to implement a policy within their respective counties consistent with this Directive to ensure compliance with *Brady* and *Giglio*.

It is understood that the procedures established for complying with *Brady* and *Giglio* may vary among the counties to accommodate the specific volume and available resources. However, each county's *Brady-Giglio* policy shall fully comply with the law and Rules of Professional Conduct.

I. Definitions

- A. ***“Civilian witness”*** refers to an individual who is not employed by a law enforcement agency or entity.
- B. ***“Giglio liaison”*** refers to the individual appointed by the County Prosecutor to serve as a primary point of contact within the County Prosecutor's Office concerning potential impeachment information.
- C. ***“Investigative employee”*** refers to an individual who is a sworn law enforcement officer, analyst, civil investigator, or civilian employee working for a law enforcement agency or entity.
- D. When used without a modifier, ***“Prosecutor”*** refers to the attorney(s) assigned to prosecute a particular case. In a County Prosecutor's Office, this will typically be an Assistant Prosecutor; in the Division of Criminal Justice, the Office of Public Integrity & Accountability, and the Office of the Insurance Fraud Prosecutor, this will typically be a Deputy Attorney General or Assistant Attorney General. The term ***“County Prosecutor”*** refers specifically to the acting or confirmed County Prosecutor who oversees a County Prosecutor's Office.
- E. ***“Sustained¹ finding”*** refers to any finding where a preponderance of the evidence shows an officer violated any law, regulation, directive, guideline policy or procedure issued by the Attorney General or County Prosecutor; agency protocol; standard operating

¹ For purposes of this policy, “sustained” is the equivalent of “substantiated” as it pertains to New Jersey State Police policies.

procedure, rule or training, following the last supervisory review of the incident(s) during the internal affairs process or a ruling by a hearing office, arbitrator, Administrative Law Judge, or the Superior Court. Allegations that cannot be sustained, are not credible, or have resulted in the exoneration of an employee, including where the previous *Giglio* finding has either been vacated, or overturned on the merits in any subsequent action, generally are not considered to be potential impeachment information, subject to the requirements herein. On the other hand, if the officer negotiates a plea or there is an administrative or civil settlement with the employer whereby the *Giglio*-related charge is dismissed, the charge would still be considered sustained, if there was sufficient credible evidence to prove the allegation, and the officer does not challenge the finding and obtain a favorable ruling by a hearing officer, arbitrator, Administrative Law Judge, or the Superior Court. In reviewing dispositions reached before the issuance of this Directive, prosecutors must be mindful that officers may not have had an incentive to challenge *Giglio*-related charges or findings when the overall negotiated disposition of the matter was acceptable to the officer. Therefore, in such cases, prosecutors must thoroughly review the entire investigative file before making determinations on the disclosure of *Giglio*-related charges that were ultimately dismissed as part of an administrative or civil settlement.

II. Implementation of Countywide *Brady-Giglio* Policies

- A. ***Prosecutors' Responsibilities.*** It is the prosecutor's responsibility to gather and disclose relevant *Brady* and *Giglio* material to the defense. The obligation to turn over exculpatory material is embedded in New Jersey's discovery rules, Rule 3:13-3(a), (b), and (f). In addition to disclosing exculpatory information pre-trial, exculpatory information must also be disclosed prior to a plea offer when offered during the pre-indictment phase. R. 3:13-3(a). Prosecutors are also bound by the Rules of Professional Conduct. Rule 3.8(d) requires prosecutors to make timely disclosure to the defense of all evidence known to the prosecutor that tends to negate guilt or mitigate the offense.

It is also the prosecutor's responsibility to decide, based on their professional judgment, what evidence is covered by *Brady* and *Giglio* and must be disclosed to the defendant. Because knowledge of *Brady* and *Giglio* material is imputed to the prosecutor, it is imperative that the prosecutor request that information of testifying State witnesses. Ultimately, it is the prosecutor's decision whether to disclose potentially exculpatory evidence.

1. ***Brady Material.*** In developing its policy, each County Prosecutor's Office shall use the following non-exhaustive list of *Brady* material as examples for guidance:
 - a. Evidence linking a State witness to the crime for which defendant is being charged. *State v. Landano*, 271 N.J. Super. 1 (App. Div.), *certif. denied* 137 N.J. 164 (1994);

- b. Evidence related to defendant's theory of third-party guilt. *State v. Smith*, 224 N.J. 36, 50 (2016);
 - c. Potentially exculpatory polygraph test of State's witness. *State v. Carter*, 85 N.J. 300 (1981); and
 - d. Prior inconsistent and exculpatory statements made by a State's witness. *State v. Cahill*, 125 N.J. Super. 492 (Law Div. 1973).
2. **Giglio Material.** "Evidence impeaching the testimony of a government witness *falls within the Brady rule* when the reliability of the witness may be determinative of a criminal defendant's guilt or innocence." *State v. Carter*, 91 N.J. at 111 (citing *Giglio* at 150) (emphasis added). The New Jersey Supreme Court in *Carter* held that "the State's obligation to disclose is not limited to evidence that affirmatively tends to establish a defendant's innocence but would include any information material and favorable to a defendant's cause even where the evidence concerns only the credibility of a State's witness." *Id.* This includes *Giglio* material on civilian and investigative State witnesses.

Thus, in developing its *Brady* and *Giglio* policy, each County Prosecutor's Office shall use the following non-exhaustive list of potential *Giglio* material as it relates to civilian and investigative State witnesses for guidance on the type of material that must be gathered. Again, this does not necessarily mean the information will be disclosed.

- a. Civilian Witnesses
 - i. Bias. A witness can be impeached with evidence that he or she has a bias against the defendant or in favor of the State (actual or potential exposure to criminal penalties, leniency/plea agreement, payments, immigration benefits, etc.);
 - ii. Specific instances of dishonesty. A witness can be impeached with evidence of a prior act of misconduct involving dishonesty, even if it has not resulted in a criminal charge or conviction. This includes lying and falsifying records;
 - iii. Criminal convictions, N.J.R.E. 609; and
 - iv. Prior inconsistent statements, N.J.R.E. 613.

b. Investigative Employees

- i. A sustained finding that an investigative employee has filed a false report or submitted a false certification in any criminal, administrative, employment, financial, or insurance matter in their professional or personal life;
- ii. A sustained finding that an investigative employee was untruthful or has demonstrated a lack of candor;
- iii. A pending criminal charge or conviction of any crime, disorderly persons, petty disorderly persons, or driving while intoxicated matter, noting that any such charges or convictions will be reviewed for disclosure under N.J.R.E. 609;
- iv. A sustained finding that undermines or contradicts an investigative employee's educational achievements or qualifications as an expert witness;
- v. A finding of fact by a judicial authority or administrative tribunal that is known to the employee's agency, which includes a finding that the investigative employee was *intentionally* untruthful in a matter, either verbally or in writing;
- vi. A sustained finding, or judicial finding, that an investigative employee intentionally mishandled or destroyed evidence. Generally, law enforcement agencies and investigative employees should disclose findings or allegations that relate to substantive violations concerning: (1) the intentional failure to follow legal or departmental requirements for the collection and handling of evidence, obtaining statements, recording communications, and obtaining consents to search or to record communications; (2) the intentional failure to comply with agency procedures for supervising the activities of a cooperating person; and (3) the intentional failure to follow mandatory protocols with regard to the forensic analysis of evidence;²
- vii. Any allegation of misconduct bearing upon truthfulness, bias, or integrity that is the subject of a pending investigation;
- viii. Information that may be used to suggest that the investigative employee is biased for or against a defendant. *See United States v. Abel*, 469 U.S. 45, 52

² This category does not include incidents deemed by a supervisory authority to be a mistake or done in error without intention, even in cases where the incident was sustained. For example, if an officer failed to follow a mandatory protocol due to a misunderstanding, and that mistake resulted in a sustained finding, that would not be considered *Giglio* information for purposes of disclosure.

(1984). The Supreme Court has stated, “bias is a term used in the ‘common law of evidence’ to describe the relationship between a party and a witness which might lead the witness to slant, unconsciously or otherwise, his testimony in favor of or against a party. Bias may be induced by a witness’ like, dislike, or fear of a party, or by the witness’ self-interest.”); and

- ix. A sustained finding, or judicial finding, that an investigative employee is biased against a particular class of people, for example, based on a person’s gender, gender identity, race, or ethnic group.

B. ***Procedures for Gathering Brady and Giglio Information.*** It is important to note that there are three separate and distinct processes: gathering *Brady* and *Giglio* material; disclosing *Brady* and *Giglio* material to the defense or the court; and admitting *Brady* and *Giglio* material at a defendant’s trial. This section of the Directive applies only to the gathering process. Gathering such material occurs when the prosecutor collects the information for the *prosecutor’s review only*. Gathering does not mean that the information will be disclosed to the defense or the court, and it does not mean that it will be admitted at trial.

Each county’s policy shall establish and maintain procedures for prosecutors to gather and review potential *Brady* and *Giglio* information prior to any plea offer, testimonial hearing, or trial. These procedures are important because often there are times when a law enforcement officer or other investigative employee knows of *Brady* or *Giglio* information yet the prosecutor does not. The United States and New Jersey Supreme Courts have made clear that even under these circumstances, knowledge of potential *Brady* or *Giglio* information is imputed to the prosecutor, and, therefore, “the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government’s behalf in the case, including the police.” *Kyles v. Whitley*, 514 U.S. 419, 437-38 (1995); *see also Giglio*, 405 U.S. at 154; *State v. Womack*, 145 N.J. 576, 589, *cert. denied*, 519 U.S. 101 (1996); *Carter*, 91 N.J. at 110; *State v. Mustaro*, 411 N.J. Super. 91, 102 (App. Div. 2009) (finding even if prosecutor was unaware of existence of impeachment material on videotape, arresting officer was aware; consequently, officer’s knowledge was imputed to State).

The United States Supreme Court has held that the federal “Constitution does not require the Government to disclose material impeachment evidence prior to entering a plea agreement with a criminal defendant.” *United States v. Ruiz*, 536 U.S. 622, 633 (2002). However, New Jersey Court Rule 3:13-3 requires that in a pre-indictment context “the prosecutor shall provide defense counsel with any exculpatory information or material.” While gathering information prior to a plea may often times be difficult, it is important for the prosecutor to conduct a thorough analysis of the case to determine the State witnesses whose testimony would be determinative of defendant’s guilt or innocence and make available such impeachment material that would seriously undermine the credibility

of such a witness. *See Carter*, 91 N.J. at 111. *Brady* and *Giglio* material related to those State witnesses must be gathered and disclosed if appropriate. *See State v. Parsons*, 341 N.J. Super. 448 (2001). Court Rule 3:13-3(a) permits a prosecutor, upon notice to the defendant, to provide more limited discovery in a pre-indictment plea context and should be used if appropriate.

Thus, each county's policy must, at a minimum, include the following:

1. **Process for Employee's Proactive Participation.** A process for the investigative employee to proactively participate in the *Brady* and *Giglio* gathering phase. As part of that process, the investigative employee involved in a case must notify the prosecuting authority (or confirm that the prosecuting authority is aware) or any potential *Brady* or *Giglio* material known to the investigative employee.
2. **Process for Prosecutor's Gathering of Information.** A process for the prosecutor and/or *Giglio* liaison to affirmatively gather *Brady* and *Giglio* information from the investigative employee and the investigative employee's agency. This can be done, for example, both formally in writing to the investigative agency and/or informally through a candid conversation between the investigative employee and the prosecutor. This type of process can occur multiple times as the underlying investigation progresses.
3. **Mechanism for Identification of *Brady* and *Giglio* Material.** A mechanism or system that allows, on a case-by-case basis, for the identification of officers with potential *Brady* or *Giglio* material, taking into account that this mechanism or system must be amenable to update and modification, as material that is considered *Brady* and *Giglio* may change under different circumstances and over time.

Therefore, each county's policy must establish procedures for gathering and reviewing *Brady* and *Giglio* material that complies with the above parameters.

- C. ***Procedures for Reviewing and Disclosing Brady and Giglio Information.*** Each county's policy shall establish the following procedures for review and disclosure of *Brady* and *Giglio* material.

1. **Procedures for Review.** The prosecutor assigned to a case, in consultation with the prosecutor's designee or *Giglio* liaison, shall review the potential *Brady* and *Giglio* material and any other information found to be relevant and material to the particular case. This shall be done in accordance with all relevant case law and court rules. The prosecutor is to review the material and determine whether it should be disclosed to the court for an *ex parte*, *in camera* review or whether it should be disclosed to the defense. It is the prosecutor's duty to recommend whether, to what extent, and/or in

what manner disclosure to the defense and/or the court shall occur. This shall be done in accordance with the approval process set out in each county's policy.

2. **Procedures for Disclosure.** After review of the potential *Brady* and *Giglio* material, there are three possible outcomes: (1) no disclosure; (2) disclosure will be made to the defense; or (3) disclosure will be made to the court for an *ex parte, in camera*, judicial review. Each county's policy shall establish and maintain a procedure for notifying the investigative employee and/or the employee's agency prior to disclosure. This will serve as notice to the investigative employee and agency and as an opportunity for the agency and employee to verify the accuracy of the noted *Brady* and *Giglio* material.

For all disclosures, whether made to the defense directly or after the court orders disclosure, the prosecutor shall notify the investigative employee and agency of the disclosure. The prosecutor shall also provide the investigative employee and agency with copies of all disclosed material.

With respect to the disclosed material, the prosecutor shall seek redactions to protect the privacy interests of third-parties and investigative personnel. The prosecutor shall also seek protective orders to limit the use and further dissemination of the material. Finally, each county's policy shall incorporate a procedure for informing the investigative employee, as well as that person's agency, of decisions made by the court as to the disclosure and/or admissibility at trial of any disclosed *Brady* and/or *Giglio* information.

A decision to disclose in one case does not dictate the decision to disclose in subsequent cases. The prosecutor, in consultation with the prosecutor's designee or *Giglio* liaison, must evaluate each piece of potential *Giglio* information on a case-by-case basis to determine whether the material must be disclosed under the law or submitted to the court for an *ex parte, in camera* review.

Importantly, if the prosecutor makes the decision not to use an investigative employee because of *Brady* or *Giglio* concerns, or if the relevant *Brady* or *Giglio* information substantially affected the case in any way, the County Prosecutor's Office shall notify the appropriate individual in that agency of the decision. The procedure for such notification shall be set by the County Prosecutor. After the required disclosures are made, the investigative employee may seek review of that determination from the County Prosecutor or their designee, or from the Office of Attorney General. This review shall not interrupt or interfere with the prosecutor's obligation to disclose information in the ongoing case.

Because a *Giglio* determination requires a case-by-case determination, promulgating a "do-not-call" list of individuals who can never be called as witnesses is not a

preferred means of complying with *Brady* and *Giglio* obligations and should be avoided. Such lists are also potentially misleading. For example, if an investigative employee who has *Giglio* that must be turned over happens to be the sole witness to a serious crime, it may be necessary to call the employee as a witness notwithstanding any *Giglio* the employee may have. For these reasons, alternatives to a do-not-call list should be considered. A do-not-call list is different than a system to identify investigative employees who have potential *Giglio*, which is permissible.

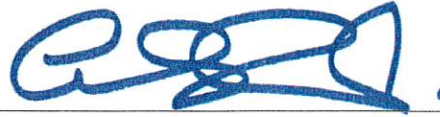
This Directive does not address remedial or consequential action on the part of the law enforcement agency.

3. **Confidentiality.** Obtaining and disclosing potential *Brady* and *Giglio* material is a confidential process. As such, all documents requested and obtained shall be kept confidential and secured in a manner to be determined by each County Prosecutor's Office and should not be shared with any person who does not have a need to know. Personnel and internal affairs files are confidential materials and will not be released except as pursuant to each county's policy.

III. Other Provisions

- A. ***Non-enforceability by third parties.*** This Directive is issued pursuant to the Attorney General's authority to ensure the uniform and efficient enforcement of the laws and administration of criminal justice throughout the State. This Directive imposes limitations on law enforcement agencies and officials that may be more restrictive than the limitations imposed under the United States and New Jersey Constitutions, and federal and state statutes and regulations. Nothing in this Directive shall be construed in any way to create any substantive right that may be enforced by any third party.
- B. ***Severability.*** The provisions of this Directive shall be severable. If any phrase, clause, sentence or provision of this Directive is declared by a court of competent jurisdiction to be invalid, the validity of the remainder of the Directive shall not be affected.
- C. ***Questions.*** Any questions concerning the interpretation or implementation of this Directive shall be addressed to the Director of the Division of Criminal Justice, or their designee.

- D. *Effective date.* This Directive shall take effect March 1, 2020, and shall remain in force and effect unless and until it is repealed, amended, or superseded by Order of the Attorney General.



Gurbir S. Grewal
Attorney General

ATTEST:



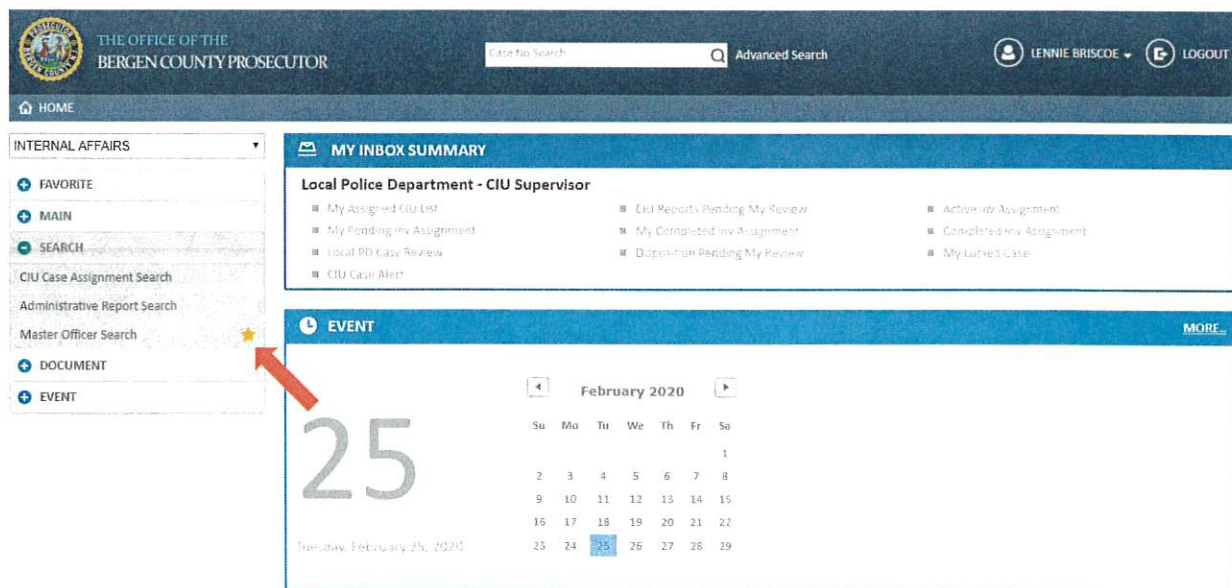
Jennifer Davenport
First Assistant Attorney General
Dated: December 4, 2019

EXHIBIT B

Adding “Brady/Giglio” information to a closed investigation or one without a case number

Step One:

Log into InfoShare’s IA module. Select search on the left-hand side of the screen. That dropdown menu has a new feature called “Master Officer Search”. This feature is widely used during Brady/Giglio operations so we suggest clicking the star to the right of that selection to make it a favorite. Left click the Master Officer Search button.



Step Two:

This is the Master Officer Search screen. This screen allows a supervisor to search through the roster of his/her department. Every officer of your department has a Master Officer Record. The Master Officer Record holds information about that officer. It is also the location where information pertaining to the Early Warning System and Brady/Giglio, if any, will be logged.

The screenshot shows the Master Officer Search screen. It has a form with the following fields: Last Name (text input), Police Agency (dropdown menu), Active? (radio buttons for NO and YES), First Name (text input), Badge # (text input), and Brady / Giglio? (text input). There is a 'GO' button and a 'Clear' button.

Enter the officer’s name and click “GO”.

Step Three:

This is the Master Officer Search Result screen displaying the results entered from the Master Officer Search screen. In this particular example, only one officer named "Falco" (a fictitious officer) was located. If a more common name was used, several names might be present. Select the appropriate officer that is being sought and left click his/her name.

INTERNAL AFFAIRS
Master Officer Search Result

LENNIE BRISCOE LOGOUT

HOME

SEARCH CRITERIA: Last Name: falco

1 Records -- 1 - 1 Displayed Page Size: 30

Police Officer's Name	Police Agency	Rank	Badge #	Phone #	Posted Date	Active ?	Brady / Giglio ?
FALCO, NICK	ROCKLEIGH BOROUGH POLICE DEPT.		999		02/25/2020 07:45 AM	YES	

1 Records -- 1 - 1 Displayed Page Size: 30

Step Four:

This is a Mater Officer Record for that officer. You will notice several tabs across the top of the screen. Tabs that contain data will have a red square next to them. Here is a rundown of those tabs:

- Officer Summary – contains basic information entered into InfoShare about the officer
- Brady / Giglio – contains Brady/Giglio information about that officer (if any)
- Early Warning – contains information pertaining to Early Warning System (EWS)
- Case Alert List – Cases linked to the EWS
- View Log History – is an audit listing of the local users that have viewed that officer's Master Officer Record screen

INTERNAL AFFAIRS
Police Officer Summary

Officer Name: FALCO, NICK

LENNIE BRISCOE LOGOUT

HOME

Officer Summary Brady / Giglio Early Warning Case Alert List Case History View Log History

POLICE OFFICER INFORMATION

Police Officer's Name	Agency	Rank	Badge #
FALCO, NICK	ROCKLEIGH BOROUGH POLICE DEPT.		999
Office Phone #	Extension	Office Fax	Agency Cellular #
Home Phone #	Personal Cellular #	Email Address	
OTP Cellular Type	OTP Cellular Carrier	Active ?	Brady / Giglio ?
		YES	
Note			

Step Five:

To add Brady/Giglio information to InfoShare on a closed matter, left click the “Brady / Giglio” tab in that officer’s Master Name Record.



Step Six:

Next, left click the “Add Incident Without IA Case” button.



Step Seven:

This screen is called the “Brady / Giglio Check List”. Select the Brady / Giglio factors that apply to the matter that is being reviewed. More than one factor can be applied at the same time.

INTERNAL AFFAIRS
Show Police Off

HOME
Officer Summary
Brady Giglio Inci
Case Reviews

Tip: Click Add hyperlink to add re
Copyright © CSI Technology Gr

Add Subject Brady / Giglio

SCORE LOGOUT

BRADY / GIGLIO CHECK LIST

Brady / Giglio Indicator

- ☐ A sustained finding that an investigative employee has filed a false report or submitted a false certification in any criminal, administrative, employment, financial, or insurance matter in their professional or personal life
- ☐ A sustained finding that an investigative employee was untruthful or has demonstrated a lack of candor
- ☐ A pending criminal charge or conviction of any crime, disorderly persons, petty disorderly persons, or driving while intoxicated matter, noting that any such charges or convictions will be reviewed for disclosure under N.J.R.E. 609
- ☐ A sustained finding that undermines or contradicts an investigative employee's educational achievements or qualifications as an expert witness
- ☐ A finding of fact by a judicial authority or administrative tribunal that is known to the employee's agency, which includes a finding that the investigative employee was intentionally untruthful in a matter, either verbally or in writing
- ☐ A sustained finding, or judicial finding, that an investigative employee intentionally mishandled or destroyed evidence. Generally, law enforcement agencies and investigative employees should disclose findings or allegations that relate to substantive violations concerning: (1) the intentional failure to follow legal or departmental requirements for the collection and handling of evidence, obtaining statements, recording communications, and obtaining consents to search or to record communications; (2) the intentional failure to comply with agency procedures for supervising the activities of a cooperating person; and (3) the intentional failure to follow mandatory protocols with regard to the forensic analysis of evidence
- ☐ Any allegation of misconduct bearing upon truthfulness, bias, or integrity that is the subject of a pending investigation
- ☐ Information that may be used to suggest that the investigative employee is biased for or against a defendant. See United States v. Abel, 469 U.S. 45, 52 This category does not include incidents deemed by a supervisory authority to be a mistake or done in error without intention, even in cases where the incident was sustained. For example, if an officer failed to follow a mandatory protocol due to a misunderstanding, and that mistake resulted in a sustained finding, that would not be considered Giglio information for purposes of disclosure
- ☐ A sustained finding, or judicial finding, that an investigative employee is biased against a particular class of people, for example, based on a person's gender, gender identity, race, or ethnic group.
- ☐ None/Does not apply

Officer Name (Req.) Reference Case # (Req.) Agency Contact

Note

500 characters left

Step Eight:

Enter the officer's name (if not already populated) as well as the local IA or investigation case number for your matter. To the extent possible, the reviewing officer should enter his/her name in the "Agency Contact" field. The box labeled "Notes" is designated for a quick summary of why the Agency Contact clicked the Brady/Giglio factors for that officer. Those notes should reflect at least some information about all of the boxes that were checked in that review. If none of the Brady/Giglio factors apply, then the box marked "None/Do not apply" should be checked. Click "Save".

Brady / Giglio Indicator		
☐	A sustained finding that an investigative employee has filed a false report or submitted a false certification in any criminal, administrative, employment, financial, or insurance matter in their professional or personal life	
☐	A sustained finding that an investigative employee was untruthful or has demonstrated a lack of candor	
☐	A pending criminal charge or conviction of any crime, disorderly persons, petty disorderly persons, or driving while intoxicated matter, noting that any such charges or convictions will be reviewed for disclosure under N.J.R.E. 609	
☒	A sustained finding that undermines or contradicts an investigative employee's educational achievements or qualifications as an expert witness	
☐	A finding of fact by a judicial authority or administrative tribunal that is known to the employee's agency, which includes a finding that the investigative employee was intentionally untruthful in a matter, either verbally or in writing	
☐	A sustained finding, or judicial finding, that an investigative employee intentionally mishandled or destroyed evidence. Generally, law enforcement agencies and investigative employees should disclose findings or allegations that relate to substantive violations concerning: (1) the intentional failure to follow legal or departmental requirements for the collection and handling of evidence, obtaining statements, recording communications, and obtaining consents to search or to record communications; (2) the intentional failure to comply with agency procedures for supervising the activities of a cooperating person; and (3) the intentional failure to follow mandatory protocols with regard to the forensic analysis of evidence	
☐	Any allegation of misconduct bearing upon truthfulness, bias, or integrity that is the subject of a pending investigation	
☐	Information that may be used to suggest that the investigative employee is biased for or against a defendant. See United States v. Abel, 469 U.S. 45, 52 This category does not include incidents deemed by a supervisory authority to be a mistake or done in error without intention, even in cases where the incident was sustained. For example, if an officer failed to follow a mandatory protocol due to a misunderstanding, and that mistake resulted in a sustained finding, that would not be considered Giglio information for purposes of disclosure	
☐	A sustained finding, or judicial finding, that an investigative employee is biased against a particular class of people, for example, based on a person's gender, gender identity, race, or ethnic group.	
☐	None/Does not apply	

Officer Name (Req.)	Reference Case # (Req.)	Agency Contact
NICK FALCO	123456	L. Briscoe

Note

On January 8, 2020, IA received an anonymous letter indicating that Officer Falco's CV listed courses that he never received. |

373 characters left

Save Clear

Step Nine:

After saving, the user will be brought back to that officer's Master Name Record screen. You will note that the Brady / Giglio tab now has a red dot next to it and the officer now has an incident listed in the area labeled "Brady/Giglio Events". Additional information can be added to an existing Incident by clicking the "Posted Date" hyperlink.



INTERNAL AFFAIRS

Show Police Officer Brady / Giglio | Officer Name: FALCO, NICK

LENNIE BRISCOE | LOGOUT

HOME

Officer Summary **Brady / Giglio** Early Warning Case Alert List Case History View Log History

Brady Giglio Incidents [Add Incident Without IA Case](#)

Posted Date	Case #	Date of Review	Review By	Officer Name	Indicator Checked	Agency Contact	Note	Posted By
02/25/2020	123456	02/25/2020	BRISCOE, LENNIE	NICK FALCO	View	L. Briscoe	On January 8, 2020, IA received an anonymous letter indicating ...	BRISCOE, LENNIE

Adding “Brady/Giglio” information to current internal affairs investigations and other personnel matters

All current and future internal affairs investigation will require the officer conducting the investigation to make an assessment as to whether the officer(s) involved in that reviewed matter involve Brady/Giglio criteria.

The process of adding Brady/Giglio information to a current or future investigation is relatively straight forward. In order to close that internal affairs investigation, the officer conducting the investigation must determine whether none of the Brady/Giglio factors apply or which of the Brady/Giglio factors apply.

For this example, Sgt. Briscoe has opened an investigation of “Officer Falco” about an allegation that he only worked 7 hours of an 8 hour shift. As such, a CIU case was entered.

Step One:

Sgt. Briscoe clicks the “Add New CIU Case” button.

The screenshot displays the user interface of the Bergen County Prosecutor's Office internal affairs system. The top navigation bar includes the logo, the text "THE OFFICE OF THE BERGEN COUNTY PROSECUTOR", a search bar, and user information for "LENNIE BRISCOE". The left sidebar contains a menu with "INTERNAL AFFAIRS" and "MAIN" sections. The "MAIN" section has a button labeled "Add New CIU Case" which is highlighted with a red arrow. The main content area shows "MY INBOX SUMMARY" for "Local Police Department - CIU Supervisor" and an "EVENT" calendar for February 2020.

MY INBOX SUMMARY

Local Police Department - CIU Supervisor

- My Assigned CIU List
- My Pending Inv Assignment
- Local PD Case Review
- CIU Case Alert
- CIU Reports Pending My Review
- My Completed Inv Assignment
- Disposition Pending My Review
- Active Inv Assignment
- Completed Inv Assignment
- My Locked Case

EVENT

February 2020

25

Tuesday, February 25, 2020

Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29

Add the relevant information about the incident. Click Save.

INTERNAL AFFAIRS

CIU Case Intake

HOME

LENNIE BRISCOE LOGOUT

CASE INFORMATION

Origin of CIU (Req.) LOCAL POLICE DEPARTMENT ▼	Police Department (Req.) ROCKLEIGH BOROUGH POLICE DEPT. ▼	Received Date & Time (Req.) 02/20/20 Cal	Classification ▼
PD Case # 987654	Cross File # 	Confidential Investigation Case Type (Req.) OTHER RULE VIOLATION ▼	Confidential Investigation Case Sub Type ▼
Origin of Incident (Req.) AGENCY COMPLAINT ▼	Initial Report Method (Req.) ANONYMOUS ▼	Initially Reported To (Req.) INTERNAL AFFAIRS ▼	

County & Agency Involved

County BERGEN ▼	Agency Involved ROCKLEIGH BOROUGH POLIC ▼
--------------------	--

LOCATION INFORMATION

Offense: From Date & Time Cal	Offense: To Date & Time Cal	Type of Location ▼
Incident Location 	Bldg / Apt / Suite 	City
Zip 	County BERGEN ▼	State NJ ▼
	Municipality ▼	

CASE NOTE INFORMATION

Case Title (Req.)
Allegation Officer didn't work entire 8 hour shift

Detail

On 2/20/20, IA received an anonymous letter that Officer Falco improperly put in for an 8 hour shift. even though he only worked 7 hours.

Step Three:

Next, the officer that is the subject of the investigation must be attached to the incident. This is done by clicking the "SUBJECT INVOLVED" button.

INTERNAL AFFAIRS
Add New Case (Continued)

HOME

Go To Case Summary

CASE INFORMATION [Update](#) [Update County & Agency Involved](#)

Case # (s)
0255-20-0001

Origin of CIU
LOCAL POLICE DEPARTMENT

PD Case #
987654

Origin of Incident
AGENCY COMPLAINT

Detail
On 2/20/20, IA received an anonymous letter that Officer Falco improperly put in for an 8 hour shift, even though he only worked 7 hours

County & Agency Involved
BERGEN / ROCKLEIGH BOROUGH POLICE DEPT.

Police Department
ROCKLEIGH BOROUGH POLICE DEPT.

Cross File #

Initial Report Method
ANONYMOUS

Received Date & Time
02/20/2020

Confidential Investigation Case Type
OTHER RULE VIOLATION

Initially Reported To
INTERNAL AFFAIRS

Classification

Confidential Investigation Case Sub Type

Case Title
ALLEGATION OFFICER DIDN'T WORK ENTIRE 8 HOUR SHIFT

LOCATION INFORMATION [Update](#)

Offense: From Date & Time

Offense: To Date & Time

Type of Location

Incident Location

Bldg / Apt / Suite

City

State
NJ

Zip

SUBJECT INVOLVED [Add](#)

No record found.

Step Three:

A new screen will pop up. The Subject type should be "Police Officer". The Agency should default to your particular agency. In the next field, begin to type the officer's badge number and/or last name and click the TAB button on your keyboard. This will do a search for the officers matching your criteria. Double click the appropriate officer from that listing. InfoShare will populate the rest of the relevant information on the screen.

Add Suspect/Defendant

Subject Type (Req.)
POLICE OFFICER

Agency (Req.)
ROCKLEIGH BOROUGH F

Badge # / Name Search
999

Rank (Req.)

Last Name (Req.)
FALCO

First Name (Req.)
NICK

Middle Name

SSN

DOB

Sex

Race

Ethnicity

Suffix

HOME ADDRESS INFORMATION

Address

Bldg / Apt / Suite

City

State

Zip

County

Municipality

Step Four:

Importantly, click the "Save From Master Name" button on the bottom of the screen.

OTHER CONTACT INFORMATION			
Phone	Work Phone	Cell Phone	NEXTEL #
Personal Email		Business Email	

NOTE INFORMATION
Note
4500 characters left

[Save From Master Name](#)  [Clear](#)

Step Five:

You will be returned to the incident page. The officer will now be listed under "Subject Involved". Click the blue "Go to Case Summary" button.

INTERNAL AFFAIRS

Add New Case (Continued)

LENNIE BRISCOE LOGOUT

HOME

Go to Case Summary

CASE INFORMATION			
Case #(s)	Police Department	Received Date & Time	Classification
0255-20-0001	ROCKLEIGH BOROUGH POLICE DEPT.	02/20/2020	
Origin of CIU	Cross File #	Confidential Investigation Case Type	Confidential Investigation Case Sub Type
LOCAL POLICE DEPARTMENT		OTHER RULE VIOLATION	
PD Case #	Initial Report Method	Initially Reported To	Case Title
987654	ANONYMOUS	INTERNAL AFFAIRS	ALLEGATION OFFICER DIDN'T WORK ENTIRE 8 HOUR SHIFT
Origin of Incident			
AGENCY COMPLAINT			
Detail			
On 2/20/20, IA received an anonymous letter that Officer Falco improperly put in for an 8 hour shift, even though he only worked 7 hours.			
County & Agency Involved		BERGEN / ROCKLEIGH BOROUGH POLICE DEPT.	

LOCATION INFORMATION			
Offense: From Date & Time	Offense: To Date & Time	Type of Location	
Incident Location	Bldg / Apt / Suite	City	State
			NJ
Zip			

SUBJECT INVOLVED				
Posted Date	Subject Name	Subject Status	Disposition	Disposition Note
02/25/2020 11:37 AM	FALCO, NICK (POLICE OFFICER)	INTAKE		

Step Six:

Once an officer or officers are added to an incident, the reviewing officer **must** add an allegation to the incident. This is accomplished by clicking the “Add” button in the section marked “Allegations / Early Warning / Brady / Giglio”.

INTERNAL AFFAIRS | CIU Case # 0255-20-0001 | Case Title: ALLEGATION OFFICER DIDN'T WORK ENTIRE 8 HOUR SHIFT | Case Stage: INTAKE | CASE LOCATION | LENNIE BRISCOE | LOGOUT

Case Summary

HOME | CIU Summary | Case Numbers | CIU Reports List | Contacts | Staff Assignment | Events | Notes | Documents | Vehicles | Forms | Inv Assignment | Permission | Stages

CASE INFORMATION [Update] [Update County & Agency Involved] [Print Preview]

Case #(s) 0255-20-0001	Origin of CIU LOCAL POLICE DEPARTMENT	Police Department ROCKLEIGH BOROUGH POLICE DEPT.	Received Date & Time 02/20/2020
Classification	Confidential Investigation Case Type OTHER RULE VIOLATION	Confidential Investigation Case Sub Type	Origin of Incident AGENCY COMPLAINT
Initial Report Method ANONYMOUS	Initially Reported To INTERNAL AFFAIRS	Case Title ALLEGATION OFFICER DIDN'T WORK ENTIRE 8 HOUR SHIFT	

Detail
On 2/20/20, IA received an anonymous letter that Officer Falco improperly put in for an 8 hour shift, even though he only worked 7 hours.

County & Agency Involved
BERGEN / ROCKLEIGH BOROUGH POLICE DEPT.

LOCATION INFORMATION [Update]

Offense: From Date & Time	Offense: To Date & Time		
Incident Location	Bldg / Apt / Suite	City	State NJ
Zip			

SUBJECT INVOLVED [Subject Disposition] [Add]

Posted Date	Subject Name	Subject Status	Disposition	Disposition Note
02/25/2020 11:37 AM	FALCO, NICK (POLICE OFFICER)	INTAKE		

ALLEGATIONS / EARLY WARNING / BRADY / GIGLIO [Add] No record found.

NOTE: Once an IA is opened in InfoShare and an officer is added, that IA cannot be closed until and unless an allegation has been added to the incident.

Step Seven:

The process of adding allegations to an IA incident has not substantially changed. The reviewing officer must pick the related subject officer from the dropdown menu of officers that were attached to the case. The reviewing officer must also pick the type of allegation from that dropdown.

Add Allegation

Related Subject (Req.) **FALCO, NICK** Drugs Involved ? Alcohol Involved ?

Allegation (Req.) **VIOLATION OF DEPARTMENTAL POLICY** Truthfulness / Veracity Conclusion **PENDING INVESTIGATION** + -

EARLY WARNING - Check a box to count this matter for EWS alert purposes.

Early Warning	Note
☐ INTERNAL AFFAIRS COMPLAINTS AGAINST THE OFFICER, WHETHER INITIATED BY ANOTHER OFFICER OR BY A MEMBER OF THE PUBLIC.	
☐ CIVIL ACTIONS FILED AGAINST THE OFFICER.	

At the conclusion of the investigation of the IA incident, the reviewing officer must determine whether any of the allegations were sustained and/or (2) whether any of the allegations, even if they weren't sustained, nonetheless require one or more of the boxes on the Brady / Giglio checklist to be checked off. At this point the officer should scroll down past the early warning section on that window until they get to the screen that has the Brady / Giglio Indicator Checklist. The reviewing officer should select all of the factors that apply to that incident. The officer should add a small note in the "Notes" area to explain why the box(es) were checked. If none of the factors apply, the box labeled "None /does not apply" should be checked.

Brady / Giglio Indicator	
☐	A sustained finding that an investigative employee has filed a false report or submitted a false certification in any criminal, administrative, employment, financial, or insurance matter in their professional or personal life
☐	A sustained finding that an investigative employee was untruthful or has demonstrated a lack of candor
☐	A pending criminal charge or conviction of any crime, disorderly persons, petty disorderly persons, or driving while intoxicated matter, noting that any such charges or convictions will be reviewed for disclosure under N.J.R.E. 609
☐	A sustained finding that undermines or contradicts an investigative employee's educational achievements or qualifications as an expert witness
☐	A finding of fact by a judicial authority or administrative tribunal that is known to the employee's agency, which includes a finding that the investigative employee was intentionally untruthful in a matter, either verbally or in writing
☐	A sustained finding, or judicial finding, that an investigative employee intentionally mishandled or destroyed evidence. Generally, law enforcement agencies and investigative employees should disclose findings or allegations that relate to substantive violations concerning: (1) the intentional failure to follow legal or departmental requirements for the collection and handling of evidence, obtaining statements, recording communications, and obtaining consents to search or to record communications; (2) the intentional failure to comply with agency procedures for supervising the activities of a cooperating person; and (3) the intentional failure to follow mandatory protocols with regard to the forensic analysis of evidence
☐	Any allegation of misconduct bearing upon truthfulness, bias, or integrity that is the subject of a pending investigation
☐	Information that may be used to suggest that the investigative employee is biased for or against a defendant. See <i>United States v. Abel</i> , 469 U.S. 45, 52. This category does not include incidents deemed by a supervisory authority to be a mistake or done in error without intention, even in cases where the incident was sustained. For example, if an officer failed to follow a mandatory protocol due to a misunderstanding, and that mistake resulted in a sustained finding, that would not be considered Giglio information for purposes of disclosure
☐	A sustained finding, or judicial finding, that an investigative employee is biased against a particular class of people, for example, based on a person's gender, gender identity, race, or ethnic group.
☐	None/Does not apply
Note 500 characters left	

NOTE: Many of the Brady / Giglio factors only apply to sustained allegations. However, please remember that the AG Directive requires that any allegation of misconduct bearing upon truthfulness, bias, or integrity that is the subject of a pending investigation, although not yet sustained, must be entered as Brady/Giglio information. As such, it is possible that the reviewing officer might have to check off a box in the Brady/Giglio Checklist even before the internal affairs investigation has concluded as sustained, not sustained, exonerated, or unfounded.

The reviewing officer can always enter Brady/Giglio information that he/she believes should be reported based on the AG Directive prior to the conclusion of the IA investigation. **However, from this point forward, the reviewing officer will be required to make a determination of the applicability of Brady/Giglio indicators for every IA case prior to closing out that incident in the IA module.** In other words, the only way to close out an incident in the IA module is for the reviewing officer to determine that one or more Brady/Giglio factors apply or none of them apply. The only exception to this requirement would be the rare incident where an IA incident was initiated on a complaint, but the officer's identity could never be established.

The reviewing officer should click "Save" button at the bottom of the page to save the Brady/Giglio review of that incident.



MARK MUSELLA
Bergen County Prosecutor

Office of the County Prosecutor

DENNIS CALO
First Assistant Prosecutor

County of Bergen

THOMAS MCGUIRE
Executive Assistant Prosecutor

Two Bergen County Plaza
Hackensack, New Jersey 07601
(201) 646-2300

ROBERT ANZILOTTI
Chief of Detectives

EXHIBIT C

DATE

PERSONAL AND CONFIDENTIAL

Chief _____

Department _____

Address _____

Address _____

Re: State of New Jersey v. _____

Dear Chief _____:

During our investigation and preparation of the above-captioned matter for prosecution, we discovered that **(insert officer's name)** of your department had a matter that may qualify for disclosure to **(insert court and/or defense counsel)** under the Bergen County Prosecutor's Office *Brady/Giglio* policy, as mandated by the Attorney General of the State of New Jersey. That matter **(briefly identify and describe matter)**.

Please inform the officer of the potential disclosure and review the matter and relevant materials with him or her. Please contact me to discuss whether you or the officer have additional relevant information which may bear on the disclosure decision by _____.

Very truly yours,

MARK MUSELLA
BERGEN COUNTY PROSECUTOR

By: _____
Assistant Prosecutor, Section Chief of
the Bergen County Prosecutor's Office
Confidential Investigations Unit



A State Accredited and Nationally Recognized Law Enforcement Agency