



### OCDA *Brady* Notification Letters FAQs

There are two types of OCDA *Brady* Notification Letters that you may receive. The first is a “*Brady*” notification letter, which is sent when OCDA has determined it needs to investigate whether there is information about you that might require disclosure to the defense. The second is a “Final *Brady*” notification letter, which is sent after the OCDA has completed its investigation and has determined there is information about you that will be disclosed to the defense. These letters are discussed below.

#### **WHY AM I GETTING A *BRADY* LETTER FROM THE OFFICE OF THE DISTRICT ATTORNEY?**

OCDA investigates whether they have any disclosure obligations to the defense under *Brady v. Maryland*. OCDA has information that might require disclosure to the defense and the Court. This *Brady* letter notifies you of OCDA’s investigation and gives you an opportunity to provide OCDA context or other information to assist with their investigation.

#### **IF THIS *BRADY* LETTER IS FROM THE DA’S OFFICE, WHY IS INTERNAL AFFAIRS SERVING THE LETTER?**

Internal Affairs serves you with the *Brady* letter from OCDA for a few reasons. First, unlike a subpoena that could travel through multiple people before arriving with the deputy, having Internal Affairs serve this letter will preserve the confidentiality of this process and possible *Brady* designation by OCDA.

Secondly, OCSD does not provide OCDA with your personal identifying information, such as your home address, so OCDA cannot send the letter directly to you.

Lastly, you have a limited time to take advantage of the opportunity to challenge OCDA’s decision. Internal Affairs limits the delay so you have an opportunity to determine whether you want to participate in their process and to compile any needed documentation.

#### **SHOULD I EVEN TRY TO MAKE A PRESENTATION TO THE OCDA AFTER RECEIVING A *BRADY* LETTER? WILL THE OCDA’S DECISION BE CHANGED BY MY PRESENCE AT THE MEETING OR IS IT JUST A WASTE OF TIME?**

We cannot speak for OCDA, but OCSD is aware of two circumstances where *Brady* determinations were removed after discussions with OCDA.

#### **SHOULD I CONTACT AOCDS, A REP, OR AN ATTORNEY IF I RECEIVE A LETTER FROM THE OCDA?**

Upon receiving a *Brady* letter from the OCDA, department members can seek advice or consult their union representatives if they choose to.





## AFTER OCDA COMPLETES THEIR INVESTIGATION, WILL I RECEIVE A FINAL *BRADY* LETTER?

Yes. At the conclusion of their investigation, you will be notified if *Brady* notification will be made to the defense on your cases.

## ASIDE FROM MEETING WITH THE OCDA, IS THERE ANOTHER PROCESS TO APPEAL THEIR DECISION?

No. It is the OCDA's decision whether to notify the defense about potential *Brady* information. But, it is not the final decision regarding whether the information can be used in court and with you on the witness stand. Ultimately, it will be up to the Court to decide whether the potential *Brady* information is admissible in a particular court case.

## HOW WILL A *BRADY* LETTER AFFECT MY ABILITY TO PROMOTE?

Receiving a letter from the DA's office regarding *Brady* will not affect your ability to promote. Under Government Code section 3305.5(a), "[a] punitive action, or denial of promotion on grounds other than merit, shall not be undertaken by any public agency against any public safety officer solely because that officer's name has been placed on a *Brady* list, or that the officer's name may otherwise be subject to disclosure pursuant to *Brady v. Maryland*, (1963) 373 U.S. 83."

## HOW LONG WILL THE OCDA MAKE A *BRADY* DISCLOSURE ABOUT ME TO THE DEFENSE?

*Brady* does not have a statute of limitations. However, after some time the probative value of the *Brady* information will decrease. The more time passes, with no other *Brady* occurrences, the court will likely determine that the *Brady* information is unduly prejudicial and without sufficient probative value to be admissible in court.

## WHAT ABOUT THE "IMPORTANT PITCHESS NOTIFICATION" EMAIL SOME DEPUTIES RECEIVED? ARE THOSE DEPUTIES "*BRADY*"?

The Pitchess Notification email went to deputies whose cases were involved in an evidence audit. Deputies should review the identified cases and be prepared to answer questions related to their evidence booking practices in court. OCDA has not opened a *Brady* investigation purely because of a deputy's involvement in an evidence audit. If OCDA opens a *Brady* investigation, you will receive a separate letter from OCDA.

