

## TRAVIS COUNTY DISTRICT ATTORNEY DISCOVERY POLICY

It is the policy of the Travis County District Attorney's Office to conduct discovery as openly as possible, consistent with effective advocacy of the case, and in compliance with applicable law and the protection of the victim and other concerned persons.

This policy is intended to provide a framework of basic rules and guidelines for discovery and is intended to comply with the January 1, 2014 codification of the discovery law outlined in Article 39.14, Texas Code of Criminal Procedure.

### EXCULPATORY EVIDENCE

The District Attorney's Office has a continuing obligation to reveal exculpatory evidence to the defense before, during, and after trial. The obligation to reveal exculpatory evidence overrides any restrictions on disclosure contained within this policy. The prosecutor shall disclose to the defense any exculpatory, impeachment, or mitigating document, item, or information in the possession, custody, or control of the state that tends to negate the guilt of the defendant or would tend to reduce the punishment for the offense charged.

### SUPERVISION OF DISCOVERY

A prosecutor should review items of discovery prior to release to determine if the materials contain information that is confidential or privileged by law or should otherwise not be provided to the defense without a court order.

If only a portion of a document, item, or information is subject to discovery, the prosecutor is not required to produce or permit the inspection of the remaining portion that is not subject to discovery and may withhold or redact that portion. The prosecutor shall inform the defendant that a portion of the document, item, or information has been withheld or redacted.

### DOCUMENTATION OF DISCOVERY PROVIDED

The prosecutor shall electronically record or otherwise document any document, item, or other information provided to the defense.

#### **WHO MAY REQUEST OR RECEIVE DISCOVERY**

Discovery will be provided within the guidelines set out in this policy, or as soon as practicable thereafter, upon proper request from the attorney of record for a defendant. Request for discovery from any person other than the attorney of record will be denied.

Non-attorney employees of the defense attorney, such as investigators and paralegals may receive discovery on the defense attorney's behalf with the approval of the prosecutor assigned the case. The District Attorney's Office may require that the defense attorney provide a letter specifying the name of any employee authorized to receive discovery on a case.

Defense attorneys must ensure that all non-attorney employees, investigators, experts, consulting legal counsel or other agents are familiar with, and comply with, the duties, obligations and restrictions outlined in Article 39.14 of the Texas Code of Criminal Procedure, including the duty to redact information prior to dissemination.

Defense attorneys must notify the District Attorney's Office of employees no longer authorized to receive discovery on their behalf.

#### **COPIES TO BE PROVIDED**

Subject to the restrictions provided by Section 264.408 Family Code, and Article 39.15 of the Texas Code of Criminal Procedure, as soon as practicable after receiving a timely request from the defendant (or attorney of record), the prosecutor shall produce and permit for inspection and the electronic duplication, copying, and photographing of any offense reports, any designated documents, papers, written or recorded statements of the defendant or a witness, including witness statements of law enforcement officers (but not including the work product of counsel for the state in the case and their investigators and their notes or report), or any designated books, accounts, letters, photographs or objects or other tangible things not otherwise privileged that constitute or contain evidence material to any matter involved in the action and that are in the possession, custody, or control of the state or any person under contract with the state.

The prosecutor may provide the defendant electronic duplicates of any documents or other information.

This policy does not authorize the removal of the documents, items, or information from the possession of the state, and any inspection shall be made in the presence of a representative of the state.

Copies are to be provided through the District Attorney's Office. The attorney of record may only request and receive the specific report related to the offense for which the defendant is indicted or charged absent compelling circumstances.

The District Attorney will provide copies of offense reports to the attorney of record, upon proper request and in accordance with all other guidelines and restrictions. This may be done by e-mail or by copying the information to a flash drive provided by the defense attorney. If provided by e-mail, it is the responsibility of the defense attorney receiving discovery to have an Adobe Acrobat or other pdf reader software installed in order to open and view the document.

Offense reports, documents, and other information will be provided to the defense in un-redacted form, except for any privileged information, partially discoverable information, or information that would compromise the safety or well-being of victims or witnesses.

#### **SPECIFIC RESTRICTED ITEMS**

- 1) Grand Jury testimony (always requires a court order);
- 2.) Victim Impact Statements;
- 3.) Psychological Profiles (except that of the defendant);
- 4.) Information that would compromise the safety or well-being of victims or witnesses.
- 5.) Information privileged by state or federal law.
- 6.) Criminal Histories (view only).

#### **EXCEPTIONS UNDER THE OPEN RECORDS ACT**

Any and all information released by the District Attorney's Office to a defendant's attorney, or the defense attorney designee, in the course of criminal discovery is being released for the sole purpose of providing discovery in accordance with the Texas Code of Criminal Procedure and the standing or specific discovery orders of the Travis County District Courts. Disclosure of this information does not constitute a voluntary disclosure for purposes of the Texas Open Records Act and does not foreclose any governmental entity's assertion of the exceptions to required disclosure under the Act with respect to information released through criminal discovery.

**DEFENSE ATTORNEYS ACCEPTANCE OF RESPONSIBILITY**

**The last two pages of this policy contain a user agreement listing the responsibilities and obligations attorneys must agree to and abide by pursuant to this policy and in compliance with Article 39.14 Texas Code of Criminal Procedure (as amended, effective Jan.1, 2014). This agreement is part of the discovery policy and must be read and signed by each defense attorney prior to receiving electronic discovery. All signed copies will be kept on file in the District Attorney's Office.**

**A defense attorney that violates any provision of this discovery policy will face any and all sanctions allowed by law.**