

DOM11 - Practices for Providing Discovery Materials

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1. Background

- 1.1. This procedure is to streamline the process of providing discovery as required by the DC Code 5-1501.06 (h)(2).

2. Definitions

- 2.1. For purposes of this document, the following terms shall have the designated meanings:

CD: Compact Disc
DFS: Department of Forensic Sciences
DOM: Departmental Operations Manual
DVD: Digital Versatile Disc

3. Scope

- 3.1. The Department of Forensic Sciences (DFS) frequently receives Discovery notifications in criminal cases. A notification may take the form of a formal request for Discovery from the Prosecution or the Defense. Alternatively, notification may be inferred via a subpoena or other communication which makes it clear a case is the subject of “a criminal prosecution” as referenced in DC Code 1501.06 (h)(2). The DFS will make every effort to provide Discovery materials within ten (10) business days. When a notification is received before the analyses have been completed, the materials for Discovery will be provided as soon as practicable after completion of testing, review, and issuance of the report.
 - 3.1.1. Production of Discovery materials from cases with files stored off-site may require more than ten (10) business days for compliance.
 - 3.1.2. Notifications for Discovery materials beyond the scope of the requirements set forth in 5-1501.06 (h)(3) of the DC Code may require more than ten (10) business days for compliance.

- 3.1.3. On occasion it may take more than ten (10) business days to comply with Discovery requests when the number of notifications received exceeds staffing resources.
- 3.2. Compliance with notifications for Discovery materials must adhere at a minimum to 5-1501.06 (h)(1 - 3) of the DC Code which states:

(1) The Department shall make available all records pertaining to the analysis conducted in a particular case to the agency that requested the analysis.

(2) If the records pertain to a criminal prosecution, the Department shall provide the prosecutor with 2 identical sets of records, one for the government and one for the defense.

(3) For the purposes of this subsection, the term "records" shall include:

(A) Lab notes and bench notes;

(B) Worksheets, graphs, and charts;

(C) Photographs;

(D) Raw data;

(E) Reports;

(F) Statistical information used to calculate probabilities or uncertainty;

(G) Any logs related to the equipment or materials used in testing;

(H) Any written communications or records of oral communications regarding a specific individual case between the Department and any other agency or between the Department and any person not employed by the Department, except as otherwise prohibited by law; and

(I) Proficiency test results for individual examiners involved in the analysis.

4. Responsibilities

4.1. The DFS Discovery compliance designee will:

- 4.1.1. Receive the Discovery notification via e-mail or mail, or
- 4.1.2. Be notified via email of "criminal prosecution" from the scientist involved and/or their Unit manager.
- 4.1.3. Ensure the notification results in providing discovery pursuant to statute as well as any additional requested materials, if available, within a timely manner
- 4.1.4. Ensure the Discovery packet(s) are delivered.

- 4.1.5. Ensure compliance with the Discovery notification is appropriately documented and all generated documentation has been included in the discovery packet.
- 4.1.6. Ensure compliance with the Discovery notification is appropriately documented and all generated documentation has been included in the case file, electronic Completed Cases case file folder on the FSL drive, or provided to the appropriate DFS employee for incorporation in the case file.
- 4.1.7. The initial discovery notification serves as an indicator that discovery is an ongoing process. Should additional materials be added to a case file and/or the electronic Completed Cases case file folder on the FSL drive, this should trigger a new discovery notification.
- 4.1.8. Ensure that the Discovery materials provided meet the minimum requirements delineated by statute, even when the information requested in writing is less expansive.
- 4.2. **The Division Quality Specialist will:**
 - 4.2.1. Ensure all non-case related materials needed for Discovery notification compliance are current and available to the DFS Discovery compliance designee.
- 4.3. **The Deputy Director of Quality will:**
 - 4.3.1. Be apprised of any issues affecting Discovery notification compliance related to materials under the control of the Division Quality Specialists.
- 4.4. **Unit Managers will:**
 - 4.4.1. Ensure that case related materials are provided to the Discovery Compliance officer in a timely fashion.
 - 4.4.2. Create and maintain a system of providing discovery that is consistent with the needs and abilities of the Unit.
- 4.5. **Division Directors will:**
 - 4.5.1. Work with the Discovery Compliance officer in the event issues arise regarding timely and/or complete disclosure of documents required.
- 4.6. **General Counsel will:**
 - 4.6.1. Oversee the Discovery Compliance Officer to ensure compliance with the DC Code.
 - 4.6.2. Speak with attorneys when concerns about discovery arise.
 - 4.6.3. Work with the Deputy Director of Training to ensure employees have an understanding of both case law and statutory requirements of discovery, as needed.

5. Practices

- 5.1. Notifications for Discovery will be directed to the DFS Discovery compliance designee.
- 5.2. As needed, questions regarding the request will be directed to the originator submitting the notification and/or the appropriate Division Director or Unit Manager.
- 5.3. The materials needed to comply with the Discovery notification will be compiled by the DFS designee and burned onto a minimum of two CDs (or DVDs when the volume of materials so dictates), one for the government, and one for the defense, as mandated by statute 5-1501.06 (h)(2). The CDs/DVDs will be delivered to the prosecuting attorney, pursuant to statute 5-1501.06 (h)(2), or to both the prosecuting attorney and defense counsel upon mutual agreement.
- 5.4. Following the Division/Unit SOPs, the DFS Discovery compliance designee will ensure all generated documentation has been included in the case file, the electronic Completed Cases case file folder on the FSL drive, and/or provided to the appropriate DFS employee for incorporation in the case file

6. Documentation

6.1. Materials Required

- 6.1.1. Discovery Notification
- 6.1.2. Compact discs or digital versatile discs
- 6.1.3. Computers with the capability to burn CDs/DVDs

6.2. Limitations

- 6.2.1. Notifications for Discovery materials will only be honored when cases have completed the review process as defined by each Division.

6.3. Comments

- 6.3.1. A cover letter describing in general terms the contents of the CDs/DVDs containing the Discovery materials should accompany the CDs/DVDs being sent. A copy of this cover letter will be placed into the corresponding case file (or electronic case file, as applicable).
- 6.3.2. The CDs/DVDs should be labeled with the case number, the date the CDs/DVDs were burned and the initials of the individual who burned the CDs/DVDs. The package containing the cover letter and the CDs/DVDs containing the Discovery materials should be tape sealed.

7. References

- 7.1. 5-1501 District of Columbia Code (2012).
- 7.2. ISOIEC 17025 - General Requirements for the Competence of Testing and Calibration Laboratories, International Organization for Standardization, Geneva, Switzerland (current revision).
- 7.3. Forensic Quality Services Supplemental Requirements for Forensic Testing, FQS ANSI-ASQ Accreditation Board, Tampa, FL (current revision).
- 7.4. ASCLD/LAB-International® Supplemental Requirements for the Accreditation of Forensic Science Testing and Calibration Laboratories, American Society of Crime Laboratory Directors/Laboratory Accreditation Board, Garner, NC (current revision).
- 7.5. Division Quality Assurance Manuals (current revisions).
- 7.6. Unit-specific Quality Assurance Manuals (current revisions).
- 7.7. Document ID 1202, DOM11 - Practices for Responding to Discovery Requests (retired Qualtrax document)