

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. Body

- 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). Alternatively, it may come to the attention of DFS that a case is in the court system based on monitoring of court-related online resources. 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. Requests 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 or be notified of “criminal prosecution” via e-mail or mail, or,
 - 4.1.2. Be informed from monitoring of the court system and court-related online resources by law clerks.
 - 4.1.3. Ensure that the discovery materials are provided within a timely manner and pursuant to statute as well as any additional requested materials, if available.
 - 4.1.4. Ensure that the Discovery materials provided meets the minimum requirements delineated by statute, even when the information requested in writing is less expansive.
 - 4.1.5. Ensure the Discovery packet(s) are delivered.
 - 4.1.6. Ensure compliance with the Discovery notification through appropriate documentation and that all generated documentation has been included in the discovery packet.
 - 4.1.7. Ensure compliance with the Discovery notification through appropriate documentation and that all generated documentation has been provided to the appropriate DFS unit for incorporation in the individual case files pursuant to the accreditation standards.
 - 4.1.8. Ensure that notice to the DFS units that discovery has been initiated and the request has been complied with is present and readily visible on the original materials. Further, the notice will indicate discovery is an ongoing process. Should additional materials be added to a case file, this should trigger additional notification from the DFS Discovery Compliance Designee to the DFS units.
- 4.2. The Division Quality Specialists will ensure all non-case related materials needed for Discovery compliance are current and available to the DFS Discovery Compliance Designee.
 - 4.3. The Deputy Director of Quality will be apprised of any issues affecting Discovery compliance related to materials under the control of the Division Quality Specialists.
 - 4.4. Unit Managers will ensure that case related materials, including communication logs, are provided to the Discovery Compliance Designee in a timely fashion.
 - 4.5. Division Directors will work with the Discovery Compliance Designee in the event that staffing or resource issues arise that affect the discovery process..
 - 4.6. General Counsel will oversee the Discovery Compliance Designee to ensure compliance with the DC Code. Additionally, General Counsel will speak with attorneys when concerns about discovery arise. As needed, General Counsel will work with the

Deputy Director of Training to ensure employees have an understanding of both case law and statutory requirements of discovery.

5. Practices

- 5.1. Notifications for Discovery will be directed to the DFS Discovery Compliance Designee.
 - 5.1.1. All Discovery requests received at the DFS must be forwarded to the DFS Discovery Compliance Designee.
 - 5.1.2. Upon receiving a formal discovery request, the DFS Discovery Compliance Designee will send a reply indicating that their request was received. A copy of the request and this response will be included in the discovery materials provided back to the units for incorporation in the appropriate case files.
- 5.2. The DFS Discovery Compliance Designee will send out an email to all Unit Managers and designees requesting any file(s) pertaining to the request and clearly state the timeframe in which the request is due.
 - 5.2.1. The Unit Managers or designees must make the requested files available to the DFS Discovery Compliance Designee within two business days if the file is complete and readily accessible by the unit. If the file is still in progress or stored offsite, the DFS Discovery Compliance Designee must be immediately informed.
 - 5.2.2. Once the DFS Discovery Compliance Designee is notified that the requested file is available, the DFS Discovery Compliance Designee will scan the contents, place a notice on the outside of the file, and return the file to the Unit Manager or designee. This serves as a notice that discovery is in progress and any additions to the file must be brought to the attention of the Office of the General Counsel.
- 5.3. The materials needed to comply with the Discovery notification will be compiled by the DFS Discovery Compliance Designee and burned onto a minimum of two CDs (or DVDs, Blu-Ray discs, flash drives, or other electronic media 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 Discovery media 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.
 - 5.3.1. Upon compilation of the file, the DFS Discovery Compliance Designee will provide to the appropriate Unit Managers or designees all general documents, including but not limited to the discovery cover letter and all communication records. The Unit Managers or designees must place the documents into the

corresponding case file pursuant to the accreditation standards for case documentation.

- 5.4. Any additions to the file subsequent to the date of the letter must be brought to the attention of the Office of the General Counsel.
- 5.5. A copy of the completed hard file must be created, and include a copy of the electronic media containing the Discovery materials, the receipt for electronic media signed by courier, and the file log sheet.
- 5.6. As needed, questions regarding the request will be directed to the originator submitting the notification and/or the appropriate Division Director or Unit Manager.

6. Documentation

6.1. Materials Required

- 6.1.1. Discovery Notification
- 6.1.2. Computer media capable of holding and retaining the necessary Discovery files (CDs, DVDs, flash drives, hard drives, etc.).
- 6.1.3. Machine with capability to copy the discovery media.
- 6.1.4. Supplies and materials to serve as Notice on the outside of the case files.

6.2. Limitations

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

6.3. Comments

- 6.3.1. A cover letter describing in general terms the contents of the electronic discovery media containing the Discovery materials should accompany the media being sent.
- 6.3.2. The Discovery media should be labeled by the DFS Discovery Compliance Designee with the CCN, the date of creation, and the initials of the individual who created the media copy. The package containing the cover letter and the Discovery media containing the Discovery materials should be tape sealed, and the seal should be initialed and dated across the seal and onto the packaging.

7. References

- 7.1. 5-1501 District of Columbia Code (2012).
- 7.2. ISO/IEC 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. ASCLDILAB-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. Quality Assurance Standards for Forensic DNA Testing Laboratories, Federal Bureau of Investigation (current revision).
- 7.6. Division Quality Assurance Manuals (current revisions).
- 7.7. Unit-specific Quality Assurance Manuals (current revisions).
- 7.8. Document ID 1202, DOM11 - Practices for Responding to Discovery Requests (retired Qualtrax document)