

DOM11 – Practices for Providing Discovery Materials

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1. Background

- 1.1. The Department of Forensic Sciences (DFS) Office of the General Counsel is responsible for providing two copies of Discovery materials as mandated by DC Code 5-1501.06(h)(2). DFS shall provide the prosecutor with two (2) identical sets of records, one for the government and one for the defense. Furthermore, since some Metropolitan Police Department (MPD) files are currently housed within the DFS, they will also be included in the provided Discovery Packets.

2. Definitions

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

DFS: Department of Forensic Sciences

DOM: Departmental Operations Manual

IN-PROGRESS NOTICE: Notice that discovery is in progress and any documentation added to the file must be brought to the attention of the Discovery Compliance Designee.

MPD: Metropolitan Police Department

3. Scope

- 3.1. The DFS Office of the General Counsel frequently receives Discovery notifications in association with criminal cases. Notification typically takes the form of a formal request for Discovery from the Prosecution. Once a request for Discovery has been received, DFS will make every effort to provide Discovery materials within twenty-one (21) days.
- 3.2. When a notification is received before the analyses have been completed, the materials for Discovery will be provided as soon as practicable after issuance of the report. Should there be documents added to the case file after the initial

Discovery Packet has been provided, a follow-up packet, also known as a Supplemental Discovery Packet, should be sent to the Prosecutor.

- 3.3. On occasion, it may take more than twenty-one (21) days to comply with Discovery requests when the number of notifications received exceeds staffing resources. Discovery Personnel should notify the prosecutor of the delay immediately after learning the Discovery Packet will not be provided within the requested turn-around-time.
- 3.4. The Discovery Compliance Designee may receive requests for records outside of the records which fall within the purview of discovery. The Discovery Compliance Designee shall comply with the request, if possible, or forward the request to the appropriate staff member.
- 3.5. Compliance with notifications for Discovery materials must adhere at a minimum to 5-1501.06 (h)(1 - 3) of the DC Code, which states:
 - 3.5.1. The Department shall make available all records pertaining to the analysis conducted in a particular case to the agency that requested the analysis.
 - 3.5.2. If the records pertain to a criminal prosecution, the Department shall provide the prosecutor with two (2) identical sets of records, one for the government and one for the defense.
 - 3.5.3. For the purposes of this subsection, the term "records" shall include:
 - 3.5.3.1. Lab notes and bench notes;
 - 3.5.3.2. Worksheets, graphs, and charts;
 - 3.5.3.3. Photographs;
 - 3.5.3.4. Raw data;
 - 3.5.3.5. Reports;
 - 3.5.3.6. Statistical information used to calculate probabilities or uncertainty;
 - 3.5.3.7. Any logs related to the equipment or materials used in testing;
 - 3.5.3.8. 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;

3.5.3.9. Proficiency test results for individual examiners involved in the analysis; and

3.5.3.10. CVs of technical examiners.

4. Responsibilities

4.1. The **DFS Discovery Compliance Designee** will:

4.1.1. Receive the Discovery request.

4.1.2. Ensure the Discovery materials are provided within a timely manner and pursuant to the statute.

4.1.3. Ensure that all records related to the request have been included in the Discovery Packet.

4.1.4. Ensure notice to the DFS units that discovery has been initiated.

4.2. **Unit Managers** will:

4.2.1. Ensure all non-case related materials needed for Discovery compliance are current and available to the DFS Discovery Compliance Designee.

4.2.2. Ensure case related materials, including communication logs, are provided to the Discovery Compliance Designee in a timely fashion.

4.3. The **Deputy Director** will:

4.3.1. Be apprised of any issues affecting Discovery compliance related to materials by the Quality Assurance Specialists.

4.4. **Division Directors** will:

4.4.1. Work with the Discovery Compliance Designee in the event staffing or resource issues arise that affect the discovery process.

4.5. **General Counsel** will:

4.5.1. Oversee the Discovery Compliance Designee to ensure compliance with the DC Code.

4.5.2. Speak with attorneys when concerns about discovery arise.

4.5.3. Work with the Deputy Director to ensure employees have an understanding of both case law and statutory requirements of discovery, as needed.

5. Practices

- 5.1. All Discovery requests received throughout the DFS must be forwarded to the DFS Discovery Compliance Designee.
 - 5.1.1. Upon receiving a formal Discovery request, the DFS Discovery Compliance Designee will send a reply indicating that their request was received.
- 5.2. The DFS Discovery Compliance Designee will send out an email to all Unit Managers and/or 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 will make the requested files available to the DFS Discovery Compliance Designee within two (2) 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 will be informed in a timely manner.
 - 5.2.2. For hard copy files, once the DFS Discovery Compliance Designee is notified that the requested file is available, the contents will be scanned, an In-Progress Notice placed on the outside of the file, and the file will be returned to the Unit Manager or designee.
- 5.3. The materials needed to comply with the Discovery notification, in addition to a cover letter detailing the contents, will be compiled into two packets by the DFS Discovery Compliance Designee, as mandated by statute 5-1501.06 (h)(2).
- 5.4. The Discovery Packet will be made available to the prosecuting attorney, pursuant to statute 5-1501.06 (h)(2), or to both the prosecuting attorney and defense counsel upon mutual agreement.
- 5.5. The Discovery Packet will be labeled by the DFS Discovery Compliance Designee with the CCN of the records within the packet.
- 5.6. An electronic file folder denoted by the CCN containing a copy of the materials generated in the discovery compliance process must be created and retained, with the folder containing a copy of the records provided in the Discovery Packet, the discovery cover letter, the discovery notification, and the acknowledgement of receipt.

6. Documentation

- 6.1. Materials Required:
 - 6.1.1. Discovery Notification.

6.1.2. Discovery cover letter.

6.1.3. Electronic media containing case records and CV(s).

6.1.4. Receipt of Delivery.

7. References

7.1. 5-1501.06 District of Columbia Code, (current effective date).

7.2. ISO/IEC 17025:2005 - General Requirements for the Competence of Testing and Calibration Laboratories, International Organization for Standardization, Geneva, Switzerland.

7.3. ANAB Supplemental Requirements for Forensic Testing, ANSI-ASQ National Accreditation Board, Milwaukee, WI, (current revision).

7.4. Division-specific Quality Assurance Manuals, (current revisions).

7.5. Unit-specific Quality Assurance Manuals, (current revisions).