



07/22/2020 (based on the 2020 Rule 16  
proposed amendments (not yet in effect))

1 DISCOVERY:

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3 AGO Prosecutors will comply with Utah Rule of Criminal Procedure Rule 16.

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5 (a)(1) **Mandatory disclosures.** The prosecutor must disclose to the defense the following  
6 material or information related to the case of which the prosecution team has knowledge and  
7 control:

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9 (a)(1)(A) written or recorded statements of the defendant and any codefendants and the  
10 substance of any unrecorded oral statements made by the defendant and any codefendants to  
11 law enforcement officials;

12 (a)(1)(B) the criminal record of the defendant and any co-defendants;

13 (a)(1)(C) reports and results of any physical or mental examination, of any identification  
14 procedure, and of any scientific test or experiment;

15 (a)(1)(D) physical and electronic evidence, including any warrants, warrant affidavits, books,  
16 papers, documents, photographs, and digital media recordings.

17 (a)(1)(E) written or recorded statements of witnesses;

18 (a)(1)(F) reports and notes prepared by law enforcement officials;

19 (a)(1)(G) evidence that must be disclosed under the United States and Utah constitutions,  
20 including all evidence favorable to the defendant that is material to guilt or punishment; and

21 (a)(1)(H) any other item of evidence which the court determines on good cause shown should  
22 be made available to the defendant in order for the defendant to adequately prepare a defense.

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24 (a)(2) **Timing of mandatory disclosures.** The prosecutor's duty to disclose under paragraph  
25 (a)(1) is a continuing duty as the material or information becomes known to the prosecutor.

26 The prosecutor's disclosures must be made as soon as practicable following the filing of an



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27 Information. In every case, all material or information listed under subsection (a)(1) that is  
28 presently and reasonably available to the prosecutor must be disclosed before the preliminary  
29 hearing, if applicable, or before the defendant is required to plead or go to trial.

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31 (a)(3) **Disclosures upon request.** Upon request, the prosecutor must obtain and disclose to  
32 the defense any of the material or information listed above which is possessed by another  
33 governmental agency and may be shared with the prosecutor under Title 63G, Chapter 2,  
34 Government Records Access and Management Act.

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36 (a)(4) **Trial disclosures.** The prosecutor must also disclose to the defense the following  
37 information and material no later than 14 days, or as soon practicable, before trial:

38 (a)(4)(A) Unless otherwise prohibited by statute or rule, a written list of names, current  
39 contact information, and criminal records, if any, of all persons whom the prosecution  
40 intends to call as witnesses at trial, and;

41 (a)(4)(B) Any exhibits that the prosecution intends to introduce at trial.

42 (a)(5) Information not subject to disclosure. Unless otherwise ordered by the court on a  
43 showing of constitutional, statutory, or regulatory right, the prosecution's disclosure  
44 obligations do not include information or material that is privileged attorney work product.

45 Attorney work product protection is not subject to the exception in Rule 26(b)(5) of the Utah  
46 Rules of Civil Procedure. [*see URCrP 16, approved July 8, 2020*]

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48 When convenience reasonably requires, the prosecutor may make disclosure by notifying the  
49 opposing party that material and information may be inspected, tested or copied at reasonable  
50 times and places. [*see Methods of disclosure, URCrP 16 (c)*]

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52 The prosecutor may impose reasonable limitations on the further dissemination of sensitive  
53 information otherwise subject to discovery to prevent improper use of the information and  
54 protect victims and witnesses from harassment, abuse, or undue invasion of privacy, including  
55 limitations on the further dissemination of videotape interviews, photographs, or psychological  
56 or medical reports. [*see Disclosure limitations and restrictions, URCrP 16 (d)(1)*]

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58 The prosecutor shall make timely disclosure of exculpatory and mitigating evidence pursuant to  
59 Brady v. Maryland, 373 U.S. 83, 87 (1963) and its progeny.

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61 Prior to providing discovery, a prosecutor should redact from materials provided as discovery all  
62 information reasonably necessary to protect the safety and privacy of a victim or witness.

63 When portions of materials are discoverable and other portions are not, a prosecutor should make  
64 good faith efforts to redact the non-discoverable portions in a way that does not cause confusion  
65 or prejudice to the accused. If counsel for the accused requests information previously redacted  
66 by a prosecutor, the prosecutor should provide the information when it is relevant to the  
67 accused's criminal case and the prosecutor can implement reasonable measures for the protection  
68 of the victim, witness, or any personal identifying information. If redacted or restricted material  
69 is ordered by a court to be produced or disclosed, a prosecutor should seek protective orders as  
70 necessary to control the dissemination of that material.

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72 If at any point in the pretrial or trial proceedings the prosecutor discovers additional  
73 witnesses, information, or other material previously requested or ordered which is subject  
74 to disclosure or inspection, the prosecutor should promptly notify defense counsel and  
75 provide the required information.

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77 A prosecutor should, at all times, carry out discovery obligations in good faith and in a manner  
78 that furthers the goals of discovery, namely, to minimize surprise, afford the opportunity for  
79 effective cross-examination, expedite trials, and meet the requirements of due process.