OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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FILE NO. 24-001

CRIMINAL LAW AND PROCEDURE:
Authority of State's Attorney to
Disclose *Brady* Material Found
in LEADS Reports

The Honorable Jamie L. Mosser
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Kane County Judicial Center
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Dear Ms. Mosser:

I have your letter inquiring whether Illinois Supreme Court Rule 412 (effective March 1, 2001) and the requirements set forth in decisions like *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny, provide legal authorization for a State's Attorney's office to disclose relevant Law Enforcement Agencies Data System (LEADS) information to an attorney who is representing a defendant in a criminal prosecution. If not, you have asked how a State's Attorney's office should appropriately carry out its duties during a criminal prosecution consistent with its obligations under Illinois Supreme Court Rule 412, *Brady* and its progeny,

and Rule 3.8 of the Illinois Rules of Professional Conduct of 2010 (Ill. R. Prof'l Conduct (2010) R. 3.8 (effective January 1, 2016)), while also complying with the administrative rules associated with LEADS.

For the reasons stated below, it is my opinion that, under appropriate circumstances, a State's Attorney's office is authorized to disclose certain information it has obtained from LEADS to criminal defense attorneys under Illinois Supreme Court Rule 412 and the due process requirements set forth in *Brady* and its progeny.

BACKGROUND

LEADS

LEADS is a "statewide, computerized telecommunications system designed to provide services, information, and capabilities to the law enforcement and criminal justice community in the State of Illinois." 20 ILCS 2605/2605-45(1) (West 2023 Supp.). Pursuant to subsection 2605-45(1) of the Illinois State Police Law (20 ILCS 2605/2605-45(1) (West 2023 Supp.)), the Division of Justice Services within the Illinois State Police is charged with operating and maintaining LEADS, and the Director of the Illinois State Police is responsible for establishing policy, procedures, and regulations consistent with State and federal rules, policies, and law by which LEADS operates.

LEADS provides law enforcement agencies access to an array of databases maintained by various government agencies in and outside of Illinois. *See* Illinois State Police, Illinois LEADS Reference Manual, LEADS Regulations & Policies (June 25, 2021) (LEADS Reference Manual), at 31-33, https://isp.illinois.gov/LawEnforcement/GetFile/f8b433b9-0ae5-

4013-91c4-43c500c634e5. Data available through a LEADS computer includes, but is not limited to, criminal history record information (CHRI); LEADS Computerized Hot Files (which contain information primarily concerning wanted and missing persons and stolen property); driver's license, title, and vehicle registration information maintained by the Illinois Secretary of State; motor vehicle and driver's license files of other states; and Firearm Owners Identification files. *See* LEADS Reference Manual, at 10-11, 25-27; Illinois State Police, LEADS Operating Manual, Criminal History Record Information (CHRI) Chapter (September 28, 2021), https://isp.illinois.gov/LawEnforcement/GetFile/316d84e4-3e12-480b-adf8-5cb162632f94. LEADS is also connected to national records systems, some of which are maintained by the Federal Bureau of Investigation (FBI). One of these systems is the Interstate Identification Index System, which facilitates the decentralized exchange of criminal history records across the states based on queries of names and other unique identifiers.[1] *See* 28 C.F.R. § 20.3(p) (2023), as amended by 89 Fed. Reg. 54346 (July 1, 2024); U.S. Department of Justice, Bureau of Justice Statistics, Use and Management of Criminal History Record Information: A Comprehensive Report, 2001 Update (December 2001), at 77-78, https://bjs.ojp.gov/content/pub/pdf/umchri01.pdf.

[1]In addition, LEADS has access to the National Criminal Information Center (NCIC), which is managed by the FBI in conjunction with the Criminal Justice Information Services Advisory Policy Board (CJIS). *See* 28 C.F.R. §§ 20.31(a), 20.35 (2023). NCIC serves as a central repository of law enforcement data and includes, for example, information on stolen property, wanted and missing persons, known or suspected terrorists, gang members, and individuals who have been identified by law enforcement as violent persons. *See* 84 Fed. Reg. 47533 (September 10, 2019). Much of this information is not directly subject to federal regulation (*see* 28 C.F.R. pt. 20, App. (2023)) but is instead protected by CJIS policy; other information may be disseminated at the user's discretion. *See* U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division, Criminal Justice Information Services (CJIS) Security Policy (July 9, 2024), at 11-12, https://le.fbi.gov/cjis-division/cjis-security-policy-resource-center.

Federal Regulations

The Department of Justice has issued federal regulations to ensure that CHRI[2] gathered by state, local, and federal criminal justice agencies is collected, stored, and disseminated in a manner that protects individual privacy and ensures the accuracy, currency, completeness, security, and integrity of that information. *See* 28 C.F.R. § 20.1 (2023). The federal regulations place limited restrictions on how states and local governments may collect, store, and disseminate their own CHRI. 28 C.F.R. pt. 20, Subpart B. For example, the regulations specifically require states to limit dissemination of nonconviction data[3] to criminal justice agencies, their contractors, researchers, and other "[i]ndividuals and agencies for *any purpose authorized by statute, ordinance, executive order, or court rule, decision, or order*, as construed by appropriate State or local officials or agencies[.]" (Emphasis added.) 28 C.F.R. § 20.21(b)(2) (2023).

The federal regulations also address how local, state, and federal criminal justice agencies may use CHRI obtained from FBI systems, such as the Interstate Identification Index System. *See* 28 C.F.R. § 20.30 (2023). With limited exceptions, CHRI obtained from FBI

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[2]CHRI is defined as follows:

> information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, including acquittal, sentencing, correctional supervision, and release. 28 C.F.R. § 20.3(d) (2023), as amended by 89 Fed. Reg. 54346 (July 1, 2024).

[3]"Nonconviction data" is defined as "arrest information without disposition if an interval of one year has elapsed from the date of arrest and no active prosecution of the charge is pending; information disclosing that the police have elected not to refer a matter to a prosecutor, that a prosecutor has elected not to commence criminal proceedings, or that proceedings have been indefinitely postponed; and information that there has been an acquittal or a dismissal." 28 C.F.R. § 20.3(u) (2023), as amended by 89 Fed. Reg. 54346 (July 1, 2024).

systems may only be disseminated to state and local criminal justice agencies for criminal justice purposes. 28 C.F.R. § 20.33(a) (2023), as amended by 89 Fed. Reg. 54346 (July 1, 2024). Unlike the regulations governing state and local CHRI systems, there is no distinction between conviction and nonconviction data, and there is no provision pertaining to federal systems that allows for the dissemination of CHRI pursuant to a state court order or rule. Access to the national system may be revoked if a law enforcement agency disseminates FBI-maintained CHRI outside of the authorized recipients specified in section 20.33. 28 C.F.R. § 20.33(b) (2023), as amended by 89 Fed. Reg. 54346 (July 1, 2024).

LEADS Administrative Rules

The Illinois State Police has adopted administrative rules (the LEADS rules) (20 Ill. Adm. Code Part 1240) to regulate the behavior of law enforcement agencies and related entities that input, extract, or edit LEADS data through direct terminal access to the LEADS system. Among other things, the LEADS rules address technology requirements to establish a communication link, site management and personnel security requirements, the policy review process, records handling, training requirements, audit procedures, and sanctions for non-compliance with the rules. The LEADS rules pertain not only to CHRI, but to all data available through a LEADS computer. *See* 20 Ill. Adm. Code § 1240.30(b)(3) (2024), added at 23 Ill. Reg. 7521, effective June 18, 1999.

Organizations with "full access" to LEADS have "direct access to all LEADS data and services." 20 Ill. Adm. Code § 1240.30(b)(2) (2024), added at 23 Ill. Reg. 7521, effective June 18, 1999. "Direct access" means "having a terminal device or computer located on the

agency's premises connected by a data communications link to the LEADS computer." 20 Ill. Adm. Code § 1240.30(b)(1) (2024), added at 23 Ill. Reg. 7521, effective June 18, 1999. "LEADS data" means "all data available through the LEADS computer[,]" and "LEADS services" encompass a variety of activities involving direct interaction with LEADS data through a computer or terminal. 20 Ill. Adm. Code § 1240.30(b)(3), (b)(4) (2024), added at 23 Ill. Reg. 7521, effective June 18, 1999. Full access to LEADS is limited to criminal justice agencies, organizations under the control of a criminal justice agency, campus and railroad police departments, or candidate organizations that are authorized by law to access some or all LEADS data. 20 Ill. Adm. Code § 1240.30(c)(1) (2024), added at 23 Ill. Reg. 7521, effective June 18, 1999.[4] Participating organizations must also enter into a LEADS interagency agreement reflecting rights and duties of the parties. 20 Ill. Adm. Code § 1240.30(c)(2) (2024), added at 23 Ill. Reg. 7521, effective June 18, 1999.

Under both the federal regulations and the LEADS rules, the term "criminal justice agency" refers to courts and any government agency "that performs the administration of criminal justice[.]" 28 C.F.R. § 20.3(g)(2) (2023), as amended by 89 Fed. Reg. 54346 (July 1, 2024); 20 Ill. Adm. Code § 1240.30(c)(1)(A) (2024), added at 23 Ill. Reg. 7521, effective June 18, 1999. In turn, "[a]dministration of criminal justice" includes "[d]etection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision,

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[4]The LEADS rules separately define "[l]ess than full access" as "limited access to some LEADS data and services[,]" but do not include criteria for qualifying for this status. 20 Ill. Adm. Code § 1240.30(b)(5) (2024), added at 23 Ill. Reg. 7521, effective June 18, 1999; *see also* LEADS Reference Manual, at 11 (defining "less than full access" to mean "an agency has limited or restricted access which, primarily, allows inquiries and directed messages but not data entry").

or rehabilitation of accused persons or criminal offenders." 28 C.F.R. § 20.3(b) (2023), as amended by 89 Fed. Reg. 54346 (July 1, 2024); 20 Ill. Adm. Code § 1240.30(c)(1)(A) (2024), added at 23 Ill. Reg. 7521, effective June 18, 1999. Criminal defense attorneys do not administer criminal justice under these regulations and thus are not eligible to make inquiries into LEADS or the Interstate Identification Index System. Moreover, the LEADS rules address dissemination of data obtained through LEADS and provide, in relevant part:

> d) LEADS data *shall not be disseminated* to any individual or organization that is *not legally authorized to have access to the information*. (Emphasis added.) 20 Ill. Adm. Code § 1240.80(d) (2024), added at 23 Ill. Reg. 7521, effective June 18, 1999.

According to the information you have provided, the Kane County State's Attorney's office has been informed that it cannot disseminate LEADS information to a public defender's office or to a defense attorney representing a defendant in a criminal prosecution because neither entity is authorized to have access to such information under the LEADS rules. This appears to be based on a belief that the LEADS rules prohibit the dissemination of LEADS information in this instance. This results in perceived conflicts between the LEADS rules and the discovery procedures set out in Supreme Court Rule 412, the due process requirements announced by *Brady*, and the Illinois Rules of Professional Conduct of 2010, all of which require prosecutors to disclose to the defense information that tends to negate the guilt of the accused or mitigate the offense charged.

ANALYSIS

Disclosure Obligations of State's Attorneys

Illinois Supreme Court rules regulating discovery in criminal cases[5] establish the prosecutorial obligation to disclose pertinent information to criminal defense attorneys in criminal proceedings. Supreme Court Rule 412 sets forth the prosecutor's disclosure obligations in cases where the accused is charged with a felony. *See also* Ill. S. Ct. R. 411 (effective December 9, 2011).[6] Supreme Court Rule 412(a) (effective March 1, 2001) lists information that must be disclosed "as a matter of course" in criminal proceedings. Ill. S. Ct. R. 412, Committee Comments (revised March 1, 2001). Upon written motion of defense counsel, the State is required to disclose "any record of prior criminal convictions, which may be used for impeachment, of persons whom the State intends to call as witnesses at the hearing or trial." Ill. S. Ct. R. 412(a)(vi) (effective March 1, 2001).

Brady, as Incorporated by Supreme Court Rule 412(c)

The *Brady* rule is in place to safeguard a criminal defendant's interest in fair proceedings and ensure that prosecutors fulfill their duties to seek truth and justice. *See People v. Beaman*, 229 Ill. 2d 56, 73 (2008). In *Brady*, the United States Supreme Court set forth a prosecutor's affirmative duty to disclose evidence favorable to a defendant. *People v. Hickey*,

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[5]While the courts' authority to conduct trials is reflected in the criminal discovery statute (725 ILCS 5/114-13(a) (West 2022) ("[d]iscovery procedures in criminal cases shall be in accordance with Supreme Court Rules")), the constitution is the ultimate source of the judiciary's authority over its procedure. *Kunkel v. Walton*, 179 Ill. 2d 519, 528 (1997); *see* Ill. Const. 1970, art. VI, § 1.

[6]Misdemeanor discovery is generally more limited than discovery in felony cases. Misdemeanor discovery is provided for by statute and by case law and includes *Brady* material. *See People v. Kladis*, 2011 IL 110920, ¶¶ 25-28; *People v. Schmidt*, 56 Ill. 2d 572, 575 (1974).

204 Ill. 2d 585, 603 (2001). Specifically, the Court held, in part, that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Brady*, 373 U.S. at 87. The *Brady* rule encompasses both exculpatory evidence and impeachment evidence. *United States v. Bagley*, 473 U.S. 667, 676 (1985); *Giglio v. United States*, 405 U.S. 150, 154 (1972); *People v. Coleman*, 206 Ill. 2d 261, 285 (2002). A prosecutor's duty to disclose evidence favorable to a defendant applies regardless of whether there has been a request for exculpatory or impeachment information. *Kyles v. Whitley*, 514 U.S. 419, 432-33 (1995); *United States v. Agurs*, 427 U.S. 97, 107 (1976); *Coleman*, 206 Ill. 2d at 285. *Brady* material includes information affecting the credibility of government witnesses, "[w]hen the 'reliability of a given witness may well be determinative of guilt or innocence[.]'" *Giglio*, 405 U.S. at 154, quoting *Napue v. Illinois*, 360 U.S. 264, 269 (1959).

Supreme Court Rule 412(c) (effective March 1, 2001) codifies the due process requirements set forth in *Brady*. *People v. Tyler*, 2015 IL App (1st) 123470, ¶ 206; *see also* Ill. S. Ct. R. 412, Committee Comments (revised March 1, 2001). Rule 412(c) provides:

> (c) Except as is otherwise provided in these rules as to protective orders,[7] the State shall disclose to defense counsel *any material or information*[8] *within its possession or control* which

[7]Supreme Court Rule 415(d) (effective October 23, 2020) addresses protective orders in felony criminal cases and "permits application by the party concerned to the court for a protective order adjusting the time, place, recipient, or use of the disclosures as are necessary in a particular case." Ill. S. Ct. R. 415, Committee Comments (revised October 23, 2020). The rule was written with the expectation that "it will ordinarily be needed with respect to those matters for which discovery is mandatory[.]" Ill. S. Ct. R. 415, Committee Comments (revised October 23, 2020). The rule concerning protective orders "is not intended to permit denial of disclosure, although it may result in deferral until a later time." Ill. S. Ct. R. 415, Committee Comments (revised October 23, 2020).

[8]The phrase "material or information" will hereinafter be referred to as "information."

> tends to negate the guilt of the accused as to the offense charged or which would tend to reduce his punishment therefor. The State shall make a good-faith effort to specifically identify by description or otherwise any material disclosed pursuant to this section based upon the information available to the State at the time the material is disclosed to the defense. At trial, the defendant may not offer evidence or otherwise communicate to the trier of fact the State's identification of any material or information as tending to negate the guilt of the accused or reduce his punishment. (Emphasis added.)

Rule 412(c) covers circumstances where disclosure of the information listed under Rule 412(a) would not fulfill the constitutional due process duties set forth in *Brady* and its progeny.[9]

Violations of the pre-trial discovery obligations set forth in Rule 412 may be analyzed under a due process framework or under Illinois Supreme Court Rule 415(g)(i) (effective October 23, 2020). *See People v. Newberry*, 166 Ill. 2d 310, 317 (1995) (Rule 415(g)(i) allows a court to impose a sanction proportionate to the magnitude of a discovery violation); *People v. Koutsakis*, 255 Ill. App. 3d 306, 312 (1993) (same). To establish a claim under *Brady*, a defendant must show: "(1) the undisclosed evidence is favorable to the accused because it is either exculpatory or impeaching; (2) the evidence was suppressed by the State either wilfully or inadvertently; and (3) the accused was prejudiced because the evidence is material to guilt or punishment." *Beaman*, 229 Ill. 2d at 73-74; *see Strickler v. Greene*, 527 U.S.

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[9]For example, Illinois courts have found that, under certain circumstances, in addition to conviction information required under Rule 412(a), Rule 412(c) requires the State to disclose potentially impeaching witness information such as pending criminal charges, juvenile adjudications, and whether a witness is on probation. *People v. Williams*, 329 Ill. App. 3d 846, 858 (2002); *see also People v. Sharrod*, 271 Ill. App. 3d 684, 688-89 (1995) (while the State was not required to disclose the juvenile adjudication of a State witness under Rule 412(a)(vi), it was required to disclose the information under Rule 412(c) and the right to due process, as expressed in *Brady*); *People v. Preatty*, 256 Ill. App. 3d 579, 589-90 (1994) (the State's failure to disclose that a key witness was on pretrial diversion status violated due process).

263, 281-82 (1999). Evidence is material under *Brady* if there is a reasonable probability the outcome of the proceeding would have been different had the prosecution disclosed the evidence. *Beaman*, 229 Ill. 2d at 74.

Rule 3.8(d) of the Illinois Rules of Professional Conduct

Rule 3.8(d) of the Illinois Rules of Professional Conduct of 2010 (Ill. R. Prof'l Conduct (2010) R. 3.8(d) (effective January 1, 2016)) describes the special responsibilities of a prosecutor with respect to disclosures to the defense and provides that the prosecutor in a criminal case shall:

> (d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal[.]

This language is substantially similar to that found in Illinois Supreme Court Rule 412(c).[10]

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[10]The language is also identical to Rule 3.8(d) of the American Bar Association (ABA) ABA Model Rules of Prof'l Conduct (Model Rule 3.8(d)). In ABA formal opinion No. 09-454, issued July 8, 2009, the ABA characterized Model Rule 3.8(d) and its state analogs as imposing an ethical obligation independent of the obligations required by the *Brady* rule, statute, court rules, court orders, and procedural rules. ABA Comm. on Ethics & Prof'l Resp., Formal Op. 09-454 at 1. Model Rule 3.8(d), as interpreted by the ABA, is more demanding than the *Brady* rule with respect to disclosure obligations "in that it requires the disclosure of evidence or information favorable to the defense without regard to the anticipated impact of the evidence or information on a trial's outcome." ABA Comm. on Ethics & Prof'l Resp., Formal Op. 09-454 at 4. The Illinois Attorney Registration and Disciplinary Commission appears to endorse the ABA's interpretation of Model Rule 3.8(d). *See In re Brenda Kay Quade*, Commission No. 2014PR00076, Report and Recommendation of the Hearing Board, October 28, 2015, at 17, citing *In re Kline*, 113 A.3d 202 (D.C. 2015).

Disclosure of LEADS Information

Brady applies to *all* favorable, material evidence that the State possesses. *United States v. Roberts*, 534 F.3d 560, 572 (7th Cir. 2008). Moreover, prosecutors have an affirmative duty to "learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police."[11] *Kyles*, 514 U.S. at 437; *Beaman*, 229 Ill. 2d at 73. *Brady* extends to favorable information that is known only to the police and not to prosecutors. *Strickler*, 527 U.S. at 280-81. If the prosecution team has knowledge and possession of favorable information, it does not matter, for *Brady* purposes, if that information originated with a law enforcement agency in another jurisdiction. *See People v. Plummer*, 2021 IL App (1st) 200299, ¶¶ 125-28 (the State committed a *Brady* violation when detectives failed to disclose knowledge of a federal investigation into a viable alternate suspect); *People v. Olinger*, 176 Ill. 2d 326, 347-51 (1997) (defendant made a substantial showing that Illinois authorities knew of and failed to disclose multijurisdictional deal concerning a State's witness's federal indictment and pending criminal actions in Florida and Nebraska and potentially violated *Brady*). It follows that favorable, material information obtained from LEADS in the prosecution's possession is

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[11]In Illinois, law enforcement and other public agencies responsible for investigating felony offenses have a statutory obligation to provide to prosecuting authorities "all investigative material" concerning felony offenses. 725 ILCS 5/114-13(b) (West 2022). Additionally, "the investigating agency shall provide to the prosecuting authority *any material or information* * * * within its possession or control that would tend to negate the guilt of the accused * * * or reduce his or her punishment[,]" regardless of "whether the information was recorded or documented *in any form*." (Emphasis added.) 725 ILCS 5/114-13(b) (West 2022). This statute was intended to codify the *Brady* holding as it applies to felony offenses. *See* Remarks of Rep. Cross, May 22, 2003, House Debate on Senate Bill No. 472, at 184-85 (which as Public Act 93-605, effective November 19, 2003, enacted the provision in question). Illinois Supreme Court Rule 412(f) (effective March 1, 2001) lays out a reciprocal obligation for the prosecution to seek pertinent information from investigative agencies ("The State should ensure that a flow of information is maintained between the various investigative personnel and its office sufficient to place within its possession or control all material and information relevant to the accused and the offense charged").

subject to *Brady*'s constitutional mandate regardless of its origin.[12] Given the sensitive information that is contained in LEADS, coupled with the general prohibition against the dissemination of LEADS data, the information obtained from LEADS and disclosed to the defense must necessarily be limited in scope to information that tends to negate the guilt of the accused or reduce his or her punishment.

The primary responsibility to disclose *Brady* material falls on the prosecutor. In those instances where a prosecutor has made a good faith effort to specifically identify and extract *Brady* material obtained from LEADS, but questions remain concerning the disclosure of certain other information available in a LEADS report, a criminal defendant's constitutional due process right is fully protected if the trial court reviews privileged records *in camera* and, at its

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[12]It is less clear whether *Brady* imposes a duty on State's Attorneys to search for exculpatory information in out-of-state records that are accessible through LEADS. *Compare Crivens v. Roth*, 172 F.3d 991, 996-98 (7th Cir. 1999) (the State was obligated under *Brady* to provide accurate arrest and conviction information about a State witness where the witness had provided Chicago police several aliases in the course of other arrests, and the State incorrectly represented that it had no information about the criminal records of any of its witnesses, holding "the availability of information is not measured in terms of whether the information is easy or difficult to obtain but by whether the information is in the possession of some arm of the state"), *with United States v. Young*, 20 F.3d 758, 764-65 (7th Cir. 1994) (an Illinois-based prosecutor who failed to procure a witness's Mississippi criminal record did not commit a *Brady* violation where the prosecutor diligently searched FBI and Illinois databases for the witness's criminal history).

discretion, discloses to the defense the material, exculpatory information.[13] *See People v. Bean*, 137 Ill. 2d 65, 99 (1990), citing *Pennsylvania v. Ritchie*, 480 U.S. 39, 58-61 (1987). Additionally, Illinois Supreme Court Rule 415(e) (effective October 23, 2020) anticipates instances where documents subject to discovery contain both discoverable and non-discoverable information. *See* Ill. S. Ct. R. 415, Committee Comments (revised October 23, 2020). In the event that a LEADS document contains information that is subject to discovery because it is favorable to the accused as well as information that is not subject to discovery (because it is not subject to the *Brady* rule, a discovery statute, or an Illinois Supreme Court rule), it is permissible for the prosecution or a court to excise the non-discoverable information.

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[13]This approach aligns with available FBI guidance on the subject. In a March 9, 1999, letter attached to Tennessee Attorney General Opinion No. 99-145, issued July 30, 1999, a Deputy Assistant Director of the FBI explained that the general rule established in 28 C.F.R. pt. 20 prohibiting the dissemination of CHRI obtained from FBI systems to criminal defense attorneys "must yield in narrow circumstances to the inherent powers of courts in dealing with the conduct of trials." According to the letter:

> Federal law, such as the Privacy Act, and FBI and III [Interstate Identification Index] policy recognize the existence of such powers with respect to dissemination of FBI CHRI pertaining to defendants and witnesses and, in most cases, accommodate the exercise of such powers. * * * We have previously acquiesced in production of CHRI to defense attorneys in response to blanket court orders which require limited production in every criminal case in a particular jurisdiction. *In such a manner, a judge would have the opportunity in each case to review the record; decide whether the record is pertinent, relevant and is in fact the record of the same person indicated in the court order; and balance the need for disclosure against the privacy interest of the record subject.* This balancing is particularly important when the record being sought concerns a subject in a civil matter rather than criminal. *We have also approved production of CHRI to defense attorneys by prosecutors in cases where court-ordered discovery of the CHRI was inevitable due to discovery practices and procedures in that jurisdiction.* (Emphasis added.) Tenn. Att'y Gen. Op. No. 99-145, at attach.1.

CONCLUSION

For the reasons stated above, it is my opinion that Illinois Supreme Court Rule 412 and the requirements set forth in *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny, provide legal authorization for a State's Attorney's office to disclose, under appropriate circumstances, relevant discoverable information obtained from LEADS to an attorney who is representing a defendant who is a party to a criminal prosecution. The information obtained from LEADS and disclosed to the defense must be limited in scope to information that tends to negate the guilt of the accused or reduce his or her punishment. The State's Attorney's office may fulfill this discovery obligation by obtaining any discoverable LEADS information, reducing that information to writing, and then tendering that information to the defense without tendering the LEADS printout wholesale.

Very truly yours,

KWAME RAOUL
ATTORNEY GENERAL