

1 **Rule 16. Discovery.**

2 (a) Disclosures by prosecutor.

3 (1) Mandatory disclosures. The prosecutor must disclose to the defendant the  
4 following material or information directly related to the case of which the prosecution  
5 team has knowledge and control:

6 (A) written or recorded statements of the defendant and any codefendants, and  
7 the substance of any unrecorded oral statements made by the defendant and any  
8 codefendants to law enforcement officials;

9 (B) reports and results of any physical or mental examination, of any identification  
10 procedure, and of any scientific test or experiment;

11 (C) physical and electronic evidence, including any warrants, warrant affidavits,  
12 books, papers, documents, photographs, and digital media recordings;

13 (D) written or recorded statements of witnesses;

14 (E) reports prepared by law enforcement officials and any notes that are not  
15 incorporated into such a report; and

16 (F) evidence that must be disclosed under the United States and Utah  
17 constitutions, including all evidence favorable to the defendant that is material to  
18 guilt or punishment.

19 (2) Timing of mandatory disclosures. The prosecutor's duty to disclose under  
20 paragraph (a)(1) is a continuing duty as the material or information becomes known  
21 to the prosecutor. The prosecutor's disclosures must be made as soon as practicable  
22 following the filing of ~~charges an information~~ an information, except that a prosecutor  
23 must disclose all evidence that the prosecutor relied upon to file the information  
24 within five days after the day on which the prosecutor receives a request for discovery  
25 from the defendant. In every case, all material or information listed under paragraph  
26 (a)(1) that is presently and reasonably available to the prosecutor must be disclosed

27 before the preliminary hearing examination, if applicable, or before the defendant  
28 enters a plea of guilty or no contest or goes to trial, unless otherwise waived by the  
29 defendant.

30 (3) Disclosures upon request.

31 (A) Upon request, the prosecutor must obtain and disclose to the defendant any of  
32 the material or information listed in paragraph (a)(1) which is in a record  
33 possessed by another governmental agency and may be shared with the  
34 prosecutor under Title 63G, Chapter 2, Government Records Access and  
35 Management Act. The request must identify with particularity the record sought  
36 and the agency that possesses it, and must demonstrate that the information in the  
37 record is directly related to the case.

38 (B) If the government agency refuses to share with the prosecutor the record  
39 containing the requested material or information under paragraph (a)(3)(A), or if  
40 the prosecution determines that it is prohibited by law from disclosing to the  
41 defense the record shared by the governmental agency, the prosecutor must  
42 promptly file notice stating the reasons for noncompliance. The defense may  
43 thereafter file an appropriate motion seeking a subpoena or other order requiring  
44 the disclosure of the requested record.

45 (4) Good cause disclosures. The prosecutor must disclose any other item of evidence  
46 which the court determines on good cause shown should be made available to the  
47 defendant in order for the defendant to adequately prepare a defense.

48 (5) Trial disclosures. The prosecutor must also disclose to the defendant the following  
49 information and material no later than 14 days, or as soon as practicable, before trial:

50 (A) Unless otherwise prohibited by law, a written list of the names and current  
51 contact information of all persons whom the prosecution intends to call as  
52 witnesses at trial; and

53 (B) Any exhibits that the prosecution intends to introduce at trial.

54 (C) Upon order of the court, the criminal records, if any, of all persons whom the  
55 prosecution intends to call as a witness at trial.

56 (6) Information not subject to disclosure. Unless otherwise required by law, the  
57 prosecution's disclosure obligations do not include information or material that is  
58 privileged or attorney work product. Attorney work product protection is not subject  
59 to the exception in Rule 26(b)(6) of the Utah Rules of Civil Procedure.

60 (b) Disclosures by defense.

61 (1) Good cause disclosures. The defense must disclose to the prosecutor any item of  
62 evidence which the court determines on good cause shown should be made available  
63 to the prosecutor in order for the prosecutor to adequately prepare the prosecutor's  
64 case for trial.

65 (2) Other disclosures required by statute. The defense must disclose to the prosecutor  
66 such information as required by statute relating to alibi or insanity.

67 (3) Trial disclosures. The defense must also disclose to the prosecutor the following  
68 information and material no later than 14 days, or as soon as practicable, before trial:

69 (A) A written list of the names and current contact information of all persons,  
70 except for the defendant, whom the defense intends to call as witnesses at trial;  
71 and

72 (B) Any exhibits that the defense intends to introduce at trial.

73 (4) Information not subject to disclosure. The defendant's disclosure obligations do  
74 not include information or material that is privileged or attorney work product.  
75 Attorney work product protection is not subject to the exception in Rule 26(b)(6) of  
76 the Utah Rules of Civil Procedure.

77 (c) Methods of disclosure.

78 (1) The prosecutor or defendant may make disclosure by notifying the opposing party  
79 that material and information may be inspected, tested, or copied at specified  
80 reasonable times and places.

81 (2) If the prosecutor concludes any disclosure required under this rule is prohibited  
82 by law, or believes disclosure would endanger any person or interfere with an  
83 ongoing investigation, the prosecutor must file notice identifying the nature of the  
84 material or information withheld and the basis for non-disclosure. If disclosure is then  
85 requested by the defendant, the court must hold an in camera review to decide  
86 whether disclosure is required and whether any limitations or restrictions will apply  
87 to disclosure as provided in paragraph (d).

88 (d) Disclosure limitations and restrictions.

89 (1) The prosecutor or defendant may impose reasonable limitations on the further  
90 dissemination of sensitive information otherwise subject to discovery to prevent  
91 improper use of the information or to protect victims and witnesses from harassment,  
92 abuse, or undue invasion of privacy, including limitations on the further  
93 dissemination of recorded interviews, photographs, or psychological or medical  
94 reports.

95 (2) Upon a sufficient showing the court may at any time order that discovery or  
96 inspection be denied, restricted, or deferred, that limitations on the further  
97 dissemination of discovery be modified or make such other order as is appropriate.  
98 Upon motion by a party, the court may permit the party to make such showing, in  
99 whole or in part, in the form of a written statement to be inspected by the judge alone.  
100 If the court enters an order granting relief following such an ex parte showing, the  
101 entire text of the party's statement shall be sealed and preserved in the records of the  
102 court to be made available to the appellate court in the event of an appeal.

103 (e) Relief and sanctions for failing to disclose.

104 (1) When a party fails to comply with the disclosure requirements of this rule, the  
105 court may, subject to constitutional limitations and the rules of evidence, take the  
106 measures or impose the sanctions provided in this paragraph that it deems  
107 appropriate under the circumstances. If a party has failed to comply with this rule,  
108 the court may take one or more of the following actions:

109 (A) order such party to permit the discovery or inspection, of the undisclosed  
110 material or information;

111 (B) grant a continuance of the proceedings;

112 (C) prohibit the party from introducing evidence not disclosed; or

113 (D) order such other relief as the court deems just under the circumstances.

114 (2) If after a hearing the court finds that a party has knowingly and willfully failed to  
115 comply with an order of the court compelling disclosure under this rule, the  
116 nondisclosing party or attorney may be held in contempt of court and subject to the  
117 penalties thereof.

118 (f) Identification evidence.

119 (1) Subject to constitutional limitations and upon good cause shown, the trial court  
120 may order the defendant to: appear in a lineup; speak for identification; submit to  
121 fingerprinting or the making of other bodily impressions; pose for photographs not  
122 involving reenactment of the crime; try on articles of clothing or other items of  
123 disguise; permit the taking of samples of blood, hair, fingernail scrapings, and other  
124 bodily materials which can be obtained without unreasonable intrusion; provide  
125 specimens of handwriting; submit to reasonable physical or medical inspection of the  
126 accused's body; and cut hair or allow hair to grow to approximate appearance at the  
127 time of the alleged offense.

128 (2) Whenever the personal appearance of the accused is required for the foregoing  
129 purposes, reasonable notice of the time and place of such appearance shall be given  
130 to the accused and the accused's counsel.

131 (3) Unless relieved by court order, failure of the accused to appear or to comply with  
132 the requirements of this paragraph without reasonable excuse shall be grounds for  
133 revocation of pre-trial release and will subject the defendant to such further  
134 consequences or sanctions as the court may deem appropriate, including allowing the  
135 prosecutor to offer as evidence at trial the defendant's failure to comply with this  
136 paragraph.

137 *Effective May 3, 2023*