

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
5 prosecution team has knowledge and control:

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

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

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

14 (D) written or recorded statements of witnesses;

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

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

20 (2) Timing of mandatory disclosures. The prosecutor's duty to disclose
21 under paragraph (a)(1) is a continuing duty as the material or information
22 becomes known to the prosecutor. The prosecutor's disclosures must be
23 made as soon as practicable following the filing of charges an Information.
24 In every case, all material or information listed under paragraph (a)(1) that
25 is presently and reasonably available to the prosecutor must be disclosed
26 before the preliminary hearing, if applicable, or before the defendant enters

27 a plea of guilty or no contest or goes to trial, unless otherwise waived by the
28 defendant.

29 (3) Disclosures upon request.

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

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

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

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

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

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

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

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

64 (b) Disclosures by defense.

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

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

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

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

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

79 (4) Information not subject to disclosure. The defendant's disclosure
80 obligations do not include information or material that is privileged or
81 attorney work product. Attorney work product protection is not subject to
82 the exception in Rule 26(b)(~~5~~6) of the Utah Rules of Civil Procedure.

83 (c) Methods of disclosure.

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

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

95 (d) Disclosure limitations and restrictions.

96 (1) The prosecutor or defendant may impose reasonable limitations on the
97 further dissemination of sensitive information otherwise subject to discovery
98 to prevent improper use of the information or to protect victims and
99 witnesses from harassment, abuse, or undue invasion of privacy, including
100 limitations on the further dissemination of recorded interviews,
101 photographs, or psychological or medical reports.

102 (2) Upon a sufficient showing the court may at any time order that discovery
103 or inspection be denied, restricted, or deferred, that limitations on the further
104 dissemination of discovery be modified or make such other order as is

105 appropriate. Upon motion by a party, the court may permit the party to make
106 such showing, in whole or in part, in the form of a written statement to be
107 inspected by the judge alone. If the court enters an order granting relief
108 following such an ex parte showing, the entire text of the party's statement
109 shall be sealed and preserved in the records of the court to be made available
110 to the appellate court in the event of an appeal.

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

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

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

119 (B) grant a continuance of the proceedings;

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

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

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

127 (f) Identification evidence.

128 (1) Subject to constitutional limitations and upon good cause shown, the trial
129 court may order the defendant to: appear in a lineup; speak for
130 identification; submit to fingerprinting or the making of other bodily

131 impressions; pose for photographs not involving reenactment of the crime;
132 try on articles of clothing or other items of disguise; permit the taking of
133 samples of blood, hair, fingernail scrapings, and other bodily materials
134 which can be obtained without unreasonable intrusion; provide specimens
135 of handwriting; submit to reasonable physical or medical inspection of the
136 accused's body; and cut hair or allow hair to grow to approximate
137 appearance at the time of the alleged offense.

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

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

147 *Effective October 12, 2022*