



NWDAO POST-CONVICTION OPEN FILE DISCOVERY POLICY

The Northwestern District Attorney's Office (NWDAO) is committed to ensuring fairness and transparency in its discovery processes both pretrial and post-conviction. In recognition of this commitment, the NWDAO has enacted a post-conviction open file discovery policy that exceeds its obligations under the law.

Unlike pretrial discovery pursuant to Mass. R. Crim. P. 14, post-conviction discovery is not automatic. Under Mass. R. Crim. P. 30(c)(4), a defendant must file a motion and affidavits that establish a prima facie case for post-conviction relief before the court may, in its discretion, authorize discovery. The NWDAO recognizes that in order to make such a prima facie showing, a defendant may need to receive basic discovery from the Commonwealth's file.

Therefore, even in the absence of an initial showing by the defendant of a prima facie case for post-conviction relief, the NWDAO will make all reasonable efforts to provide a defendant who presents a plausible claim of factual innocence or wrongful conviction with access to evidence currently in its case file in order to ensure the defendant is able to properly prepare for and explore legal challenges to their conviction.ⁱ This information includes, where appropriate and available:

- Written or recorded statements made by the defendant or co-defendant(s);
- Grand Jury minutes;
- Expert reports;
- Police reports,ⁱⁱ photographs, exhibits, reports of physical examinations of any person or scientific tests or experiments, and written or recorded statements;
- Any existing materials related to identification procedures (if applicable);
- Documentation of promises, rewards, or inducements offered, or ultimately made, to witnesses the Commonwealth called to testify at trial; and
- Transcripts of trials and hearings.

The NWDAO generally will: (1) redact or withhold documents necessary to protect the privacy of victims or witnesses and to comply with any applicable court order or statute; (2) seek

protective orders before providing the defendant with discovery where appropriate; (3) withhold documents if required to do so by law; (4) redact privileged information unless that privileged information contains exculpatory evidence or statements of facts; (5) withhold information pertaining to the identity of confidential informants and identifying information of Commonwealth witnesses in proffer letters and cooperation agreements; and (6) withhold information defined as work product.

The Commonwealth will document any materials withheld from disclosure and the reasons for withholding them, and will preserve the withheld materials in its case file.

HOW TO MAKE A POST-CONVICTION OPEN FILE DISCOVERY REQUEST

In order for the NWDAO to consider a request for post-conviction open file discovery, post-conviction counselⁱⁱⁱ should take the following two actions:

- 1) Complete the NWDAO Application for Review of a Criminal Conviction. The application is available at: [Conviction Integrity | Northwestern District Attorney \(northwesternda.org\)](https://www.northwesterndistrictattorney.org).
- 2) Send a written request containing the following information to the NWDAO Conviction Integrity Committee (CIC):
 - a. Copy of NWDAO Application for Review of a Criminal Conviction;
 - b. An articulation of a basic legal claim or theory that post-conviction counsel would like to explore that has not been raised before to the CIC;
 - c. Confirmation that post-conviction counsel does not already have the information sought in their possession;
 - d. Confirmation that post-conviction counsel made all reasonable efforts to obtain the information sought from other sources, including: (1) the defendant's prior counsel; (2) the applicable courts; and (3) their client; and
 - e. Confirmation that post-conviction counsel has not already received the information via a Mass. R. Crim. P. 30 motion, G. L. c. 278A motion, public records request, or other means.

The NWDAO will review each request and notify the requestor if the request has met the requirements. If the request is denied, the requestor may attempt to cure any deficiencies in the original request by resubmitting it. If a request is granted, an Assistant District Attorney will work with the requestor to provide discovery as appropriate. By agreement of the parties, inspection of the NWDAO file may be satisfied by delivering electronic or print copies to the requestor or by providing review access to the file in the NWDAO office. The NWDAO may set a limit on the number of copies of the same document it provides to the same requestor.

ⁱ As indicated on the NWDAO Application for Review of a Criminal Conviction, except in extraordinary circumstances, the CIC will not review or provide discovery in a case until the direct appeal is final and no other litigation is pending.

ⁱⁱ The NWDAO has an obligation to protect the privacy of a victim or witness years after a case's conclusion. As such, victim and witness dates of birth, addresses, phone numbers, and social security numbers will be redacted from all police reports provided. However, if there is a specific investigatory need for this identifying information, the NWDAO may provide such information in its discretion.

ⁱⁱⁱ The NWDAO CIC accepts discovery requests only from petitioners represented by counsel.