

**JUDICIAL PROCEEDINGS PANEL
REQUEST FOR INFORMATION SET # 6**

124. Services: What guidance and/or training informs the following stakeholders about the Service’s policies regarding victims’ access to information and what measures are taken to ensure they comply with these policies?

a. Investigators

USA	CID agents are required by policy to brief/update victims (or their designated representative) on the status of the investigation every 30 days (or at whatever other frequency the victim may desire). Prior to releasing any information or updates to the victim, the CID agents are required to coordinate with the trial counsel/prosecutor to ensure the release would not jeopardize the integrity of the investigation and any possible judicial proceeding, and that the release would not violate any privacy rights of other persons involved in the investigation. The required annual refresher training reiterates these procedures.
USAF	Specific Air Force guidance pertaining to release of information to victims and their representatives, specifically, SVCs, was added to Air Force regulation in October 2015. All AFOSI reports of investigation are releasable in accordance with Air Force Instruction 71-101, Volume 1, <i>Criminal Investigations Program</i> , dated 8 October 2015. AFI 71-101 is an FOUO instruction and cannot be publically released.
USN	The policies regarding victim’s access to information is covered in the NCIS Victim/Witness Assistance Program (VWAP) training which is an annual requirement for all NCIS Special Agents and investigators. Additionally, the victim’s access to information is specifically covered for sexual assault victims in the AASAITP course. NCIS case agents are required to update victims on the progress of the investigation at a minimum of every 30 days, which is documented in the NCIS case file. Also, every victim and witness in an NCIS investigation is provided with a VWAP pamphlet explaining their rights in the investigative process. The issuance of the VWAP pamphlet is documented in initial NCIS reporting.
USMC	The policies regarding victim’s access to information is covered in the NCIS Victim/Witness Assistance Program (VWAP) training. This training is an annual requirement for all NCIS Special Agents and investigators. Additionally, the victim’s access to information is specifically covered for sexual assault victims in the AASAITP course. NCIS case agents are required to update victims on the progress of the investigation at a minimum of every 30 days, which is documented in the NCIS case file. Also, every victim and witness in an NCIS investigation is provided with a VWAP pamphlet explaining their rights in the investigative process. The issuance of the VWAP pamphlet is documented in initial NCIS reporting.
USCG	Investigators have been issued interim guidance via email. A tactics, training and procedures (TTP) will be issued to standardize procedures.

b. SARCs / FAP advocates

USA	SHARP (b): AR 600-20 requires all Full-Time Sexual Assault Response Coordinators (SARC) and Victim Advocates (VAs) to attend the SARC/VA Career Course (7-Week) training at the SHARP Academy and all Collateral Duty SARC/VA/Victim Representatives/SHARP Advisors to attend the Foundation Course (2-Week). The Foundation Course of instruction provides the baseline of understanding for all current
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	<p>guidance and policies that pertain to SHARP. The SARC/VA Career Course provides more in-depth training that exposes the full-time personnel to subject matter experts and adjunct professors who provide insight into all five lines of effort (Prevention, Advocacy/Victim Assistance, Accountability, Investigation and Assessment). Reinforcement training in regards to victim's access to information is provided at the installation by the Lead SARC. To ensure that the SARC is in compliance, an inspection of the program will take place utilizing the Organizational Inspection Program (OIP) designed specifically for SHARP.</p>
<p>USAF</p>	<p>Air Force SARCs receive guidance regarding victims' access to information from AFI 90-6001, <i>Sexual Assault Prevention and Response (SAPR) Program</i>. Within 72 hours of the Case Management Group meeting, a victim's unit commander (or equivalent) will ensure the victim receives a monthly update on the current status of all investigative, medical, legal, and command proceedings pertaining to an unrestricted-report case until final case disposition. Once the commander has completed the update, he contacts the SARC to ensure the victim's case file is updated. Victims' access to FAP information is handled under the FAP and AFI 40-301, <i>Family Advocacy Program</i>.</p>
<p>USN</p>	<p>SARCs: Commander, Navy Installations Command's Sexual Assault Case Management Group (CMG) training calls for the victim's Commanding Officer to provide case updates within 72 hours of the monthly CMG. OPNAVINST 1752.1C further informs SARCs to provide a consistent, standardized program to support victims and facilitate communication and transparency among responders who provide victim support services.</p> <p>FAP Advocates: Training: CNIC provides annual training to Domestic Abuse Victim Advocates (DAVA) on their role in intervening with victims. The most recent trainings occurred in August and September 2015. Training consists of working within the community response system to include the military and civilian legal system, system advocacy and Special Victim Capability.</p> <p>We additionally have available the DAVA On-demand Training that includes chapters and modules that discuss military protection orders/civilian protective orders, restricted/unrestricted reporting, appropriate referrals to the legal office and accompanying victims to court.</p> <p>Related policy and guidance: DoDI 6400.06, Change 2 includes and addresses assisting victims in contacting legal services as applicable, working with VWAP, and accompanying victims to court proceedings as appropriate.</p> <p>DoDI 6400.06, Change 2, indicates that FAP VAs will coordinate with SVIP personnel in support of a victim's welfare, security, and recovery in cases involving SVIP covered offenses.</p> <p>The Fleet and Family Support Center Certification Standards (N-MIL-FAP 8) holds FAP Victim Advocates accountable to procedures for linking victims to comprehensive services within the military and civilian community.</p>

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	The Domestic Abuse Victim Advocate Resource Guide along with the supported DAVA On-Demand Training provides the training and guidance regarding victim access to services.
USMC	<p><u>SARCs.</u> MCO 5800.14, Victim-Witness Assistance Program (VWAP), is the guidance regarding all victim rights and MCO 1752.5B, SAPR, provides supporting guidance for sexual assault victims. SARCs receive USMC initial 40-hour advocacy training and follow-on SARC training specific to their area of responsibility; i.e. Command SARC, Installation SARC, or Marine Forces SARC. Within these trainings, the SARCs are educated on DoD policy and Marine Corps Orders regarding victim care and support, M.R.E. 514, and victim rights. To ensure that SARCs adhere to the policies regarding victims' rights and M.R.E. 514, their Department of Defense Sexual Assault Advocacy Credentialing Program (DSAACP) credentials could be suspended or revoked should they not comply with the applicable policies.</p> <p><u>FAP Advocates.</u> MCO 1754.11 details that FAP VAs assist victims with interactions with the military justice system. Advocates work collaboratively with the Victim Legal Counsel Organization (VLCO) and other applicable counsel in supporting the victim during court proceedings, referring victims to appropriate legal services, and work with the VWAP. See DoDI 1030.2, DoDI 6400.06, DoDI 6400.07, MCO 5800.14, and MCO 1752.5B. Additionally, all FAP VAs are credentialed by the National Organization for Victim Assistance (NOVA), under the National Advocate Credentialing Program (NACP). NACP is designed to promote a minimum of 40 hours of pre-service training for advocates. These requirements provide advocates with an essential skillset to interact with victims. DoDI 6400.06 instructs VAs to ascertain the victim's immediate needs, encourage the victim to seek medical consultation, assess the situation for imminent danger and take appropriate action, and work with the victim to develop a safety plan. Finally, Installation FAP Managers provide oversight to installation VAs and are responsible for ensuring VAs comply with the USMC policies and procedures.</p>
USCG	SARCS in the Coast Guard will refer questions about victim access to information to the victim's special victims' counsel. If the victim does not have counsel, the trial counsel will assist in ensuring the victim has appropriate access to information.

c. Prosecutors

USA	OTJAG (c and f): Judge Advocates are informed of the requirements under AR 600-20, the Uniform Code of Military Justice, the Rules for Courts-Martial, and TJAG Policy 14-09 governing victim's access to information at courses, and through on-line resources or newsletters, etc. Commanders are trained on their obligations under AR 600-20 in pre-command courses and in-briefs with SHARP personnel. Compliance with requirements is monitored by SHARP personnel, SVC, and at the monthly SARB.
USAF	The Air Force has provided significant guidance and training to legal personnel regarding access to information for victims and their representatives, including SVCs. Guidance and training has been provided in the form of legal advice, talking papers, briefing slides, Webcasts, and in-person training, particularly with regard to victims' rights. Written guidance is contained in the Privacy Act, 5. U.S.C. 552a(b)(1); DoDI 5400.11-R, <i>Department of Defense Privacy Program</i> ; AFI 33-332, <i>The Air Force Privacy and Civil Liberties Program</i> ; and AFGM2015-01 to AFI 51-201, <i>Administration</i>

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	<p><i>of Military Justice</i> concerning victims’ and SVCs’ access to Air Force records.</p> <p>The attached OpJAGAF opinion (Atch 124.1) states, “Under the Privacy Act, SVCs can, at the discretion of the record OPR, obtain relevant Air Force Privacy Act records that are necessary to perform their assigned duties.” SVCs may also request non-Privacy Act records they believe are necessary for them to perform their assigned SVC duties and concludes,</p> <p style="padding-left: 40px;">Requests from SVCs for Air Force records associated with an accused’s/subject’s conduct toward the victim and subsequent investigatory/disciplinary action, absent specific guidance on the type of information that is releasable to an SVC/victim, are properly addressed under Privacy Act and FOIA principles, as noted in DODI 1030.2 and AFI 51-201. Depending on what an SVC seeks and why, requests for records associated with a Privacy Act SORN may be releasable under the Privacy Act’s (b)(1) exception. In the absence of release under that exception, or to the victim under the PA (b)(3) routine use provision, release of Privacy Act records is governed under FOIA exemption rules. <i>See</i> 5 U.S.C. § 552a(b)(2) (otherwise governing release of Privacy Act records required to be released under the FOIA). Non-Privacy Act record requests from SVCs are also addressed as functional use/official use requests, applying a relevancy standard and any applicable FOIA exemption rules. (Atch 124.1)</p> <p>Guidance and training on release of information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and DoD 5400.7-R_AFMAN 33-302, are also provided to legal offices and SVCs. (Atchs 124.2 – 124.6)</p> <p>ENCLOSURES:</p> <ol style="list-style-type: none"> 1. OpJAGAF 2014-3, SVC Request for AF Records Under PA & FOIA 2. FOIA Exemption 7 Training 3. Processing SVC Requests for Records Under FOIA & PA Rules 4. OpJAGAF2014-4, FOIA Requests for Copy of Witness Statement 5. SVC Records Requests Slide 6. SVC Records Request Under FOIA Memorandum (Sample)
USN	<p>Commander Naval Legal Service Command Notice 5810.1 is the policy that provides guidance. In addition, Trial Counsel Assistance Program hosts webinars on working with victims and Victims’ Legal Counsel. Additionally, the issue is addressed at Targeted Mobile Training Teams. Article 6 inspections ensure compliance.</p>
USMC	<p>The Marine Corps VWAP order, MCO 5800.14, provides basic requirements for prosecutors regarding victims’ access to information. This order was completely rewritten and at the time of this submission (March 2016), the order is still in its final stages of review before publication. More recent guidance and requirements were promulgated in Military Justice Practice Advisory 4-14, enclosure (12). Both prosecutors and the Marines who support them are required to implement these requirements and procedures throughout the court-martial process. The Marine Corps Trial Counsel Assistance Program (TCAP) also provides annual training which integrates VWAP requirements and procedures. This training is followed up by quarterly training</p>

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	<p>by Regional Trial Counsel and more frequent, local training by Senior Trial Counsel which incorporates VWAP requirements, such as victims’ access to information. Moreover, TCAP maintains an active blog and discussion board that are used to make announcements, disseminate lessons learned, and discuss questions relating to trial practice. The Marine Corps Case Management System also requires trial counsel to input VWAP information for each victim and witness. Finally, pursuant to the SJA to CMC’s UCMJ Article 6 authority, inspections are conducted annually to ensure compliance.</p> <p>ENCLOSURE:</p> <p>Military Justice Practice Advisory 4-14, dated 5 November 2014</p>
USCG	<p>Trial counsel are guided by TJAG Memorandum 5810 of 28 October 2014 (Disclosure of Information to Crime Victims). Prospective judge advocates attending the Naval Justice School Basic Lawyer Course receive one hour of classroom instruction related to the prosecution of special victims’ cases, including the duties of prosecutors under the Victim and Witness Assistance Program and Coast Guard policy. Prior to graduation, all Basic Lawyer Course students must demonstrate basic proficiency as trial or defense counsel in mock courts-martial using a sexual assault fact-pattern that requires students to demonstrate understanding of prosecutorial duties with respect to victim advisements, rights to information, and records of proceeding, as well as prosecutor engagement with Special Victims’ Counsel. Advanced trial advocacy courses provide refresher and advanced training related to engagement with victims of crime and victims’ counsel.</p>

d. Defense counsel

USA	<p>TDS (d): The U.S. Army Defense Counsel Assistance Program has conducted training for defense counsel specifically on the rights of the victim. Most recently, this training was part of the 2015 Sexual Assault Trial Advocacy Course. Furthermore, we address the topic of victim access to information in the context of other training we routinely conduct on tasks such as Article 32s, interviewing witnesses, and the post-trial process.</p> <p>ENCLOSURES:</p> <ol style="list-style-type: none"> 1. DCAP Course Schedule & Agenda (Feb 14) 2. Defense Counsel Training Courses
USAF	<p>See JPP RFI 124c.</p>
USN	<p>All information for victims is provided through Trial Counsel or Staff Judge Advocates. Defense counsel are available should a victim need defense counsel assistance regarding any alleged misconduct collateral to a sexual offense.</p>
USMC	<p>No DSO specific guidance or training exists regarding a victim’s access to information. A defense attorney has an obligation to the client, not the victim. Defense attorneys receive training on reciprocal discovery obligations, but those obligations only require providing certain information to the trial counsel. Further disclosure requirements are then the responsibility of the trial counsel. While there is no specific DSO guidance or training for victims’ access to information, defense counsel are familiar with this concept due to an ethical obligation to remain competent in the area of military justice.</p>

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USCG	By long standing memorandum of agreement between the Coast Guard and the Navy JAG Corps, the Navy is principally responsible for defending Coast Guard members accused of crimes under the UCMJ. The Coast Guard depends on the Navy JAG Corps to provide fully qualified defense counsel for Coast Guard cases. As such, the Coast Guard defense counsel are guided by Navy training, policy and guidance as to this issue. However, the Coast Guard judge advocates assigned to the Navy are aware of and bound by TJAG Memorandum 5810 of 28 October 2014 (Disclosure of Information to Crime Victims). They are also charged with sharing that information with Navy judge advocates that are representing Coast Guard members.
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e. Special victim’s counsel

USA	SVC (e): Army SVC are trained on all policies to safeguard the rights of crime victims at The Judge Advocate General’s Legal Center and School (TJAGLCS). The SVC Program Manager conducts quarterly Defense Collaboration Services (DCS) meetings with SVC in the field to disseminate information and receive feedback. The SVC Program’s milSuite page is used by SVC to collaborate with each other on any issues they have encountered, including victim’s access to information. To comply with this provision the JAG Corps leadership, SVC Program Manager, and Chief of LAPD conduct site visits to installations to evaluate the SVC Program implementation.
USAF	As noted in JPP RFI 124a, SVCs may request Air Force records and information as Official Use Requests (OUR). These requests are made on a case-by-case basis allowing the SVC to obtain release of specific information necessary for the performance of official duties. The underlying analysis supporting this approach may be found in Attachment 123.1. SVCs provide narrowly tailored, written requests indicating why they should receive documents with personally identifiable information (PII) redacted and that the documents they receive will not be further released. In addition, OURs often cite to additional authorities for the request. See JPP RFI 123, Attachment 3, Victim Access to Information, in the column “Governing Service Policy or relevant Service guidance.” Since October 2014, SVCs have found this approach to be very successful. ENCLOSURE: Guiding Principles in Responding to SVC Request for AF Records
USN	In addition to the specific requirements to provide information and materials to victims under the Uniform Code of Military Justice, Rules for Courts-Martial, Military Rules of Evidence, and the Victims Witness Assistance Program (VWAP), Commander, Naval Legal Service Command Notice 5810.1 of 30 January 2015, enclosure (3), established a policy for disclosure of information to victims who report suffering direct physical, emotional, or pecuniary harm as a result of the commission of an offense under the UCMJ. In the event that a Trial Counsel, Military Criminal Investigation Officer, Staff Judge Advocate (SJA), or Command Services Attorney (CSA) fail to provide victims’ access to information, Victims’ Legal Counsel (VLC) have been given guidance to seek relief from the Senior Trial Counsel (STC), the Commanding Officer of the Region Legal Service Office whom the SJA or CSA reports to, the senior SJA in the region, the head of the Trial Command Assistance Program, or the VLC may bring a motion in front of a Military Judge if the case is referred to court-martial. VLC are trained to notify their Program leadership (Officer in Charge, Deputy Chief of Staff and Chief of Staff) when

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	<p>barriers exist to disclosure of information to sexual assault victims so that programmatic issues can be identified, addressed and resolved.</p> <p>ENCLOSURE:</p> <p>COMNAVLEGSVCCOMNOTE 5810.1, <i>Disclosure of Information to Crime Victims</i>, dated 30 January 2015</p>
USMC	<p>The SJA to CMC’s Military Justice Branch published Practice Advisory 4-14, enclosure (12). VLC may seek remedies for a trial counsel’s failure to comply with the requirements to provide victims access to information by pursuing relief from the convening authority, making a motion to a Military Judge, or by petitioning an appellate court for a writ of mandamus.</p> <p>ENCLOSURE:</p> <p>Military Justice Practice Advisory 4-14, dated 5 November 2014</p>
USCG	<p>SVCs are guided by TJAG Memorandum 5810 of 28 October 2014 (Disclosure of Information to Crime Victims).</p>

f. Commanders

USA	N/A
USAF	<p>Commanders’ guidance on victims’ access to information is found in AFI 90-6001, Chapter 8. Before release of any information by a commander to a victim or victim’s representative, the commander should coordinate with the supporting SJA. Consultation with the legal office before release ensures not only that the victim receives information to which he or she is entitled but also that the privacy interests of the accused, other victims, and witnesses remain protected.</p> <p><u>ENCLOSURES:</u></p> <ol style="list-style-type: none"> 1. OpJAGAF 2014/3, 1 July 2014, SVC Request for Air Force Records Under PA and FOIA 2. Exemption 7 DCO SVC Training Slides 3. Processing Special Victims’ Counsel Requests for Records Under FOIA PA Rules 4. OpJAGAF 2014/4, 1 July 2014, Witness FOIA Request For a Copy of Their Witness Statement 5. SVC Records Request Slide 6. SVC Request for Records Response Example 7. SVC Discussion With Victim Info In PA Records <p><u>REFERENCES:</u></p> <ol style="list-style-type: none"> 1. Article 54(e), UCMJ http://www.law.cornell.edu/uscode/text/10/854 2. 5 U.S.C. § 552, Privacy Act http://www.law.cornell.edu/uscode/text/5/552 3. Article 6b, UCMJ, 10 U.S.C. § 806b http://www.law.cornell.edu/uscode/text/10/806b 4. DoDI 5400.11-R, <i>Department of Defense Privacy Program</i> http://www.dtic.mil/whs/directives/corres/pdf/540011r.pdf

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	<p>5. AFGM to AFI 51-201, <i>Administration of Military Justice</i> http://static.e-publishing.af.mil/production/1/af_ja/publication/afi51-201/afi51-201.pdf</p> <p>6. AFI 33-332, <i>The Air Force Privacy and Civil Liberties Program</i> http://static.e-publishing.af.mil/production/1/saf_cio_a6/publication/afi33-332/afi33-332.pdf</p> <p>7. AFI 90-6001, <i>Sexual Assault Prevention and Response (SAPR) Program</i> http://static.e-publishing.af.mil/production/1/af_cvs/publication/afi90-6001/afi90-6001.pdf</p>
USN	<p>OPNAVINST 1752.1C requires Commanding Officers (COs) to obtain a one-on-one SAPR brief and the commander's toolkit brief within 30 days of assuming command. A SAPR training module is included in the training for new or prospective commanders at all levels of command. The training requirements include explanation of the potential needs of victims and the resources available to victims after an incident of sexual assault. The Installation Sexual Assault Response Coordinator (SARC) provides and tracks completion of this training requirement for the command triad.</p> <p>The Commander's SAPR Toolkit brief provides guidance to the CO that they are to update the victim on the status of their case within 72 hours of the monthly CMG. OPNAVINST 1752.1C also requires COs to ensure a SARC, deployed resiliency counselor, SAPR VA or unit SAPR VA is contacted immediately upon receipt of unrestricted reports of sexual assault to provide victims with information, emotional support, and guidance through the various medical, mental health, legal and investigative processes and ensure victims and witnesses (whether military or civilian) of crimes under military jurisdiction are afforded their rights and kept informed on the status of the case through any administrative or disciplinary action.</p>
USMC	<p>Commanders are subject to the VWAP requirements in MCO 5800.14. To assist them in fulfilling their duties, each unit commander has a Victim Witness Assistance Coordinator (VWAC) to ensure and confirm that both the command and the trial counsel comply with all pertinent requirements to provide notice, consultation, and appropriate access to information. The VWAC also educates the commander on the command's VWAP responsibilities. At both the regional and installation level, commanders have Victim Witness Liaison Officers (VWLOs) who receive Marine Corps VWAP training each year and who then provide training and guidance to both unit VWACs and commanders on their VWAP roles. The VWLOs also train and coordinate with VWACs to ensure they understand and fulfill their duties to support their unit commanders in their VWAP responsibilities. To facilitate this process, VWLOs chair a quarterly Victim Witness Assistance Council, which brings together the multi-disciplinary team of representatives who have victim service/support roles aboard the installation. These councils highlight systemic deficiencies which can be appropriately addressed by commanders, as needed. Additionally, staff judge advocates are specifically tasked with providing advice and guidance to convening authorities and commanders with regard to VWAP.</p>
USCG	<p>Commanders are advised by their legal advisors, who are in turn are guided by TJAG Memorandum 5810 of 28 October 2014 (Disclosure of Information to Crime Victims).</p>