

**JUDICIAL PROCEEDINGS PANEL
REQUEST FOR INFORMATION SET # 1**

15. Services: What guidance, programs, or procedures provide victims access to information relevant to the protection of the rights codified in Article 6b?

<p>USA</p>	<p>The JSC published a draft EO implementing provisions of the FY14 NDAA, including §1701 and Article 6b. This was published in the Federal Register (Vol. 79, No. 192) on October 3, 2014 for public comment. See http://www.gpo.gov/fdsys/pkg/FR-2014-10-03/pdf/2014-23546.pdf.</p> <p>On October 1, 2014, the TJAG signed Policy Memorandum 14-09, Disclosure of information to Crime Victims. This policy addresses the disclosure of information by prosecutors to victims who report suffering direct physical, emotional, or pecuniary harm as a result of the commission of any offense under the Uniform Code of Military Justice (UCMJ). See Enclosure 7.</p> <p>ENCLOSURE 7, TJAG Policy Memoranda:</p> <ul style="list-style-type: none"> a. TJAG Policy Memorandum 14-09, Disclosure of information to Crime Victims (01 Oct 2014) b. TJAG Policy Memorandum 14-01, Special Victim Counsel (01 Nov 2014) c. TJAG Policy Memorandum 14-06, Special Victim Prosecutors (22 Jan 2014) d. TJAG Policy Memorandum 14-08, Location, Supervision, Evaluation and Assignment of Judge Advocates in Brigades (24 Aug 2014)
<p>USAF</p>	<p>See response above pertaining to information victims of crime under the UCMJ are entitled to throughout the military justice process. Para. 7.11 was added to AFGM to AFI 51-201, <i>Administration of Military Justice</i>, to specifically reference the rights a victim has pursuant to Article 6b as distinguished from rights that were previously provided to victims by Department of Defense and Air Force policy. Additionally, for Special Victim Capability cases, which includes all sexual assault cases, the trial counsel, victim liaison, and Special Victims Unit – Senior Trial Counsel (when applicable), will ensure that victims of crime are informed of their rights under Article 6b and AFGM2 to AFI 51-201, provide victims with a comprehensive explanation of the military justice process, provide the victim with regular case updates, and consult with victims as required under Article 6b and AFGM2 to AFI 51-201. AFGM2 to AFI 51-201, <i>Administration of Military Justice</i>, para. 13.41.</p> <p>Separately, the Air Force JAG Corps has provided significant guidance and training regarding access to information for victims of crime and Special Victims’ Counsel to record OPRs and Special Victims’ Counsel in the form of legal advice, talking papers, power point slides, video, and in-person training concerning victim access to information relevant to the protection of their codified rights. In particular, the written guidance is primarily contained in AFGM to AFI 51-201, <i>Administration of Military Justice</i>, The Privacy Act, 5. U.S.C. 552a(b)(1), AFI 33-332, <i>The Air Force Privacy and Civil Liberties Program</i>, and DoDI 5400.11-R, <i>Department of Defense Privacy Program</i>, concerning access by Air Force military Special Victims’ Counsel to Air Force Privacy Act records as necessary in order to accomplish their Air Force official duties.</p>

**JUDICIAL PROCEEDINGS PANEL
REQUEST FOR INFORMATION SET # 1**

The attached OpJAGAF opinion (Atch 15.1) 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.

The OpJAGAF concludes: “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. *See* 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 15.1)

Additional guidance was provided to SVCs regarding information SVCs obtain under the Privacy Act’s (b)(1) exception and what information the SVC can further discuss with their victim-clients. (Atch 15.7)

Guidance and training is also provided to SVCs and legal offices, consistent with the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and DoD 5400.7-R_AFMAN 33-302, concerning victim access to information and records when made by the victim under the FOIA. (Atchs 15.2 – 15.6)

AFOSIMAN 71-118, Volume 4, *General Investigative Methods*, sets forth guidance for AFOSI Detachments on providing information to victims. Access to AFOSIMAN 71-118 is restricted and is not provided as an attachment.

References:

- Article 54(e), UCMJ <http://www.law.cornell.edu/uscode/text/10/854>
- 5 U.S.C. § 552, Privacy Act <http://www.law.cornell.edu/uscode/text/5/552>
- Article 6b, UCMJ, 10 U.S.C. § 806b
<http://www.law.cornell.edu/uscode/text/10/806b>
- DoDI 5400.11-R, *Department of Defense Privacy Program*
<http://www.dtic.mil/whs/directives/corres/pdf/540011r.pdf>
- AFGM to AFI 51-201, *Administration of Military Justice* http://static.e-publishing.af.mil/production/1/af_ja/publication/afi51-201/afi51-201.pdf
- AFI 33-332, *The Air Force Privacy and Civil Liberties Program* http://static.e-publishing.af.mil/production/1/saf_cio_a6/publication/afi33-332/afi33-332.pdf

**JUDICIAL PROCEEDINGS PANEL
REQUEST FOR INFORMATION SET # 1**

	<p>ATTACHMENTS 15:</p> <ul style="list-style-type: none"> - Atch 15.1 – OpJAGAF 2014/3, SVC Request for Air Force Records Under PA and FOIA (1 Jul 2014) - Atch 15.2 – FOIA Exemption 7 DCO SVC Training Slides - Atch 15.3 – Processing Special Victims’ Counsel Requests for Records Under FOIA PA Rules - Atch 15.4 – OpJAGAF 2014/4, 1 July 2014, Witness FOIA Request For a Copy of Their Witness Statement (01 Jul 2014) - Atch 15.5 – SVC Records Request Training Slide - Atch 15.6 – SVC Request for Records Response Template (Sep 2014) - Atch 15.7 – SVC Discussion With Victim Info In PA Records
USN	<p>The VLC program and Navy Victim Witness Assistance Program (VWAP) provide victims access to dedicated attorneys and support mechanisms that form the basis for information and support. Information regarding the availability of such services is provided at multiple steps through the process to ensure victims are comfortable in their decision to seek assistance or treatment. These rights are specifically discussed with victims during consultations with VLC.</p>
USMC	<p>See Question 14 above, MCO 5800.14 (VWAP) and MCO P5800.16A. Additionally, the pending executive order (EO) proposed by the Joint Service Committee on Military Justice would provide many rights to victims as required by Article 6b. The pending EO, which is currently in the public comment period, can be found here: http://www.regulations.gov/#!documentDetail;D=DOD-2014-OS-0140-0001.</p>
USCG	<p>When a victim comes forward to make either a restricted or unrestricted report of sexual assault, that person is given a form entitled “Victim Reporting Preference Statement”. The victim’s rights are listed on that form.</p> <p>Upon receiving an unrestricted report of a sexual assault, the victim’s command is directed to follow a checklist to provide appropriate care. Many of the tasks on the checklist are designed to ensure that the victim’s Article 6b rights are protected at the early stages of the case, such as the right to be treated with dignity and fairness and the right to protection from the accused. As soon as the Special Victims’ Counsel (SVC) is assigned, that individual is tasked with explaining and protecting the victim’s rights.</p> <p>The Article 6b rights were also announced in a message released by the Judge Advocate General to the entire service in January 2014. Trial counsel have received supplemental guidance on their requirements and obligations under Article 6b, specifically focuses on their obligation to ensure that the victim is provided notice, an opportunity to be present, and an opportunity to be heard.</p>