

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

**16. Services: Requests for information relating to the victim or the victim’s rights:**

**a. What is the process by which a victim or victim’s counsel submits a request for information during the different phases of the court-martial process?**

<b>USA</b>	<p>Prosecutors are required to disclose information pursuant to TJAG Policy Memorandum 14-09. See Enclosure 7. The SVC submits requests for additional information to the Office of the Staff Judge Advocate (OSJA) through the Chief of Military Justice or the Trial Counsel. The SVC may also submit requests for information directly to the Military Judge.</p> <p><b>ENCLOSURE 7, TJAG Policy Memoranda:</b></p> <ul style="list-style-type: none"> <li>a. TJAG Policy Memorandum 14-09, Disclosure of information to Crime Victims (01 Oct 2014)</li> <li>b. TJAG Policy Memorandum 14-01, Special Victim Counsel (01 Nov 2014)</li> <li>c. TJAG Policy Memorandum 14-06, Special Victim Prosecutors (22 Jan 2014)</li> <li>d. TJAG Policy Memorandum 14-08, Location, Supervision, Evaluation and Assignment of Judge Advocates in Brigades (24 Aug 2014)</li> </ul>
<b>USAF</b>	<p>Crime victims may request records through a Freedom of Information Act Request (FOIA) pursuant to 5 U.S.C. 522(a) at any time. It is unlikely that a crime victim will receive records requested from AFOSI until proceedings are complete. Pursuant to AFOSIMAN 71-118, Volume 4, <i>General Investigative Methods</i>, AFOSI will generally release a copy of a statement made by the victim to that victim.</p> <p>If the victim is represented by a SVC, the SVC may make a request directly to legal offices, AFOSI, and other records OPRs for records and information necessary for them to perform their assigned SVC duties as discussed above in the response to RFI #15. Pre-trial, the SVC may request that the holder of the desired record release it to them in order that they may assist their client in making informed decisions when consulting with the government regarding the investigation and disposition of the case and other matters the government consults with victims on pursuant to AFGM2 to AFI 51-201, para. 7.12.12. Typically, the requested records are in the possession of AFOSI, the legal office, a Military Treatment Facility (MTF), or military personnel records office. The SVC may request records informally over the telephone or e-mail, formally in a memorandum request, or in the case of an Article 32 hearing, by motion to the Investigating Officer.</p> <p>Once charges have been referred and a military judge has been detailed, an SVC can motion the court to compel the production of records, motions, documents or statements which they require to effectively represent their client. Most SVCs request, in their notice of representation to the court, that the military judge direct the parties to provide the SVC with copies of all motions, documents or statements implicating the rights of the victim. Military judges have directed the parties to provide the requested information on a case-by-case basis using different approaches (e.g., providing written motions via e-mail). Military judges have regularly directed the parties to provide any</p>

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

	<p>notices, motions, attachments and statements relating directly to MRE 412, 513, and 514 hearings to the SVC.</p> <p>After authentication of the record of trial, military judges’ authority is limited. At this point, the victim is generally requesting from the record holder, often the legal office or AFLOA/JAJM authenticated records of trial, to provide any required information or documentation to fulfill the meaningful exercise of their rights. If the trial results in a conviction, the legal office has obligations to provide the victim with certain information without a specific victim request, such as a copy of the record of trial.</p> <p><u>References:</u></p> <ul style="list-style-type: none"> <li>- 5 U.S.C. § 552, <i>Freedom of Information Act</i>, <a href="http://www.law.cornell.edu/uscode/text/5/552">http://www.law.cornell.edu/uscode/text/5/552</a></li> <li>- AFGM to AFI 51-201, <i>Administration of Military Justice</i>, <a href="http://static.e-publishing.af.mil/production/1/af_ja/publication/afi51-201/afi51-201.pdf">http://static.e-publishing.af.mil/production/1/af_ja/publication/afi51-201/afi51-201.pdf</a></li> </ul>
<b>USN</b>	A VLC request for access to information after prefferal but prior to referral of charges is made to the government, which can include the Military Criminal Investigation Organization (MCIO) [Naval Criminal Investigation Service (NCIS)], the accused’s command, the staff judge advocate for the disposition authority, or the detailed trial counsel. Following referral, a motion for access to information can be made to the military judge – the military judge may determine, depending on the circumstances, the victim does not have standing to bring the issue before the court.
<b>USMC</b>	<p>Marine VLC make requests for information and documents via the following:</p> <ul style="list-style-type: none"> <li>• Notice of Representation (NOR) Letter which contains the initial pretrial discovery request;</li> <li>• Naval Correspondence Letter addressed to the Convening Authority, Article 32 investigating officer, or trial counsel depending on the phase of the military justice process;</li> <li>• Email requests following delivery of the NOR;</li> <li>• Verbal requests following written requests to coordinate compliance; and</li> <li>• Motions to the Court after a military judge is detailed to the case.</li> </ul>
<b>USCG</b>	The victim or victim’s counsel may submit a request, either verbally, in written memo, or via email, to the trial counsel or special agent in charge of the investigation. Typically the request is done verbally or through email. For information that is required to be provided by policy, the trial counsel has an obligation to provide that information without the need for a request from the victim.

**b. In practice, how have issues related to victim requests for information been resolved?**

<b>USA</b>	The SVC work with the SVC Program Manager and OSJA to resolve issues relating to requests for information.
<b>USAF</b>	If an SVC’s request for information is denied, the SVC may continue to work with the requested release authority or appeal to someone higher in the chain of command (e.g.,

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

	<p>the Staff Judge Advocate, Convening Authority, or OSI Detachment Commander).</p> <p>SVCs report that responses to requests for information vary. AFOSI generally releases the victim’s statements to the SVC. OpJAGAF 2014/3, 1 July 2014, SVC Request for Air Force Records Under PA and FOIA (Atch 15.1) is relatively new guidance. AF/JAA conducts training for the field on the processing of these requests to speed access while balancing the privacy act interests of those named in the records.</p> <p>In addition, when the requested information is informally denied, SVCs have relied for support on official DoD policies which permit the disclosure of records to victims to comply with the Victim and Witness Assistance Program, Sexual Assault Prevent and Response Program, and the Victims’ Rights and Restitution Act of 1990, as well as statutes, DoD regulations, and Air Force Instructions which permit the victim to exercise meaningful involvement in the process. SVCs report that a majority of offices that receive requests based on these references have advised the victim to file a FOIA request to secure the requested records, if releasable.</p> <p><b>ATTACHMENT 15 –15.1 - OpJAGAF 2014/3, SVC Request for Air Force Records Under PA and FOIA (01 Jul 2014)</b></p>
<b>USN</b>	<p>In practice, nearly all requests for information received from the victim in a case or from that victim’s military or civilian legal counsel are resolved by the trial counsel and VLC or victim advocate working together. In situations where such issues cannot be resolved, usually involving complicated requests, these issues may be elevated and resolved via the Trial Counsel Assistance Program (TCAP) working with the Chief of Staff (COS) of the VLC program. In addition, VLC have filed Freedom of Information Act (FOIA) requests, appealed to higher military authorities, filed motions in courts-martial, and filed Writs of Mandamus when a motion or request for information was denied.</p>
<b>USMC</b>	<p>See Response to RFI # 14. If a VLC does not receive information requested from the trial counsel or the convening authority, they can move the court for additional discovery.</p>
<b>USCG</b>	<p>In practice, issues related to a victim’s request for information have been handled informally between the trial counsel, victim’s counsel, and Coast Guard Investigative Service.</p>

**c. To whom does a victim or the victim’s counsel make requests for information during each phase of the court-martial process?**

<b>USA</b>	<p>The SVC submits requests for information to the OSJA through the Chief of Military Justice or the Trial Counsel during each phase of the court-martial process. The SVC may also submit requests for information directly to the Military Judge once the case is referred.</p>
<b>USAF</b>	<p>Pre-trial, requests for information will go to the office that holds the record as defined in DoD regulations. This is typically the base legal office or investigative agency. Once appointed, an Air Force Article 32 investigating officer is the point of contact for requests for records related to the Article 32 hearing.</p>

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

	Once a military judge is detailed, an SVC may file a motion or request to the military judge that certain information be compelled as discussed above in subpart a. In situations in which it appears that the request was denied unnecessarily, an SVC may explore alternate means of obtaining the record, including requesting that an individual higher in the record holder’s chain of command review the request and release the information to the victim.
<b>USN</b>	Such requests are generally made directly to the trial counsel. A VLC request for access to information prior to referral of charges is made to the government, which can include the MCIO, the accused’s command, the staff judge advocate for the disposition authority, or the detailed trial counsel. Following referral, a motion for access to information can be made to the military judge. The military judge may determine, depending on the circumstances, the victim does not have standing.
<b>USMC</b>	A victim may make a request to the Trial Counsel, Convening Authority, Military Judge, or submit a FOIA request pursuant to 5 U.S.C. § 552.
<b>USCG</b>	The victim makes requests to the trial counsel or the special agent investigating the case, depending on the stage of the proceedings. If the case is in the post-trial stage, the victim makes the request to the Office of Military Justice, who maintains the records for completed courts-martial.

**d. Who makes pre-trial and post-trial decisions with respect to victims’ requests and/or motions?**

<b>USA</b>	The Military Judge makes the decision for requests submitted to the court. The Staff Judge Advocate (SJA) ensures that requests by victims or designated counsel for investigative reports or other documents pre and post trial are processed without delay under the applicable procedures of the Freedom of Information Act or Privacy Act.
<b>USAF</b>	The decision maker is described in a and b above.
<b>USN</b>	The decision to request information or file any motions pre or post trial will depend on the nature of the information sought. If the information is necessary to protect or advance a victim’s interest, a VLC may act independently to seek access to information, but under certain circumstances, such as the use of the Freedom of Information Act (FOIA) it may be a better approach to have the victim request that information with the assistance of the VLC. If a victim is seeking to obtain information in order to better understand the proceedings, the victim may specifically direct the VLC to request access to information, such as post-trial access to recordings of a court-martial where no verbatim transcript is required. Once received, either from VLC or directly from a victim, requests for information from the victim would be resolved by the trial counsel or judge advocate supporting the convening authority for pre-trial issues. For post-trial issues the trial counsel or judge advocate may also be able to respond to victim requests. Where a motion is filed, and is not rendered moot by an appropriate response, either the military judge with cognizance over the case or the appropriate appellate court would rule on the issue.
<b>USMC</b>	The military judge makes the decision for requests submitted to the court after referral. The trial counsel makes the initial determination for any discovery requested by the VLC. For documents requested of the command, the Staff Judge

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

	Advocate (SJA) ensures that requests by victims or designated counsel for investigative reports or other documents pre and post-trial are processed without delay under the applicable procedures of the Freedom of Information Act or Privacy Act.
<b>USCG</b>	The trial counsel or special agent makes the decision to provide information pre-trial, and shall comply with Coast Guard policy when doing so. The Office of Military Justice makes the decision post-trial. If the victim makes a motion for documentation during trial, the military judge rules on that motion.

**e. What recourse is available to a victim when a request or motion is denied?**

<b>USA</b>	The victim, through the SVC, can file an Extraordinary Writ with the Army Court of Criminal Appeals.
<b>USAF</b>	<p>If a FOUO request for information is denied, the SVC may appeal to a higher authority in the chain of command or assist the client in filing a FOIA request for the information. There is no appellate authority to obtain requested information with the exception of petitioning for a writ of mandamus to the Air Force Court of Criminal Appeals, as was used in <i>L.R.M. v. Kastenber</i>g. When no other efforts to obtain the information are successful, an SVC would advise a client that pursuing a lawsuit in federal court is an option to pursue to obtain requested records.</p> <p>If a victim’s FOIA request is denied, the victim may submit an appeal of the declination, following the procedure set forth in DoD 5400.7-R_AFMAN 33-302, <i>Freedom of Information Act Program</i>, Section 3.</p> <p>References:</p> <ul style="list-style-type: none"> <li>- DoD 5400.7-R_AFMAN 33-302, <i>Freedom of Information Act Program</i>, <a href="http://static.e-publishing.af.mil/production/1/saf_cio_a6/publication/dod5400.7-r_afman33-302/dod5400.7-r_afman33-302.pdf">http://static.e-publishing.af.mil/production/1/saf_cio_a6/publication/dod5400.7-r_afman33-302/dod5400.7-r_afman33-302.pdf</a></li> </ul>
<b>USN</b>	Prior to referral, if a request for access to information made to the Government is denied, a victim may seek to renew the request with a higher military authority. The denial of a request made under the FOIA, can be challenged in federal court where a victim can move to compel disclosure. Following referral, a victim can file a motion with the military judge to compel disclosure. If the military judge denies such a motion, the victim could appeal through the use of a Writ of Mandamus under the All Writs Act (28 USC § 1651) to the appropriate Criminal Court of Appeals (CCA); it is within the discretion of the CCA to stay the court-martial proceedings and accept such a writ for review.
<b>USMC</b>	If the trial counsel denies a request, the victim may seek relief from the military judge. If the military judge denies the request, the victim can file an extraordinary writ to the appellate courts.
<b>USCG</b>	If the victim made a motion with the trial court and that motion was denied, the victim could file a writ of extraordinary relief with the service appellate court. If the victim’s request for information was denied, he or she may seek recourse through the trial counsel’s supervisor or the special agent’s supervisor.

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

**f. In practice, what remedies have counsel sought on behalf of victims when a request or motion for information has been denied?**

<b>USA</b>	Pursuant to TJAG Policy Memorandum 14-09, the SJA is required to disclose information to the victim/victim's counsel. The victim/victim's counsel can appeal any denial to the convening authority. No motions have been filed with the Trial Judiciary at this time. Generally, any disagreements are resolved between the SVC, the SVC Program Manager, and the SJA.
<b>USAF</b>	To the best of our knowledge, all remedies described above have been utilized with the exception of FOIA appeal litigation and writs to the Air Force Court of Criminal Appeals.
<b>USN</b>	VLC have filed FOIA requests, appealed to higher military authorities, filed motions in courts-martial, and filed Writs of Mandamus when a motion or request for information has been denied.
<b>USMC</b>	Victims have sought relief from the military judge.
<b>USCG</b>	The service is unaware of any remedies, other than specific performance of the request, sought by counsel on behalf of victims when a request for information is denied.