

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

51. Services: What rules, regulations, and policies govern how investigating officers at Article 32 hearings preserve and protect personal information contained in mental health records of adult victims of sexual assault? How do these differ from processes used by military judges at courts-martial?

USA	Rule for Court-Martial 405, as modified by EO 13669 gives the investigating officer the same powers as the military judge to exclude evidence from the pretrial investigation. The draft EO placed in the Federal Register on October 3, 2014 substantially amends R.C.M. 405 to implement required changes in the FY14 NDAA. In addition, the executive order amends R.C.M. 1103A to give preliminary hearing officers the power to seal records. Currently only military judges have the authority to seal records under R.C.M. 1103A. The procedural guide is currently under revision to incorporate Section 1702 of the FY14 NDAA.
USAF	<p>As noted above in RFI #46, this issue is not often seen in Air Force practice during Article 32 investigations. Article 6b provides victims the right to be treated with fairness and with respect for the dignity and privacy of the victim. These provisions apply to Article 32 hearings. We are not aware of any Article 32 investigations where the Investigating Officer actually conducted an <i>in camera</i> review and released records under the MRE 513 procedure that applies to military judges.</p> <p>If an investigating officer considered this course of action, we would expect the government representative to argue against the issuance of any subpoena, against any order to produce records, and against any review by the IO. We would also expect the government representative to argue that the constitutionally required exception under MRE 513(d)(8) should not be a factor during a statutory hearing without confrontation clause implications. If unsuccessful, the convening authority could certainly replace the IO if the convening authority believed the IO had exceeded his/her authority. If allowed to continue, we would expect the government representative to insist that the victim's privacy be protected to the maximum extent possible by using the privacy protections in MRE 513 such as sealing any motions, related papers, and the record of the hearing.</p>
USN	There are no specific regulations or policies distinct from RCM 405 and MRE 513 governing preliminary investigating officers handling of protected information. However, convening authorities often include guidance in the appointing order directing specific protections, and investigating officers are trained to follow the restrictions of MRE 500 (series). Trial judges close the court room for any hearings held in accordance with MRE 412. In accordance with MRE 513, the trial judge may order the hearing closed upon motion from either party with good cause. The record of trial for those hearings and all related exhibits are sealed under court order. MRE 513 documents presented to the trial judge for <i>in camera</i> review are also sealed by court order. If the military judge releases any documents to the parties, the judge redacts all PII that is not relevant and necessary to the release, and the judge releases the redacted pages under a protective order that prohibits duplication and tightly constrains access and disclosure.
USMC	Information covered by MRE 513 should not be released by an Article 32 hearing officer. If it is inadvertently obtained or disclosed, it will be sealed pursuant to

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

	RCM 1103A.
USCG	The discussion section of R.C.M. 405(i) governs how investigating officers preserve and protect personal information contained in health records of adult victims. This guidance is modeled after the processes used by military judges at courts-martial, and thus the two are similar. Unlike the military judge, the investigating officers does not have the authority to seal an exhibit, but the investigating officer and counsel for the United States is responsible for careful handling of sensitive evidence to prevent indiscriminate viewing or disclosure.