



AIR FORCE LEGAL OPERATIONS AGENCY
SPECIAL VICTIMS' COUNSEL
HURLBURT FIELD, FLORIDA

20 March 2014

MEMORANDUM FOR [REDACTED]

FROM: AFLOA/SVC [REDACTED]

SUBJECT: SVC Request for Information – [REDACTED]

1. As previously noted, I represent [REDACTED] in my capacity as a Special Victims' Counsel (SVC). In order to effectively advocate my client's rights under Article 6b, UCMJ, *Rights of the victim of an offense under this chapter (See National Defense Authorization Act for Fiscal Year 2014, P.L. 113-66 [H.R. 3304], Sec. 1701)*; and IAW the government's VWAP responsibilities under AFI 51-201, *Administration of Military Justice*, Chapter 7, I request I be provided with the Article 32 Report and the Investigating Officer's (IO) recommendations. These documents are necessary for my client to meaningfully exercise her rights under Article 6b, UCMJ, and AFI 51-201.
2. Among the many rights accorded victims IAW Article 6b, UCMJ (10 U.S.C. § 806b), currently at issue here is [REDACTED] reasonable right to confer with the counsel representing the Government at an Article 32 hearing or court-martial relating to the offense; the right to proceedings free from unreasonable delay; and the right to be treated with fairness and with respect for the dignity and privacy of the victim of an offense under this chapter.
3. AFI 51-201, para. 7.12.12, requires the servicing legal office to consult with victims and obtain their views concerning, "dismissal of charges; pretrial agreement negotiations, including PTA terms; plea negotiations; discharge or resignations in lieu of trial by court-martial; and scheduling of judicial proceedings where the victim is required or entitled to attend."
4. In order for the victims to meaningfully confer with the government counsel and present their views to the convening authority, they must have the IO's assessment of the strengths and weaknesses of the case IO in his review of the facts and credibility of the witnesses. Without this assessment, the victim cannot properly weight the potential outcome of their full involvement as compared to supporting alternate methods of disposition. This information is also critical to their understanding of subsequent decisions by the convening authority to refer all, some, or an alternate version of the underlying charges.
5. Apart from adherence to victim rights under the UCMJ and AFI 51-201, Article 32 reports and the recommendations of the IO are releasable under the Freedom of Information Act (FOIA) to the victim of a crime. These documents fall within the scope of the materials authorized for release under the Federal Register: "Individual's name, Social Security Number (SSN), records of trial by courts-martial; records of Article 15 punishment; discharge proceedings; documents received or prepared in anticipation of administrative non-judicial and judicial proceedings;

witness statements; police reports; other reports and records from local, state, or federal agencies.” Accordingly, “[i]n addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, **these records, or information contained therein, may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:… [t]o victims and witnesses of a crime** for the purposes of providing information consistent with the requirements of the Victim and Witness Assistance Program and the Victims’ Rights and Restitution Act of 1990. See Federal Register Volume 73, Number 236, December 8, 2008, pg. 74472-72474. <http://www.gpo.gov/fdsys/pkg/FR-2008-12-08/pdf/E8-28936.pdf> (Emphasis added). In addition, pursuant to the FY14 NDAA’s revisions to Article 32, UCMJ (P.L. 133-66, Sec. 1702), the provision of a recording of the proceedings will become required on 27 December 2014.

6. Per AFI 51-201, paragraph 7.2, the primary objectives of the VWAP are to mitigate the physical, psychological, and financial hardships suffered by victims, to foster cooperation of victims within the military criminal justice system, and to ensure best efforts are made to accord to victims of crime certain enumerated rights.

7. As the victim in this case, [REDACTED] hardships would be most effectively mitigated by a speedy resolution to the criminal charges pertaining to her, whether that be through referral to a courts-martial or by some other lesser disposition. At the conclusion of the Article 32 hearing, the assigned defense counsel has already solicited input from [REDACTED] on her support of a Chapter 4 discharge request. In addition, as discussed above, the legal office is required to consult with the victim on a wide range of disposition options. In order for the victim to competently weigh these options and the potential outcomes of various courses of action, she must be provided with the underlying information that the servicing legal office, defense counsel and the convening authority are using to analyze the case and make their own informed decisions. Therefore, the information contained in the Article 32 report and IO recommendations are critical to a victim’s ability to make informed, meaningful decision as to their participation in court-martial.

8. [REDACTED] respectfully requests that the Article 32 report and IO recommendations are provided to her expeditiously through trial counsel, rather than having to wait for the prolonged delay of submitting a FOIA request and having it routed through all the required hands. By providing this information to the victim before absolutely required by the NDAA revisions, but still authorized for release under FOIA, you foster the cooperation of the victim and ensure you have made your best efforts to meaningfully confer with her in keeping with the underlying objectives and requirements of VWAP. This timely involvement of the victim in the discussion of disposition options will ensure that the victim does not have to make substantially uninformed decisions as to their participation or that her considerations are entirely overlooked.

9. If you have any questions regarding this request, please contact me at DSN 579.1766, [REDACTED], via my duty cell at [REDACTED] or via electronic mail at [REDACTED].

///signed/ECS/20MAR14///
ERIC C. SELKE, Capt, USAF
Special Victims' Counsel

Certificate of Service

I certify I caused a true copy of this *SVC Request for Information* – [REDACTED] to be served on the above-referenced counsel on 20 March 2014 via electronic mail.

///signed/ECS/20MAR14///
ERIC C. SELKE, Capt, USAF
Special Victims' Counsel

head and ear anatomy are produced from whole carcasses, heads, or temporal bones from animals that strand and die or die in captivity. The tissues are scanned by CT (Computerized Tomography) and MRI (Magnetic Resonance Imaging) and the ears are decalcified, sectioned, digitized, and reconstructed. Measurements from these reconstructions are used to calculate frequency distribution maps for each species examined. These inner ear models have provided the first evidence of acute infrasonic hearing in some species, new insights into how marine mammals achieve extreme infra and also ultrasonic hearing, and estimates of species specific hearing curves. A permit is requested for a period of 5 years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: August 22, 2006.

Charlie R. Chandler,

Chief, Branch of Permits, Division of Management Authority, U.S. Fish and Wildlife Service.

Dated: August 22, 2006.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 06-7196 Filed 8-25-06; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Business Board; Notice of Advisory Committee Meeting

AGENCY: Department of Defense, DoD.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Business Board (DBB) will meet in open session on Wednesday, September 6, 2006 at the Pentagon, Washington, DC from 9:30 a.m. until 10 a.m. The mission of the DBB is to advise the Secretary of Defense on effective strategies for implementation of best business practices of interest to the Department

of Defense. At this meeting, the Board will deliberate on their findings and recommendations related to Military Health System Governance and to the Alignment and Configuration of Business Activities.

DATES: Wednesday, September 6, 2006, 9:30 a.m. to 10 a.m.

ADDRESSES: 1155 Defense Pentagon, 2C554, Washington, DC 20301-1155.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to attend the meeting must contact the Defense Business Board no later than Wednesday, August 30th for further information about escort arrangements in the Pentagon. Additionally, those who wish to provide input to the Board should submit written comments by Wednesday, August 30th to allow time for distribution to the Board members prior to the meeting.

The DBB may be contacted at: Defense Business Board, 1155 Defense Pentagon, Room 3C288, Washington, DC 20301-1155, via e-mail at defensebusinessboard2@osd.mil or via phone at (703) 697-2168.

Due to an administrative oversight, this notice has not been published within the 15 day notification requirement.

Dated: August 22, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06-7187 Filed 8-23-06; 10:48 am]

BILLING CODE 5001-06-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Secretary of Defense's Defense Advisory Board for Employer Support of the Guard and Reserve (DAB-ESGR)

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the DAB-ESGR. This meeting will focus on the status of DoD actions and recommendations from previous DAB meetings and relevant discussions of DoD planning guidance for future mobilizations and targeted communications to employers. This meeting is open to the public.

DATES: 0830-1530, September 22, 2006.

Location: Assistant Secretary of Defense for Reserve Affairs Conference Room 2E219, the Pentagon.

FOR FURTHER INFORMATION CONTACT: Interested attendees may contact LCDR Vic Lopez at 703 696-1386 x540, or e-mail at victor.lopez@osd.mil.

Dated: August 18, 2006.

L.M. Bynum,

DSD Federal Register Liaison Officer, DoD.

[FR Doc. 06-7183 Filed 8-25-06; 8:45 am]

BILLING CODE 5001-06-M

DEPARTMENT OF DEFENSE

Department of the Air Force

[USAF-2006-0012]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to alter a record system.

SUMMARY: The Department of the Air Force proposes to alter a system of records notice to its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The actions will be effective on September 27, 2006 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Officer, Office of Warfighting Integration and Chief Information Officer, SAF/XCISI, 1800 Air Force Pentagon, Suite 220, Washington, DC 20330-1800.

FOR FURTHER INFORMATION CONTACT: Ms. Novella Hill at (703) 588-7855.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on August 14, 2006, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: August 21, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F071 AF OSI D

SYSTEM NAME:

Investigative Support Records (June 11, 1997, 62 FR 31973).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with "Investigative Information Management System (I2MS)."

SYSTEM LOCATION:

Delete entry and replace with "Headquarters, Air Force Office of Special Investigations (AFOSI), 1535 Command Drive, Andrews AFB, MD 20762-7002."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Any individual involved in, or suspected of being involved in, crimes or acts of terrorism affecting U.S. interests (e.g., property located in or outside of the United States), U.S. nationals, and/or U.S. personnel. Individuals who provide information that is relevant to the investigation, such as victims and witnesses, and individuals who report such crimes or acts. Individuals may include, but are not limited to, active duty, retired or former military personnel; current, retired and former Air Force civilian employees; applicants for enlistment or appointment; Air Force academy cadets, applicants and nominees; dependents of active duty, retired or former military personnel; current and former Armed Forces Exchange employees; union or association personnel; civilian contracting officers and their representatives; employees of the Peace Corps, the State Department, and the American Red Cross; Department of Defense employees and contractors; and foreign nationals residing in the U.S. and abroad."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Reports of investigation, collection reports, statements of individuals, affidavits, correspondence, and other documentation pertaining to criminal collection activities, investigative surveys, technical, forensic, polygraph, and other investigative support to criminal and counterintelligence investigations to include source control documentation and region indices."

Add a second paragraph to read "Data on individuals (victims, witnesses, complainants, offenders, and suspects) involved in incidents may include, but is not limited to, name; digital photograph; Social Security Number; date of birth; place of birth; home address and telephone number; duty/work address and telephone number; alias; race; ethnicity; sex; marital status;

identifying marks (tattoos), scars, etc.); height; weight; eye and hair color; biometric data; date, location, nature and details of the incident/offense to include whether alcohol, drugs and/or weapons were involved; driver's license information; tickets issued; vehicle information; whether bias against any particular group was involved or if offense involved sexual harassment; actions taken by military commanders (e.g., administrative and/or non-judicial measures, to include sanctions imposed); referral action; court-martial results and punishment imposed; confinement information, to include location of correctional facility, gain/cult affiliation if applicable; and release/parole/clemency eligibility dates."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. Chapter 47, Uniform Code of Military Justice, and 8013, Secretary of the Air Force; 18 U.S.C. 922 note, Brady Handgun Violence Prevention Act; 28 U.S.C. 534 note, Uniform Federal Crime Reporting Act; 42 U.S.C. 10601 et seq., Victims Rights and Restitution Act of 1990; and E.O. 9397; DoD Directive 7730.47, Defense Incident Based Reporting System (DIBRS)."

PURPOSE(S):

Delete entry and replace with "To conduct and exercise overall responsibility within the Department of Air Force for all matters pertaining to the investigation of alleged crimes and acts of terrorism committed against U.S. citizens, U.S. property or interest; used in judicial and adjudicative proceedings including litigation or in accordance with a court order; and reporting of statistical data to Department of Defense officials."

To assist (1) AFOSI and other Military commanders in directing and supporting criminal investigative, law enforcement, counterintelligence, and distinguished visitor protection program; (2) in managing the AFOSI criminal and counterintelligence investigative program at the various USAF and U.S. military installations worldwide; (3) USAF and other military commander in identifying areas of possible criminality and in developing and managing the installation law enforcement, include crime prevention, program; (4) in managing the AFOSI source program; (5) in determining if, in fact, possible criminal activity requiring further specialized investigation is occurring in a specific area; (6) USAF and other authorized individuals to request AFOSI investigation; (7) USAF and other military commanders, as well as Department of Justice officials, to

determine if judicial or administrative action is warranted; (8) in joint investigations by AFOSI and Federal, state, or local law enforcement agencies; (9) in joint investigations by AFOSI and foreign law enforcement agencies; (10) in developing and managing the AFOSI Distinguished Visitor Protection Program; (11) in developing and managing the AFOSI Investigative Survey Program for both appropriated and non-appropriated fun activities; (12) in recording technical investigative support provided to other investigative activities; (13) in reporting forensic and polygraph support to other investigative activities; (14) HQ USAF activities in the promotion, reassignment, and similar personnel actions for Air Force personnel only.

To serve as a repository of criminal and non-criminal incidents used to satisfy statutory and regulatory reporting requirements: to provide crime statistics required by the Department of Justice (DoJ) under the Uniform Federal Crime Reporting Act; to provide personal information required by the DoJ under the Brady Handgun Violence Prevention Act; to provide statistical information required by DoD under the Victim's Rights and Restitution Act; to enhance AF's capability to analyze trends and to respond to executive, legislative, and oversight requests for statistical crime data relating to criminal and other high-interest incidents; to provide such data as other federal laws may require."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete second paragraph and replace with "To the United States Citizenship and Immigration Service for purposes of immigration and naturalization investigations."

Delete third paragraph and replace with "To Federal medical and forensic laboratory personnel to assist in making laboratory tests and medical examinations in support of the investigative, judicial, and administrative process."

To the Central Intelligence Agency (CIA), Federal Bureau of Investigation (FBI), and other counterintelligence/intelligence agencies in matters pertaining to hostile intelligence activities and terrorism directed against the U.S., its installations, personnel, and allies."

Delete fourth paragraph and replace with "To the Department of Veterans Affairs for purposes of verifying and settling claims."

Delete fifth paragraph and replace with "To the Department of State and

U.S. embassies overseas for purposes of providing information affecting U.S. diplomatic relations with foreign nations."

Delete sixth paragraph and replace with "To the U.S. Secret Service for purposes of aiding and assisting in the provision of protective services to the President, Vice President, and other designated officials."

Add a new routine to read "To the Department of Justice for criminal reporting purposes as required by the Brady Handgun Violence Prevention Act."

Add a new routine use to read "To courts and state, local, and foreign law enforcement agencies for purpose of criminal or civil investigative or judicial proceedings."

Add a new routine use to read "To victims and witnesses for purposes of complying with the requirements of the Victim and Witness Assistance Program, the Sexual Assault Prevention and Response Program, and the Victims' Rights and Restitution Act of 1990."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Delete entry and replace with "Maintained on computers and computer output products; maintained in file folders, video and audio tape."

RETRIEVABILITY:

Delete entry and replace with "Retrieved by Name, Social Security Number, or Case File Number."

SAFEGUARDS:

Delete entry and replace with "Records are accessed by custodian of the records system and by persons responsible for servicing the records system in performance of their official duties who are properly screened and cleared for need-to-know. Buildings are equipped with alarms, security guards, and/or security-controlled areas accessible only to authorized persons. Electronically and optically stored records are maintained in "fail-safe" system software with password-protected access."

RETENTION AND DISPOSAL:

Delete entry and replace with "Record paper and electronic copies of criminal and counterintelligence investigative cases at HQ AFOSI are retained under the same criteria assigned to the substantive case supported (as determined by Public Law and/or DoD and Air Force records retention rules).

At AFOSI field units, documentation is transferred to HQ AFOSI/XILI and

once receipt is confirmed it is destroyed at the field unit after 90 days for criminal or one year for counterintelligence cases, after command action is reported to HQ AFOSI, or when no longer needed, whichever is sooner.

Source control documentation at HQ AFOSI is destroyed after 25 years. At AFOSI field units, hard copy source documentation is destroyed one year after termination of source use.

Paper copies furnished USAF Commanders are destroyed when all actions are completed and reported to AFOSI or when no longer needed.

At HQ AFOSI, all copies of reciprocal investigations conducted on request of a local, state or federal investigative agency in the US, or host country investigative agencies overseas, are destroyed after one year. Copies retained by AFOSI field units are destroyed after 90 days."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Director of Warfighting Integration, HQ AFOSI/XI, 1535 Command Drive, Andrews AFB, MD 20762-7002."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Chief, Information Release Branch, HQ AFOSI/XILI, ATTN: Freedom of Information/Privacy Act Officer, PO Box 2218, Waldorf, MD 20604-2218, or via e-mail to fileroom@ogn.af.mil."

RECORD ACCESS PROCEDURE:

Delete entry and replace with "Individuals seeking access to information about themselves should address written inquiries to the Chief, Information Release Branch, HQ AFOSI/XILI, ATTN: Freedom of Information/Privacy Act Officer, PO Box 2218, Waldorf, MD 20604-2218, or via e-mail to fileroom@ogn.af.mil."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33-332; 32 CFR part 806b; or may be obtained from the system manager."

RECORD SOURCE CATEGORIES:

Delete entry and replace with "Individuals (suspects, witnesses, victims, informants, DoD personnel and other individuals); DoD record systems; Federal, state, local, and foreign law enforcement agencies; Federal, state,

local and foreign governmental agencies and non-governmental organizations; and other sources that may provide pertinent information relevant to the investigative proceedings."

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F071 AF OSI D

SYSTEM NAME:

Investigative Information Management System (I2MS)

SYSTEM LOCATION:

Headquarters, Air Force Office of Special Investigations (AFOSI), 1535 Command Drive, Andrews AFB, MD 20762-7002.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual involved in, or suspected of being involved in, crimes or acts of terrorism affecting U.S. interests (e.g., property located in or outside of the United States), U.S. nationals, and/or U.S. personnel. Individuals who provide information that is relevant to the investigation, such as victims and witnesses, and individuals who report such crimes or acts. Individuals may include, but are not limited to, active duty, retired or former military personnel; current, retired and former Air Force civilian employees; applicants for enlistment or appointment; Air Force academy cadets, applicants and nominees; dependents of active duty, retired or former military personnel; current and former Armed Forces Exchange employees; union or association personnel; civilian contracting officers and their representatives; employees of the Peace Corps, the State Department, and the American Red Cross; Department of Defense employees and contractors; and foreign nationals residing in the U.S. and abroad.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports of investigation, collection reports, statements of individuals, affidavits, correspondence, and other documentation pertaining to criminal collection activities, investigative surveys, technical, forensic, polygraph, and other investigative support to criminal and counterintelligence investigations to include source control documentation and region indices.

Data on individuals (victims, witnesses, complainants, offenders, and suspects) involved in incidents may include, but is not limited to, name; digital photograph; Social Security Number; date of birth; place of birth; home address and telephone number; duty/work address and telephone number; alias; race; ethnicity; sex;

marital status; identifying marks (tattoos, scars, etc.); height; weight; eye and hair color; biometric data; date, location, nature and details of the incident/offense to include whether alcohol, drugs and/or weapons were involved; driver's license information; tickets issued; vehicle information; whether bias against any particular group was involved or if offense involved sexual harassment; actions taken by military commanders (e.g., administrative and/or non-judicial measures, to include sanctions imposed); referral actions; court-martial results and punishments imposed; confinement information, to include location of correctional faculty, gang/cult affiliation if applicable; and release/parole/clemency eligibility dates.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. Chapter 47, Uniform Code of Military Justice, and 8013, Secretary of the Air Force; 18 U.S.C. 922 note, Brady Handgun Violence Prevention Act; 28 U.S.C. 534 note, Uniform Federal Crime Reporting Act; 42 U.S.C. 10601 *et seq.*, Victims Rights and Restitution Act of 1990; and E.O. 9397; DoD Directive 7730.47, Defense Incident Based Reporting System (DIBRS).

PURPOSE(S):

To conduct and exercise overall responsibility within the Department of Air Force for all matters pertaining to the investigation of alleged crimes and acts of terrorism committed against U.S. citizens, U.S. property or interests; used in judicial and adjudicative proceedings including litigation or in accordance with a court order; and reporting of statistical data to Department of Defense officials.

To assist (1) AFOSI and other military commanders in directing and supporting criminal investigative, law enforcement, counterintelligence, and distinguished visitor protection programs; (2) in managing the AFOSI criminal and counterintelligence investigative program at the various USAF and U.S. military installations worldwide; (3) USAF and other military commanders in identifying areas of possible criminality and in developing and managing the installation law enforcement, to include crime prevention, programs; (4) in managing the AFOSI source program; (5) in determining if, in fact, possible criminal activity requiring further specialized investigation is occurring in a specific area; (6) USAF and other authorized individuals to request AFOSI investigations; (7) USAF and other military commanders, as well as Department of Justice officials, to

determine if judicial or administrative action is warranted; (8) in joint investigations by AFOSI and Federal, state, or local law enforcement agencies; (9) in joint investigations by AFOSI and foreign law enforcement agencies; (10) in developing and managing the AFOSI Distinguished Visitor Protection Program; (11) in developing and managing the AFOSI Investigative Survey Program for both appropriated and non-appropriated fund activities; (12) in recording technical investigative support provided to other investigative activities; (13) in reporting forensic and polygraph support to other investigative activities; (14) HQ USAF activities in the promotion, reassignment, and similar personnel actions for Air Force personnel only.

To serve as a repository of criminal and non-criminal incidents used to satisfy statutory and regulatory reporting requirements: to provide crime statistics required by the Department of Justice (DoJ) under the Uniform Federal Crime Reporting Act; to provide personal information required by the DoJ under the Brady Handgun Violence Prevention Act; to provide statistical information required by DoD under the Victim's Rights and Restitution Act; to enhance AF's capability to analyze trends and to respond to executive, legislative, and oversight requests for statistical crime data relating to criminal and other high-interest incidents; to provide such data as other federal laws may require.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the United States Citizenship and Immigration Service for purposes of immigration and naturalization investigations.

To Federal medical and forensic laboratory personnel to assist in making laboratory tests and medical examinations in support of the investigative, judicial, and administrative process.

To the Central Intelligence Agency (CIA), Federal Bureau of Investigation (FBI), and other counterintelligence/intelligence agencies in matters pertaining to hostile intelligence activities and terrorism directed against the U.S., its installations, personnel, and allies.

To the Department of Veterans Affairs for purposes of verifying and settling claims.

To the Department of State and U.S. embassies overseas for purposes of providing information affecting U.S. diplomatic relations with foreign nations.

To the U.S. Secret Service for purposes of aiding and assisting in the provision of protective services to the President, Vice President, and other designated officials.

To the Department of Justice for criminal reporting purposes as required by the Brady Handgun Violence Prevention Act.

To courts and state, local, and foreign law enforcement agencies for purposes of criminal or civil investigative or judicial proceedings."

To victims and witnesses for purposes of complying with the requirements of the Victim and Witness Assistance Program, the Sexual Assault Prevention and Response Program, and the Victims' Rights and Restitution Act of 1990.

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Maintained on computers and computer output products; maintained in file folders, video and audio tape.

RETRIEVABILITY:

Retrieved by Name, Social Security Number, or Case File Number.

SAFEGUARDS:

Records are accessed by custodian of the records system and by persons responsible for servicing the records system in performance of their official duties who are properly screened and cleared for need-to-know. Buildings are equipped with alarms, security guards, and/or security-controlled areas accessible only to authorized persons. Electronically and optically stored records are maintained in "fail-safe" system software with password-protected access.

RETENTION AND DISPOSAL:

Record paper and electronic copies of criminal and counterintelligence investigative cases at HQ AFOSI are retained under the same criteria assigned to the substantive case supported (as determined by Public Law and/or DoD and Air Force records retention rules).

At AFOSI field units, documentation is transferred to HQ AFOSI/XILI and

once receipt is confirmed it is destroyed at the field unit after 90 days for criminal or one year for counterintelligence cases, after command action is reported to HQ AFOSI, or when no longer needed, whichever is sooner.

Source control documentation at HQ AFOSI is destroyed after 25 years. At AFOSI field units, hard copy source documentation is destroyed one year after termination of source use.

Paper copies furnished USAF Commanders are destroyed all when all actions are completed and reported to AFOSI or when no longer needed.

At HQ AFOSI, all copies of reciprocal investigations conducted on request of a local, state or federal investigative agency in the U.S., or host country investigative agencies overseas, are destroyed after one year. Copies retained by AFOSI field units are destroyed after 90 days.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Warfighting Integration, HQ AFOSI/XI, 1535 Command Drive, Andrews AFB, MD 20762-7002.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Chief, Information Release Branch, HQ AFOSI/XILI, ATTN: Freedom of Information/Privacy Act Officer, P.O. Box 2218, Waldorf, MD 20604-2218-, or via e-mail to fileroom@ogn.af.mil.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves should address written inquiries to the Chief, Information Release Branch, HQ AFOSI/XILI, ATTN: Freedom of Information/Privacy Act Officer, P.O. Box 2218, Waldorf, MD 20604-2218-, or via e-mail to fileroom@ogn.af.mil.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33-332; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individuals (suspects, witnesses, victims, informants, DoD personnel and other individuals); DoD record systems; Federal, state, local, and foreign law enforcement agencies; Federal, state, local and foreign governmental agencies and non-governmental organizations; and other sources that may provide pertinent information relevant to the investigative proceedings.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under 5 U.S.C. 552a(j)(2), as applicable.

An exemption rule for this record system has been promulgated in accordance with 5 U.S.C. 553(b)(1), (2) and (3) and (e) and published in 32 CFR part 806b. For additional information contact the system manager.

[FR Doc. 06-7186 Filed 8-25-06; 8:45 am]

BILLING CODE 5001-06-M

DEPARTMENT OF DEFENSE

Department of the Army

[USA-2006-0030]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Army is proposing to alter a system of records to its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective on September 27, 2006 unless comments are received that would result in a contrary determination.

ADDRESSES: Department of the Army, Freedom of Information/Privacy Division, U.S. Army Records Management and Declassification Agency, ATTN: AHRC-PDD-FPZ, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325-3905.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 428-6503. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on August 14, 2006, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: August 21, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

AAFES 1609.02

SYSTEM NAME:

AAFES Customer Service (May 31, 2002, 67 FR 38070).

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Army and Air Force Exchange Service (AAFES) customers including but not limited to those who make purchases, use the services of the Customer Service Desk, purchase merchandise on a time payment, layaway, or special order basis, or who need purchase adjustments or refunds."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

After AR 60-10, insert "Army Regulation 60-20, Army and Air Force Exchange Service Operation Policies."

PURPOSE(S):

Add at the end of the entry "and, to help detect and prevent criminal activity, and identify potential abuse of exchange privileges."

* * * * *

AAFES 1609.02

SYSTEM NAME:

AAFES Customer Service.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236-1598; Army and Air Force Exchange Service-Europe Region, Building 4001, In der Witz 14-18, 55252 Mainz-Kastel, Germany, APO 09251-4580; and Exchange Regions and Area Exchanges at posts, bases, and satellites worldwide. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Army and Air Force Exchange Service (AAFES) customers including but not limited to those who make purchases, use the services of the Customer Service Desk, purchase merchandise on a time payment, layaway, or special order basis, or who need purchase adjustments or refunds.

From:

Subject: FW: Release of DSAID Disposition Information

Date: Tuesday, August 26, 2014 11:26:36 AM

Sexual Assault Response Coordinator (SARC)

Nellis/Creech Air Force Base

Admin (702) 652-5399

24/7 Response Line (702) 652-7272

<http://www.nellis.af.mil/sapr/>

<http://www.sexualassaultpreventionresponse.af.mil/>

"This e-mail contains FOR OFFICIAL USE ONLY (FOUO) information which must be protected under the Freedom of Information Act (5 U.S.C 552) and/or the Privacy Act of 1974 (5 U.S.C. 552a)."

-----Original Message-----

From:

Sent: Wednesday, August 20, 2014 3:42 AM

To:

Subject: FW: Release of DSAID Disposition Information

Below you will find the info on what you can and cannot release - thought I forwarded this. Sorry.

v/r

ACC Sexual Assault Prevention and Response Program Manager
DSN 575-5973

757-225-5973

Hurts ONE.... Affects ALL!
Preventing Sexual Assault is Everyone's Duty

-----Original Message-----

From:

[\[mailto:\]](#)

Sent: Wednesday, August 06, 2014 3:22 PM

To:

Subject: FW: Release of DSAID Disposition Information

Good afternoon MAJCOM SARCs. As you are all well aware, efforts are underway to gather disposition data for closed sexual assault cases for DSAID. One of the big benefits of SARCs collecting this information is increased visibility on the disposition of these cases. That said, the Privacy Act does limit the release of some of the information outside of your office. This includes giving information to victims. Below are some guidelines on what you may release to victims. If you receive requests for information from another source you should contact your local legal office or public affairs office.

You can release:

- That the case resulted in a court, Article 15, no action or administrative action. Administrative actions generally include things like verbal counseling, letters of counseling, letters of admonishment, letters of reprimand, administrative demotions, and similar actions. If you have questions about this, you should ask your servicing legal office.
- That the accused was discharged
- In the case of a court-martial - anything that was said in court to include the findings (i.e., whether the accused was found guilty or not), the sentence, who testified and what was said during public portions of the trial

You cannot release:

- The punishment for an Article 15 action
- The characterization of a discharge (honorable, general...)
- The specific type of administrative action or the substance of the administrative action (i.e., you can tell a victim that the subject "received an administrative action," but not that the subject received a letter of reprimand for larceny)

Based on the information currently being collected I believe most information will fall within the areas above. If not let me know and I can provide further guidance. If you have any questions you can contact your

local legal office or I am always available to provide advice.

Thanks for your DSAID support

Air Staff Counsel
HQ Air Force Sexual Assault Prevention and Response
1040 Air Force Pentagon, Room 5E960
Washington DC 20330-1040

703-697-0869 (DSN 227)

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

By individual's full name and/or Social Security Number (SSN).

SAFEGUARDS:

Individual users, Air Force report administrators and personnel may only access the system by using reduced sign-on capability available through the Air Force Portal. System is contractor owned and operated and can only access the system by using an individual specific unique User ID and password to access the system for servicing the record system in performance of their official duties. Typical industry standard software/hardware applications/appliances (audit logs, virus detection, intrusion detection, firewalls, encryption of data in transmission) are utilized to protect the system. Data Center where system area network resides has onsite personnel, 24x7; electronic and physical security, video surveillance, man-trap entry, and badge-only access. Student data collected is encrypted.

RETENTION AND DISPOSAL:

Destroy by shredding or burning 4 months after individual retires or separates.

SYSTEM MANAGER(S) AND ADDRESS:

Program Manager, Department of the Air Force, AF Information Technology Electronic-Learning; Cyber Force Training; Air Force Communications Agency (HQ AFCA/CAFT), 203 West Losey Street, Scott Air Force Base, IL 62225-5212.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records may contact the Program Manager, Department of the Air Force, Air Force Information Technology Electronic-

Learning; Cyber Force Training; Air Force Communications Agency (HQ AFCA/CAFT), 203 West Losey Street, Scott Air Force Base, IL 62225-5212.

Written request must include individual's complete name, address, daytime contact telephone number, and signature on request.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system of records may also contact the Program Manager, AF Information Technology Electronic-Learning; Cyber Force Training; Air Force Communications Agency (HQ AFCA/CAFT), 203 West Losey Street, Scott Air Force Base, IL 62225-5212.

Written request must include individual's complete name, address, daytime contact telephone number, and signature on request.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33-332 Privacy Act Program; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from Air Force Portal, Air Force Directory Services, and individually registered users of the system.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8-28935 Filed 12-5-08; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID USAF-2008-0043]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to Alter a System of Records.

SUMMARY: The Department of the Air Force is proposing to alter a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on January 7, 2009 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Officer, Office of Warfighting Integration and Chief Information Officer, SAF/XCPPI, 1800 Air Force Pentagon, Washington, DC 20330-1800.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Brodie at (703) 696-7557.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on November 26, 2008, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: December 2, 2008.

Morgan E. Frazier,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

F051 AF JA F

SYSTEM NAME:

Courts Martial and Article 15 Records (November 23, 2005, 70 FR 70790).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with "Courts-martial and Article 15 Records".

SYSTEM LOCATION:

Delete entry and replace with "Primary Location: The Judge Advocate General, Headquarters United States Air Force, 1420 Air Force Pentagon, Washington, DC 20330-1420.

SECONDARY LOCATIONS:

Headquarters Air Force Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150-4746.

Washington National Records Center, 4205 Suitland Road, Suitland, MD 20746-8001.

Headquarters of Air Force major commands and all levels down to and including Air Force installations. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Individuals subject to the Uniform Code of Military Justice (10 U.S.C. 802, Art. 2. Persons subject)."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Individual's name, Social Security Number (SSN), records of trial by courts-martial; records of Article 15 punishment; discharge proceedings; documents received or prepared in anticipation of administrative nonjudicial and judicial proceedings; witness statements; police reports; other reports and records from local, state, or federal agencies."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 8013, Secretary of the Air Force; 10 U.S.C. 8037, Judge Advocate General; 10 U.S.C. 815, Art. 15 Commanding officer's nonjudicial punishment; 10 U.S.C. 854, Record of Trial; 10 U.S.C. 938, Art. 138. Complaints of wrongs; Air Force Instruction 51-201, Administration of Military Justice; Air Force Instruction 51-202, Law—Nonjudicial Punishment; and E.O. 9397 (SSN)."

PURPOSE(S):

Delete entry and replace with "Records are used to investigate, adjudicate and prosecute adverse action cases, Article 138 complaints, and for other investigations, as necessary. For review by appellate and other authorities; for use for official purposes by Department of Defense personnel. Also used as source documents for collection of statistical information and used to manage cases and case processing."

* * * * *

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Delete entry and replace with "Paper records in file folders and electronic storage media."

RETRIEVABILITY:

Delete entry and replace with "Individual's name, Social Security Number (SSN) or Military Service Number."

SAFEGUARDS:

Delete entry and replace with "Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who

are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software. Computers must be accessed with a password."

RETENTION AND DISPOSAL:

Delete entry and replace with "Courts-martial records are retained in office files for 2 years following date of final action and then retired as permanent.

General and special courts-martial records are retired to the Washington National Records Center, Washington, DC 20409-0002.

Summary courts-martial and Article 15 records are retained in office files for 3 years or until no longer needed, whichever is later, and then retired as permanent.

Summary courts-martial and Article 15 records are forwarded to the Air Force Personnel Center for filing in the individual's permanent master personnel record.

Records received or prepared in anticipation of judicial and non-judicial Uniform Code of Military Justice or discharge proceedings, and data maintained on Judge Advocate's computer storage are maintained until action is final or no longer needed.

Paper records are disposed of by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by deleting, erasing, degaussing, or by overwriting."

* * * * *

F051 AF JA F**SYSTEM NAME:**

Courts-martial and Article 15 Records.

SYSTEM LOCATION:**PRIMARY LOCATION:**

The Judge Advocate General, Headquarters United States Air Force, 1420 Air Force Pentagon, Washington, DC 20330-1420.

SECONDARY LOCATIONS:

Headquarters Air Force Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150-4746.

Washington National Records Center, 4205 Suitland Road, Suitland, MD 20746-8001.

Headquarters of Air Force major commands and all levels down to and including Air Force installations.

Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals subject to the Uniform Code of Military Justice (10 U.S.C. 802, Art. 2. Persons subject).

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number (SSN), records of trial by courts-martial; records of Article 15 punishment; discharge proceedings; documents received or prepared in anticipation of administrative non-judicial and judicial proceedings; witness statements; police reports; other reports and records from local, state, or federal agencies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; 10 U.S.C. 8037, Judge Advocate General; 10 U.S.C. 815, Art. 15 Commanding officer's non judicial punishment; 10 U.S.C. 854, Record of Trial; 10 U.S.C. 938, Art. 138. Complaints of wrongs; Air Force Instruction 51-201, Administration of Military Justice; Air Force Instruction 51-202, Law—Nonjudicial Punishment; and E.O. 9397 (SSN).

PURPOSE(S):

Records are used to investigate, adjudicate and prosecute adverse action cases, Article 138 complaints, and for other investigations, as necessary. For review by appellate and other authorities; for use for official purposes by Department of Defense personnel. Also used as source documents for collection of statistical information and used to manage cases and case processing.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Records from this system may be disclosed to other federal agencies and federal courts for official purposes, to include a determination of rights and entitlements of individuals concerned or the government.

The records may also be disclosed to a governmental board or agency or health care professional society or organization if such record or document is needed to perform licensing or professional standards monitoring; to medical institutions or organizations for official purposes, wherein the individual has applied for or been

granted authority or employment to provide health care services if such record or document is needed to assess the professional qualifications of such member.

To victims and witnesses of a crime for the purposes of providing information consistent with the requirements of the Victim and Witness Assistance Program and the Victims' Rights and Restitution Act of 1990.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

Individual's name, Social Security Number (SSN) or Military Service Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software. Computers must be accessed with a password.

RETENTION AND DISPOSAL:

Courts-martial records are retained in office files for 2 years following date of final action and then retired as permanent.

General and special courts-martial records are retired to the Washington National Records Center, Washington, DC 20409-0002.

Summary courts-martial and Article 15 records are retained in office files for 3 years or until no longer needed, whichever is later, and then retired as permanent.

Summary courts-martial and Article 15 records are forwarded to the Air Force Personnel Center for filing in the individual's permanent master personnel record.

Records received or prepared in anticipation of judicial and non-judicial Uniform Code of Military Justice or discharge proceedings, and data maintained on Judge Advocate's computer storage are maintained until action is final or no longer needed.

Paper records are disposed of by tearing into pieces, shredding, pulping,

macerating or burning. Computer records are destroyed by deleting, erasing, degaussing, or by overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

The Judge Advocate General, Headquarters United States Air Force, 1420 Air Force Pentagon, Washington, DC 20330-1420.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to The Judge Advocate General, Headquarters United States Air Force, 1420 Air Force Pentagon, Washington, DC 20330-1420.

Individuals should provide their full name, Social Security Number (SSN), Unit of assignment, date of trial and type of court, date of discharge action, and date of punishment imposed in the case of Article 15 action may also be necessary, as appropriate.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system of records should address written inquiries to The Judge Advocate General, Headquarters United States Air Force, 1420 Air Force Pentagon, Washington, DC 20330-1420.

Individuals should provide their full name, Social Security Number (SSN), Unit of assignment, date of trial and type of court, date of discharge action, and date of punishment imposed in the case of Article 15 action may also be necessary, as appropriate.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33-332; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information from almost any source can be included if it is relevant and material to the proceedings. These include, but are not limited to witness statements; police reports; reports from local, state, and federal agencies; information submitted by an individual making an Article 138 complaint; Inspector General investigations; and commander directed inquiries.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency that performs as its principal function any activity pertaining to the enforcement of criminal laws from the following

subsections of 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H) and (I), (e)(5), (e)(8), (f), and (g).

Records compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information except to the extent that disclosure would reveal the identify of a confidential source from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f). NOTE: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 806b. For additional information contact the system manager.

[FR Doc. E8-28936 Filed 12-5-08; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN-2008-0063]

Privacy Act of 1974; System of Records

AGENCY: United States Marine Corps, DoD.

ACTION: Notice to Add a System of Records.

SUMMARY: The U.S. Marine Corps is proposing to add a new system of records notice to its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on January 7, 2009 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to Headquarters, U.S. Marine Corps, FOIA/PA Section (ARSF), 2 Navy Annex, Room 3134, Washington, DC 20380-1775.

FOR FURTHER INFORMATION CONTACT: Ms. Tracy Ross at (703) 614-4008.

SUPPLEMENTARY INFORMATION: The U.S. Marine Corps system of records notices



SPECIAL VICTIMS' COUNSEL
AIR FORCE LEGAL OPERATIONS AGENCY
JOINT BASE ANDREWS, MARYLAND

7 Nov 13

MEMORANDUM FOR HQ AFOSI/XILI
Attn: FOIA Section
27130 Telegraph Rd.
Quantico, VA 22134

FROM: [REDACTED]
(through her attorney)
Capt Ryan D. Richter
4349 Duffer Dr., Bldg. 625
Nellis AFB, NV 89191

SUBJECT: Freedom of Information Act Request

1. I am the legal representative of [REDACTED]. I am making the foregoing request for information under the Freedom of Information Act (FOIA) in my official capacity as [REDACTED] Special Victims' Counsel (SVC). I am authorized to make a FOIA request for a client in my official capacity as an SVC under Part B, Section 4 of the *Air Force Special Victims' Counsel Charter*.
2. [REDACTED] requests a copy of the Report of Investigation (ROI) published by Air Force Office of Special Investigations (AFOSI), Detachment 322, concerning a potential sexual assault against her (victim) by [REDACTED] (subject) on or about 7 April 2013. The Special Court-Martial Convening Authority (SPCMA) has already determined that no charges will be brought forward in this case, so release of the ROI to my client has no impact on any pending prosecution. [REDACTED] seeks this document in her personal capacity and not for a commercial use. My client does not seek the release of information protected under the *Privacy Act* or *Health Insurance Portability and Accountability Act* unless it is a record, or other information pertaining to her. My client requests that her information not be unnecessarily redacted from the records she receives.
3. [REDACTED] seeks waiver of the fees for this request because disclosure of the requested information is in the public interest and is not related to a commercial interest. Congress has expressed that there is a public interest in providing information to victims of sexual assaults in their changes to the *Military Rules of Evidence* and *Uniform Code of Military Justice* in recent years. In 2002, *Military Rule of Evidence* 615 was amended by Congress to make it harder for a victim-witness to be excluded from hearing testimony and other evidence in a trial. The purpose of that change was to facilitate a victim-witness's presence at court to witness the justice process and hopefully gain some level of closure from the observation. In 2012, Congress amended Article 54 of the *Uniform Code of Military Justice* to grant victims of sexual assaults a right to a copy of the Record of Trial free of charge when that victim testifies in the case. Again, Congress wished to provide victim-witnesses the ability to better observe and understand the military justice process in hopes of gaining a level of closure from the experience. Providing [REDACTED] a copy of the ROI without fee is in the public interest and should be granted.

4. My client requests that all contacts regarding this FOIA request be made directly to me as her attorney. All responsive documents, comments, or questions can be addressed to me at DSN [REDACTED], commercial [REDACTED], or via email at [REDACTED]. Thank you for your assistance with this request.

RYAN D. RICHTER, Capt, USAF
Special Victims' Counsel

Capt Ryan D. Richter is my detailed special victims' counsel, and I have authorized him to submit this FOIA request on my behalf. I request that all future contacts regarding this request be made only through my attorney.

[REDACTED], [REDACTED] USAF

KIRK, AARON D Capt USAF AFSPC AFLOA/CLSV

From: KIRK, AARON D Capt USAF AFSPC AFLOA/CLSV
Sent: Friday, August 15, 2014 12:02 PM
To: [REDACTED] USAF AFOSI AFOSI/FIR 4/FIS 11
Subject: Official Use Request for Information - OSI
Attachments: Sexual_Assault_Provisions_from_Final_POTUS_Signed_FY14_NDAA.pdf; SVC Charter Version 2.pdf

SA [REDACTED]

I am requesting Civ [REDACTED] address from the ROI on [REDACTED] in order to send him a notice from my client. This information would not be released directly to my client or outside of Air Force channels, apart from the formal legal letter I am sending that would have the address on it.

The notice from my client involves the exercise of her civil legal rights and are part of my role as a Special Victims' Counsel. Specifically, I am seeking this information in order to send a written notice in accordance with my client's rights under 10 USC 1044 and 1044e (attached NDAA provisions - page 17-19 and SVC Charter p.2) - specifically the provision regarding "civil legal matters" and the Air Force's interpretation found in AFI 51-504, which allows the provision of legal assistance on criminal law issues...of any local state when acting as an SVC (see para 1.2.2). In this instance, my client is providing notice to [REDACTED] that she did not consent to any audio / video recordings that may have been taken in conjunction with the investigated assault and the transfer or publication of those materials, if still in his possession, would be in violation of Texas criminal law and may open him up to additional civil remedies.

Since my client would NOT be provided the address, I would be the one sending the letter on behalf of my client in my official role as her SVC. If I am unable to obtain the address, my client will otherwise be without recourse to put [REDACTED] on notice that if he transfers / publishes the illicit material that it would be criminal to do so.

If you have any further questions or concerns about this request please do not hesitate to contact me.

V/R

Capt Kirk

AARON D. KIRK, Capt, USAF
Special Victims' Counsel
JBSA Lackland, TX 78236
Office: (210) 671 -4740 (DSN 473)
Cell: (202) 360-5487

-----Original Message-----

From: [REDACTED] USAF AETC 502 ISG/JA
Sent: Tuesday, July 01, 2014 9:09 AM
To: KIRK, AARON D Capt USAF AFSPC AFLOA/CLSV
Cc: [REDACTED] USAF AETC 502 ISG/SJA
Subject: RE: SSgt Binger's Concerns

Capt Kirk,

We will not release the specification for the [REDACTED] NJP.

Additionally, we are not the OPR for the ROI release for [REDACTED]. Please contact OSI/JA.

[REDACTED]

PROCESSING SPECIAL VICTIMS' COUNSEL (SVC) REQUESTS FOR RECORDS UNDER A FOIA/PA RULES

This paper discusses the Freedom of Information Act (FOIA) and Privacy Act (PA) rules to apply concerning SVC/victim requests for records made in the course of the SVCs official duties. *See DODI 1030.2, Victim and Witness Assistance Procedures*, June 4, 2004, and AFI 51-201, *Administration of Military Justice*.

Many SVC/victim requests for records are made for Military Justice records (AF Forms 3070, non-judicial punishment actions; Article 32 reports; records of trial, etc.) and OSI records (1168 statements, OSI records of investigation) that are considered PA under three PA System of Records Notices (SORNs): F051 AFJA I, *Military Justice and Magistrate Court Records* (July 22, 2010, 75 FR 42720); F071 AF OSI D, *Investigative Information Management System* (August 22, 2006, 71 FR 50894); and F071 AF OSI C, *Criminal Records* (June 11, 1997, 62 FR 31793).

AF/JAA has previously advised that record OPRs receiving requests for records from an SVC/victim should process the request as a functional/official use request outside the formal FOIA process. Doing so is the appropriate and more expeditious way to process an SVC/victim request for records, or a victim's request for records that does not specifically cite the FOIA, and is otherwise not released to the SVC/victim under the PA's (b)(1) exception paragraph or (b)(3) routine use provision. *See DoD 5400.7-R_AFMAN 33-302*, paragraph C1.3.1.2 (discussing the application of a FOIA analysis when processing request for records made outside the FOIA process). Further, since an SVC is unable to personally sue the Air Force in court for non-release of requested records under the formal FOIA process - which is the end result of the formal FOIA process - it makes little sense to force such a request into the formal FOIA process. However, since application of the PA (b)(1) exception or (b)(3) routine use provision is discretionary, and SVC/victim record requests can also seek non-PA records, this paper also discusses the analysis to apply under the FOIA exemptions.

THE PA ANALYSIS

THE PA (b)(1) EXCEPTION: ALLOWS FOR DISCLOSURE OF APPLICABLE PA RECORDS TO OFFICERS AND EMPLOYEES AS NECESSARY FOR USE IN THE PERFORMANCE OF THEIR DUTIES

Paragraph 1 of subsection b of the PA allows for applicable PA records to be released to DoD employees. *See 5 U.S.C. § 552a(b)(1)*. Specifically, the (b)(1) exception states that records from a PA SORN may be disclosed to "those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties." DoD 5400.11-R, *Department of Defense Privacy Program*, paragraph C4.2.1, sets forth a three part test that must be met before a record from a PA SORN is provided to a DoD employee under the (b)(1) exception. If this three part test is met, the PA will not be a bar to providing appropriate records from these two PA SORNs to SVCs:

(1) The DoD employee has a need for the record in the performance of his or her assigned duties;

(2) the intended use of the record [by the requester] generally relates to the purpose for which the record is maintained; and

(3) only those records as are minimally required to accomplish the intended use are disclosed (Note – #3 is essentially a relevancy test, with any applicable FOIA exemption analysis applied. The records OPR can redact unnecessary/irrelevant information contained in the records otherwise provided. And, once the intended use is completed, the records OPR can require any copies that were provided to the SVC be returned or destroyed).

SVC's requesting PA records covered by the Military Justice SORN and AFOSI SORNs can meet this test and properly be provided requested PA records when the request is made in the context of performing their assigned duties during the investigative or Article 15/courts-martial/or other Air Force disciplinary process (i.e., the purpose for which the records were created/compiled by the Air Force is similar to the SVC's intended use in the performance of their assigned duties). AFI 51-201, paragraph 7.24, further states that "[w]hen analyzing PA exceptions, consider the Air Force's interest in fostering cooperation of victims and witnesses in the instant case, whether the accused has made any disclosures about the action or disposition that would diminish his/her expectation of privacy, and other relevant factors."

However, even if the three part test for a (b)(1) disclosure to an SVC is met, the record OPR can choose not to provide the PA record to the other DoD/AF official requesting the record. This usually does not happen, and AF/JAA does not advise that records be denied if the requirements of the provision (or the (b)(3) routine use provision as to victims, discussed below) are met. But, if records are denied under the PA (b)(1) exception or (b)(3) routine use provision, or denied applying a FOIA analysis for those requests processed outside the formal FOIA process, the remedy for the DoD/AF employee record requester, such as an SVC, is to elevate their concern up the chain of command.

The PA (b)(3) ESTABLISHED ROUTINE USE PROVISION FOR VICTIM RECORD REQUESTS FOR APPLICABLE PA RECORDS

The established routine use for the Military Justice SORN, IAW 5 U.S.C. § 552a(b)(3), states that "documents may be released "to victims...for the purposes of providing information consistent with the requirements of the Victim and Witness Assistance program, the Victims' Rights and Restitution Act of 1990, and other laws and regulations governing the providing of information to victims." This routine use is narrower than the PA's (b)(1) exception, but can be interpreted and applied more expansively (or strictly) as related policies and laws change and develop.

The established routine use for the AFOSI SORN, *Investigative Information Management System*, IAW 5 U.S.C. § 552a(b)(3), states that documents may be released outside the DoD "[t]o victims ... [only] for the purposes of complying with the requirements of the Victim and Witness Assistance Program, the Sexual Assault Prevention and Response Program, and the Victims' Rights and Restitution Act of 1990." This routine use is also narrower than the PA's (b)(1) exception, but can be interpreted and applied more expansively (or strictly) as related policies and laws change and develop.

As with release under the (b)(1) exception, DoD 5400.11-R, paragraph C4.2.3.1., provides guidance as to when a record may be released under an established routine use. However, as noted above, a record OPR is not required to release records to a requester who meets the (b)(1) exception requirements or a (b)(3) routine use provision.

Accordingly, SVC/victim requests for non-PA records or for PA records that are not released under the above PA provisions should be released after applying a FOIA analysis. We now turn to a discussion of the FOIA analysis.

THE FOIA ANALYSIS

DoDI 1030.2, *Victim and Witness Assistance Procedures*, June 4, 2004, states that except for information that is releasable under paragraph 6.2 and subparagraph 6.3.1 of that Instruction, “requests for information relating to the investigation and prosecution of a crime (e.g., investigative reports and related documents) from a victim or witness shall be processed in accordance with DoD 5400.7-R.” DoD 5400.7-R_AFMAN 33-302, *Freedom of Information Act Program*, governs requests for Air Force records pursuant to the formal Freedom of Information Act (FOIA) process, or that are made outside the formal FOIA process, but in accordance with FOIA exemption release rules. See DoD 5400.7-R_AFMAN 33-302, paragraph C1.3.1.2.

Likewise, AFI 51-201, *Administration of Military Justice*, requires a proper analysis under the FOIA and PA concerning the release of certain information to the victim and other third parties, unless release is specifically authorized to a victim as a matter of policy as set forth in the AFI (or, as noted, allowed under the PA (b)(1) exception paragraph or a (b)(3) routine use). See the following paragraphs of AFI 51-201:

Paragraph 3.7.2 (“trial counsel should distinguish between rules pertaining to discovery and rules pertaining to the release of information to a third party (such as the Freedom of Information Act or Privacy Act);

Paragraphs 9.7.1.1 and 9.7.1.2 (“*Note: Ensure all records provided to the victim are redacted in accordance with the Freedom of Information Act and the Privacy Act*”) (emphasis in original);

Paragraph 13.5, (concerning release of information to the public states: “The release of information relating to a criminal proceeding is subject to the Air Force Rules of Professional Conduct, the Air Force Standards for Criminal Justice, implementing directives, security requirements, judicial orders protecting information, and applicable laws such as the Privacy Act, the Freedom of Information Act (FOIA), and the Victim and Witness Protection Act”); Paragraph 13.7 (“The disclosure authority for such documents and records is the OPR for those records under the provisions of the, AFI 33-332, *Privacy Act Program*, and/or DoD 5400.7-R_AFMAN 33-302, *DoD Freedom of Information Act (FOIA) Program*”);

Paragraph 13.7.1 (“The court-martial record of trial is subject to release determination under the Privacy Act and Freedom of Information Act”);

Paragraph 13.7.2 (“All other documents or records, including documents which will become part of a record of trial, and including those which are attached to the court-martial record of trial but not made a part of the record of trial under the provisions of RCM 1103 (for example, an Article 32 report and its attachments) are also subject to release determination under the Privacy Act and Freedom of Information Act”).

NOTE: An agency cannot justify withholding an entire document under the FOIA or a FOIA analysis simply because it contains some exempt material. Non-exempt material must be released after the exempt material is redacted. *Mead Data Cent., Inc. v. Dep’t of the Air Force*, 566 F.2d 242, 260 (D.C. Cir. 1977). The FOIA was passed in 1966 to require the Government to release information/records when requested, unless a specific exemption or exemptions applied to withholding information contained in the requested record.

THE FOIA EXEMPTIONS

The Department of Justice (DOJ) FOIA Guide @ <http://www.justice.gov/oip/foia-guide.html> has a good discussion of the applicability and scope of each FOIA exemption. The electronic Guide is kept updated year to year. Note: If the link under the exemption number does not work, try clicking on the next link underneath the discussion of that exemption number. For instance, for 7(A), click on the “Introduction” link.

Exemption 1 protects information that is properly and currently classified under an Executive Order (the current primary EO for classified information is EO13526).

Exemption 2 protects internal personnel rules and practices of an Agency.

Exemption 3 protects information specifically withheld from release to the public under another federal statute.

Exemption 4 protects trade secrets and confidential commercial or financial information of a company or individual.

Exemption 5 protects the same privileged information that could be – but does not have to be – withheld from a party opponent engaged in civil litigation against the federal agency. The three most commonly asserted civil litigation privileges under the FOIA are the pre-decisional, deliberative process privilege; the attorney-client privilege; and the attorney work product privilege. Although use of this exemption by an Agency is discretionary, the Air Force does not release attorney client privileged/work product privileged information unless waived by the Air Force/client.

Exemption 6 protects information that, if released, would constitute a clearly unwarranted invasion of a person’s privacy, after balancing the privacy interest of the individual against the public interest in the information requested. NOTE: This Exemption does not “implement the Privacy Act.” The PA was passed eight years after the FOIA and the creation of this exemption.

Exemption 6 and its counterpart Exemption 7(C) are broader than the PA. It protects all protectable personal information contained in non-PA records too.

Exemption 7 protects information created or compiled for a law enforcement purpose. *See* discussion at <http://www.justice.gov/oip/foia-guide14/exemption7.pdf>. There are six subparts to this exemption: 7(A), (B), (C), (D), (E) and (F).

Exemption 8 protects matters that are contained or related to the examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions. Exemption 9 protects geological and geophysical information and data.

SVCs/victims do not commonly make requests for classified records; or records that meet the withholding criteria of exemptions 2, 3, 4, 8 and 9. Further, the use of Exemption 5 by the Air Force, except for attorney-client/attorney work-product privileged information unless waived by the Air Force, is discretionary.

Accordingly, we will address in detail the use of Exemption 7. The records to which this exemption may apply include records concerning the investigation of a person for alleged misconduct; background investigations, disciplinary/courts-martial documents, etc.

Exemption 7(A) pertains to records created or compiled for a law enforcement purpose if release “could reasonably be expected to interfere with enforcement proceedings” [pending or prospective]. The use of this exemption is temporal, that is it can apply only during the course of the law enforcement proceeding. *See* discussion at DOJ FOIA Guide, http://www.justice.gov/oip/foia_guide09/exemption-7A-2009.pdf.

7(A) is less likely to apply after prefferal of charges, after referral (less likely), or after the Article 32 hearing (even less likely). In other words, the further down the disciplinary/courts-martial process, the less likely this exemption will apply. And, after the disciplinary action itself – even if there is an appeal avenue such as post-courts-martial conviction – this exemption subpart is unlikely to apply.

Exemption 7(B) pertains to records created or compiled for a law enforcement purpose if release “would deprive an individual of the right to a fair trial or impartial adjudication.”

This exemption is rarely used because it is difficult to meet. For instance, the DOJ FOIA Guide devotes only two pages to a discussion of this subpart, as opposed to devoting 39 pages to a discussion of subpart 7(C). *See* discussion at <http://www.justice.gov/oip/foia-guide14/exemption7b.pdf>. This is so because in order for this exemption to apply, release of the requested information must actually “deprive” an individual of any right to a fair trial or impartial adjudication. Use of this exemption is also temporal.

Exemption 7(C) pertains to records created or compiled for a law enforcement purpose if release “could reasonably be expected to constitute unwarranted invasion of [an individual’s] privacy.”

This Exemption 7 subpart is the most applicable exemption that supports withholding information or records created/compiled for a law enforcement purpose. *See* <http://www.justice.gov/oip/foia-guide13/exemption7c.pdf>. Review of the FOIA Guide materials addressing Exemption 6, <http://www.justice.gov/oip/foia-guide14/exemption6.pdf>, will also be helpful because the interests involved are similar, although the two Exemptions are somewhat differently applied.

When reviewing records created/compiled for a law enforcement purpose to an SVC or victim, the release of personal information concerning the victim to the SVC/victim is not an issue. Accordingly, the required balancing test under 7(C) is only applicable to assess the privacy interest of the accused/subject and third parties other than the victim, such as witnesses named in the documents.

The privacy interest of the subject/accused will primarily be the privacy interest that supports withholding records or information requested by an SVC or victim, unless the public interest in release outweighs the privacy interest. Usually, the privacy interest of witnesses and other personnel named in requested documents can be properly protected by redacting their name, duty title and other identifying personal information (PII).

For example, the privacy interest of the accused/subject in release of investigative and associated court-martial records is greatest at the start of an investigation. The accused's privacy interest begins to diminish as the accused moves through the process of, for example, preferral of charges, an Article 32 hearing, referral of charges, the posting of the courts-martial trial date on the Air Force website, the court-martial itself, etc. Each of these stages increases the public interest/exposure of the charges/allegations against the accused to the public.

The fact a request for records is being made by the SVC or the victim is an important factor to consider in balancing the privacy interest (of the accused/subject) against the public interest. This is so because Congress and the DoD have created statutes and rules that have put an accused/subject on notice that when it comes to the victim, the victim will be entitled to more information about the accused/subject's conduct toward the victim than other third party requesters, such as "Joe Q" citizen. Accordingly, the accused/subject's reasonable expectation of privacy vis-à-vis the production of records to the victim/SVC during the investigatory/discipline/courts-martial process is diminished, while the public interest in release of requested records to the SVC/victim in such situations is increased. For example, the attached document lists information noted in DODI 1030.2 and AFI 51-201 that must be provided to a victim. To the extent the information is also contained in a record specifically requested by the SVC/victim, the record would also be releasable. **NOTE:** DODI 1030.2 has been sent to the Air Force and other Services for revision/update, with a suspense date of July 11th. Revisions may provide further specific release authority to SVCs/victims.

Other factors applicable to the balancing test analysis include the rank/grade of the accused/subject; seriousness of the charges; publicity, etc.

Exemption 7(D) pertains to records created or compiled for a law enforcement purpose if release “could reasonably be expected to disclose the identity of a confidential source.” See DOJ FOIA Guide, <http://www.justice.gov/oip/foia-guide13/exemption-7d.pdf>.

Exemption 7(E) pertains to records created or compiled for a law enforcement purpose if release “would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.” See <http://www.justice.gov/oip/foia-guide13/exemption7e.pdf>.

Exemption 7(F) pertains to records created or compiled for a law enforcement purpose if release “could reasonably be expected to endanger the life or physical safety of any individual.” See DOJ FOIA Guide, <http://www.justice.gov/oip/foia-guide13/exemption7-f.pdf>.

Two other provisions of the FOIA (not exemptions) permit withholding of records under a FOIA analysis. 5 U.S. C. § 552(c)(1) allows an Agency to treat requested records as not subject to release under the FOIA if an investigation or proceeding involving a possible violation of criminal law is ongoing; and there is reason to believe the subject is not aware of the proceeding (and we do not want him at the time to be aware); and disclosure of the existence of records could reasonably be expected to interfere with enforcement proceedings. Use of this provision is temporal – the ability to use the provision ceases when the proceeding ends. This provision is usually most applicable at the start of an investigation, prior to the time investigators would normally inform the subject of the proceeding/investigation, or the subject would otherwise reasonably know of the proceeding/investigation. See DOJ FOIA Guide, <http://www.justice.gov/oip/foia-guide13/exclusions.pdf#p3>.

5 U.S.C. § 552(c)(2) allows a criminal law enforcement agency to entirely exclude records from the FOIA process when necessary to avoid divulging the existence of a confidential source relationship. Specifically, this provision states “Whenever an informant record maintained by a criminal law enforcement agency under an informant’s name or personal identifier are requested by a third party according to the informant’s name or personal identifier, the agency may treat the records as not subject to the requirements [of the FOIA] unless the informant’s status as an informant has been official confirmed.” See DOJ FOIA Guide, <http://www.justice.gov/oip/foia-guide13/exclusions.pdf#p7>.

This provision is not commonly invoked as the determination has to be made that release of the informant record itself, even if redacted, would confirm that a person is a confidential informant (which could be the case if the records were requested by the requester using the informant’s name or other personal identifier. In that case, even if the Air Force could remove all PII of the informant, the requester would still know the records are associated with the informant named by the requester in his request.

CONCLUSION

Requests from SVCs/victims 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 PA 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 the Military Justice and AFOSI PA SORNs may be releasable to an SVC under the Privacy Act's (b)(1) exception. In the absence of release under that exception, or to the SVC/victim under the PA (b)(3) routine use provision, release is governed under FOIA release principles. SVC requests for records should be directly responded to by the OPR for the record.

Additional guidance on applying the FOIA/PA analysis to a request for records can be found in the FOIA, Privacy Act, DOJ FOIA Guide, DoD 5400.7-R_AFMAN 33-302; Office and Management and Budget Guidance concerning the PA, as well as information on AF/JAA's Information Access Law site at <https://aflsa.jag.af.mil/AF/lynx/jaa/>.

AF/JAA also provides weekly FOIA DCO training at 1200hrs every Wednesday, unless otherwise noted in TJAG's Online News Service. Mr. Mike McIntyre, AF/JAA, is also available to provide individual organizational/office FOIA training via DCO, or in person.

Attachment: DODI 1030.2 and AFI 51-201 Victim Information Disclosures



**SPECIAL VICTIMS' COUNSEL
AIR FORCE LEGAL OPERATIONS AGENCY
JOINT BASE ANDREWS, MARYLAND**

30 September 2014

MEMORANDUM FOR 10 IS/CC
633 ABW/JA
AFOSI
ADC
SARC

FROM: [REDACTED]

SUBJECT: Notice of Representation – [REDACTED]

1. This notice is to inform you that I currently represent, and have an attorney-client relationship with [REDACTED]. If any judge advocate, defense counsel, investigating officer, commander, AFOSI special agent, government agent, military authority or other person wishes to question my client, I request that individual contact me first to discuss the general nature of the questions to be asked.
2. My client requests that all further contact (including if any party desires to interview or question her) related to the investigation and/or prosecution of her reported sexual assault be made through counsel.
3. My client hereby invokes her rights and privileges under Military Rules of Evidence, 412, 513 and 514 to the fullest extent under the law. If you deem it necessary to obtain any privileged information, please contact me to discuss the matter.
4. As applicable, please provide me copies of any investigative reports, witness statements, pleadings, or other documents relevant to my client's meaningful exercise of her rights as a federal crime victim and under the Uniform Code of Military Justice. These rights include, but are not limited to, the right to be protected from the offender, the right to be notified of court-proceedings, the right to be present at all court proceedings absent a court order, the right to confer with government counsel to include the right to be consulted regarding any decision to pursue or not pursue charges against the offender, and the right to be provided information about any conviction, sentence, imprisonment, and release of the offender.
5. If you have any questions or concerns, please contact me at [REDACTED] or via email at [REDACTED]

[REDACTED]
[REDACTED] Capt, USAF
Special Victims' Counsel

**DEPARTMENT OF THE AIR FORCE
UNITED STATES AIR FORCE TRIAL JUDICIARY**

UNITED STATES

v.

[REDACTED]

)
)
) **SPECIAL VICTIMS' COUNSEL**
) **NOTICE OF APPEARANCE**
)
)
) **30 May 2014**
)

COMES NOW the undersigned counsel on behalf of [REDACTED] and submits the following notice of appearance.

1. [REDACTED], formerly [REDACTED], is the named victim in the Specifications of the Charges referred to the above-captioned Court-Martial. I was detailed to represent [REDACTED] in the course of my duties as an Air Force Special Victims' Counsel and maintain an attorney-client relationship with [REDACTED] on that basis.
2. Pursuant to MRE 412(c)(1)(B) and (c)(2), [REDACTED] asserts her rights to notice and to be heard with respect to any attempts to offer evidence under the purview of MRE 412.
3. Pursuant to MREs 513(a) and 514(a), [REDACTED] asserts her privileges with respect to any matters within the scope of those privileges.
4. I respectfully request the Court direct the parties to provide me with copies of any motions and accompanying papers filed pertaining to MREs 412, 513, 514, or 615 in which [REDACTED] is the subject of the motion in order to permit her exercise her rights under the Rules.
5. Pursuant to Article 6b(a)(3), UCMJ, and MRE 615, [REDACTED] reserves the right to be present throughout the court-martial.

Respectfully submitted,

//swd-signed//
SETH W. DILWORTH, Capt, USAF
Special Victims' Counsel

DEPARTMENT OF THE AIR FORCE
UNITED STATES AIR FORCE TRIAL JUDICIARY

UNITED STATES

v.

████████████████████
████████████████████
JBSA-Fort Sam Houston, TX

)
)
) NOTICE OF APPEARANCE
) SPECIAL VICTIMS' COUNSEL
)
) 24 July 2014
)
)

COMES NOW Capt Aaron Kirk, COUNSEL FOR ██████████, and submits the following notice of appearance.

1. ██████████ submitted a request for Special Victims' Counsel in accordance with 10 U.S.C. §§ 1044 and 1565b, as implemented by AFGM1 to AFI 51-504, *Legal Assistance, Notary, and Preventive Law Programs*.
2. On 8 May 2014, Col Dawn Hankins, Chief, Special Victims' Counsel Program, detailed me to represent ██████████ and I entered into an attorney-client relationship with ██████████ on 9 May 2014.
3. ██████████ is a victim in this case. I respectfully request that your honor directs the parties in this case to provide me with informational copies of motions or accompanying papers filed pertaining to issues arising under MREs 412, 513, 514, and 615 and Article 6b of the Uniform Code of Military Justice in which ██████████ or her rights as a victim under the UCMJ are implicated or the subject of the motion.
4. ██████████ and I reserve the right to be present throughout the court-martial, with the exception of closed proceedings that do not involve ██████████.
5. ██████████ has limited participant standing in this court-martial and she reserves the right to make factual statements and legal arguments herself or through counsel.

Respectfully submitted,



AARON D. KIRK, Capt, USAF
Special Victims' Counsel

Headquarters U.S. Air Force

Integrity - Service - Excellence

Privacy Act & Freedom of Information Act



**Mr. Mike McIntyre, AF/JAA
703-695-6002**

U.S. AIR FORCE



Privacy Act (PA) System of Records Notices (SORNs)

U.S. AIR FORCE

- **Special Victims' Counsel/victims commonly make requests for records associated with three PA SORNs:**
 - **F051 AFJA I, *Military Justice and Magistrate Courts***
 - **F071 AF OSI D, *Investigative Information Management System***
 - **F071 AF OSI C, *Criminal Records***

- ***<http://dpclo.defense.gov/Privacy/DODComponentArticleList/tabid/6799/Category/277/departments-of-the-air-force.aspx>***



- **Records from these SORNs may be disclosed by the Air Force to other DoD employees under the PA's (b)(1) exception (i.e., no consent from first party PA individual required):**
 - **...those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties**



- **DoD 5400.11-R, Department of Defense Privacy Program, paragraph C4.2.1, sets forth a three-part test before a requested PA record can be provided to another DoD employee by the record OPR:**
 - **(1) The DoD employee has a need for the record in the performance of his or her assigned duties**
 - **(2) The intended use of the record [by the requester] generally relates to the purpose for which the record is maintained; and**
 - **(3) only those records as are minimally required to accomplish the intended use are disclosed (#3 is essentially a relevancy test)**



- **The (b)(1) exception does not require the record OPR to release the requested record to the DoD employee, but if the record OPR does, restrictions on its further dissemination can be imposed.**

- **SVCs who do not receive requested PA records under the PA (b)(1) exception, or who make requests for non-PA records, should have their requests analyzed applying the FOIA exemptions, primarily FOIA exemption (b)(7)(C)**

- **See DoDI 1030.2, Victim and Witness Assistance Procedures & AFI 51-201, Administration of Military Justice**
 - **Lists information victims must be provided**



Exemption 7

Created or compiled for a law enforcement purpose

- **7(A) “could reasonably be expected to interfere with enforcement proceedings” [pending or prospective]**
- **7(B) “would deprive an individual of the right to a fair trial or impartial adjudication”**
- **7(C) “could reasonably be expected to constitute an unwarranted invasion of privacy”**
- **7(D) “could reasonably be expected to disclose the identity of a confidential source ...”**
- **7(E) “would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law**
- **7(F) “could reasonably be expected to endanger the life or physical safety of any individual”**



Exemption 7 threshold

U.S. AIR FORCE

- **Withholds appropriate information contained in a record created or compiled for a law enforcement purpose**
- **What is considered a record compiled or created for a law enforcement purpose is very broad: criminal and civil investigations of misconduct against an individual; background security investigations; etc**
 - **Compiled: records not initially created for a law enforcement purpose can become part of such a record (such as one of its attachments). In that case, the otherwise non-law enforcement created record is treated as a record compiled for a law enforcement purpose *WHEN* it is otherwise *associated* with the underlying report that is a record created for a law enforcement purpose**
 - **Example: medical records**



U.S. AIR FORCE

Exemption 7

- **No *per se* rule on withholding or releasing records compiled for a law enforcement purpose when requested**

- **Generally speaking, a First Party (who the record is about) will get more information when requested under the FOIA than a Third Party (everyone else)**
 - **See Dept of Justice narrative discussion of what is considered a record compiled or created for a law enforcement purpose @ http://www.justice.gov/oip/foia_guide09/exemption7.pdf, pages 491-521**



Exemption 7(A)

- **Narrative discussion on pages 523-558 of DOJ FOIA Guide very helpful**

- **Two part test:**
 - **Whether law enforcement proceeding is pending or contemplated**
 - **Whether release of information about it could reasonably be expected to cause some articulable harm**

- **Temporal**



Exemption 7(B)

- **Release would “deprive” a person of a right to a fair trial or an impartial adjudication**
 - **No balancing test, but...**

- **Rarely used. See pages 559-560 of DOJ FOIA Guide for narrative discussion. There is only one page of discussion of this exemption for a reason.... Rarely used because test very difficult to meet**



- **Read narrative portion of pages 561-601 of DOJ FOIA Guide**

- **Release “could reasonably be expected to constitute an unwarranted invasion of personal privacy”**
 - **Conduct the privacy interest v. public interest balancing test**



7(C) - *The Balancing Test*

U.S. AIR FORCE

- Many factors can/are considered when conducting the balancing test with respect to the release of a person's personal info or info about himself (usually concerning alleged misconduct investigations):
- Rank/Grade of person
- For misconduct reports, were allegations substantiated?
- Seriousness of misconduct. Disciplined?
- Whether the information is about an AF wide policy
- Whether information sought is related to an employee's job function, or, rather, is of a personal nature
- Is the person whose records are requested considered a public figure
- Role of individual in publicly providing the requested information
 - Did he go to the public first?



The Balancing Test con't

U.S. AIR FORCE

- **The current general public knowledge in the underlying facts and circumstances concerning the records requested**
 - **Pre or post-trial conviction?**
- **Personal sensitivity of information requested**
- **How long ago in the past the underlying info/conduct occurred**
- **The individual's role in making public the underlying nature of the subject matter**
- **How the requested information affects the public**
- **Courts have generally held that the public interest in learning of a government employee's official conduct or misconduct “increases as one moves up an agency's hierarchical ladder“**
- **When all is reviewed, would release constitute an unwarranted invasion of an individual’s privacy? If yes, withhold. If no, release**



U.S. AIR FORCE

Exemption 7(C) con't.

- **There may be privacy interests in old information that once was public – the practical obscurity standard**
- **The identity of the requester is usually not considered in determining *what should* be released**
- **Should not consider the purpose(s) for which the request is being made**
 - **If the requester wants to use the records to have a bonfire, that fact has nothing to do with a release decision**



Exemption 7(D)

- Pages 603-635 of DOJ FOIA Guide (no balancing test/harm)

- Release could reasonably be expected to disclose the *identity* of a confidential source, to include a state, local, foreign agency or private institution confidential source. *AND also*, “in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, *information furnished by a confidential source.*”

- IDENTITY of source
 - Except for valid law enforcement purposes
 - Can be much more than just the “name” of the source – see pages 625, 626 of DOJ Guide

 - Express confidentiality or under circumstances from which such an assurance could be reasonably inferred
 - Underlying Agency Office/official must be authorized to ensure confidentiality



U.S. AIR FORCE

7(D) con't

- **Confidential Source INFORMATION (pages 627-631 of DOJ FOIA Guide)**

- **Waiver (Pages 631-635)**



Exemption 7(E)

- Pages 637-651 of DOJ FOIA Guide

- Can withhold if release “would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.”

- No balancing test
 - Courts have disagreement as to whether harm must be found when techniques and procedures involved, but in general agreement that technique or procedure must not be well known to public to allow for withholding

 - Remember that Air Force [public] Instructions are filled with guidelines, techniques and procedures....



Exemption 7(F)

- **Release “could reasonably be expected to endanger the life or physical safety of any individual”**
- **No balancing test**
- **See pages 653-658 of DOJ FOIA Guide**
 - **Can protect the names and identifying information of non-law enforcement federal employees and other third persons in connection with particular law enforcement matters**
 - **But, most likely appropriate to use in conjunction with 7(C) concerning the protection of U.S. military/civilian government personnel.**
 - **Post-court testimony; after retirement, etc**



Special Exclusions

- **Under 5 U.S.C. § 552(c)(2), a criminal law enforcement agency can entirely exclude records from the FOIA process when necessary to avoid divulging the existence of a confidential source relationship. Specifically, that section states:**
 - **Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements [of the FOIA] unless the informant's status as an informant has been officially confirmed**



Special Exclusions con't

U.S. AIR FORCE

- **5 U.S.C. § 552(c)(1), an Agency may treat records as not subject to the FOIA if an investigation or proceeding involving a possible violation of criminal law is ongoing; and there is reason to believe the subject is not aware of the proceeding; and disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings**
- **This can only be done only during such time as these circumstances continue/exist**



U.S. AIR FORCE

FOIA

Questions?

O'Brien, Michael E CAPT USAF AF-JA (US)

From: [REDACTED]
Sent: Thursday, November 14, 2013 3:22 PM
To: OBrien, Michael E Capt USAF ACC AFLOA/SVC
Cc: [REDACTED]
Subject: RE: Follow up: Request for Information in the [REDACTED] Case
Categories: On Behalf of

Capt O'Brien,

In accordance with what I told you previously in and with the guidance you've provided, the command took appropriate administrative action in this case. I'm afraid I'm not authorized to release any additional information.

v/r,

[REDACTED]
Assistant Staff Judge Advocate
Minot Air Force Base
DSN 453-4152, Comm (701) 723-4152

This message may contain information protected from disclosure by the attorney-client and/or attorney work product privileges or by other applicable laws, regulations or orders. Do not disseminate without approval. If you have received this message in error, please notify the sender by reply e-mail and delete all copies of this message. This message may also contain Privacy Act information. Under the Privacy Act of 1974, you must safeguard all pertinent information reflected on this e-mail and, if applicable, all attachments. Disclosure of information is IAW AFI 33-119, AFI 33-127, AFI 33-129, DoDR 5400.7 AF Supp and AFI 33-332.

-----Original Message-----

From: OBrien, Michael E Capt USAF ACC AFLOA/SVC
[mailto:michael.obrien@offutt.af.mil]
Sent: Thursday, November 14, 2013 2:27 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: Follow up: Request for Information in the [REDACTED] Case

Capt [REDACTED]

I'd like to follow up with you regarding the status of the case involving my client, A1C [REDACTED]), in the matter with the Subject/Accused, A1C [REDACTED] [REDACTED]. On 9 September 2013, we provided a statement that my client did not wish to proceed or participate in a court-martial surrounding the allegations that she made on 1 February 2013 involving her being the victim of a sexual assault. As I understand it, your office supported my client's stance and worked with your NAF in order to address this matter in an

administrative forum. I request information as to the disposition of that matter so that my client can gain some amount of closure in her life after dealing with this particular assault. Specifically, I request to know how the matter was handled administratively by the command, (Article 15, LOR, LOA, LOC, or verbal counseling), and if there was any punishment levied, as well as if administrative discharge for the Accused is planned (and what characterization is initially sought).

I understand the Privacy Act concerns that your office may have but I hope that the information that I am requesting, pursuant to AFI 51-201, Administration of Military Justice, dated 6 June 2013, paragraph 7.24. Disclosure of Administrative Disposition (full text below), adequately covers those concerns. Additionally, I believe that there is additional support for my request found on the JAJM Virtual Military Justice Deskbook under the title, " What Information About a Case Can be Disclosed to a Victim or Witness?" LINK:
<https://aflsa.jag.af.mil/apps/jade/collaborate/mod/resource/view.php?id=17623>, text below.

Thank you for your consideration and assistance in this matter.

V/r,

MOB

MICHAEL E. O'BRIEN, Capt, USAF

Special Victims' Counsel

Offutt AFB, NE 68113

Commercial: 402-232-1590

DSN: 272-1590

Work Cell: 309-306-1735

Alternate E-mail: obrien.svc@gmail.com

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of the originator's office. If you received this message in error, please notify the sender by reply e-mail and delete all copies of this message."

From JAJM Deskbook:

Victims and witnesses generally have the right to know the disposition of the case against an offender. If disposition is by court-martial, the analysis is straightforward. AFI 51-201, paragraphs 7.10. through 7.14., as well as Figure 7.1. and Figure 7.4. provide an extensive list of notifications to victims, witnesses and other individuals. However, if the case is disposed of by NJP or by Quality Force Management (QFM) tools, such as a Letter of Reprimand, the analysis is more complex. In 2008, the Privacy Act System of Records Notice (SORN) for courts-martial and Article 15 records was changed to acknowledge the "routine use" of providing disclosure to victims and witnesses of a crime consistent with the requirements of the Victim and Witness Assistance Program. Accordingly you may disclose: that the offender received and accepted NJP; the findings of the commander; the general nature of the punishment, i.e., a fine and a reprimand; any collateral consequences that follow by operation of regulation or are documented on the AF 3070, including UIF entry, officer/SNCO selection record entry appeal results. No similar SORN provision exists for lesser administrative dispositions such as LORs, LOCs, and LOAs. In those cases, disclosing that "appropriate administrative actions were taken," or that "the commander decided not to impose nonjudicial punishment or prefer court-martial charges" is appropriate. Similarly a statement that "no adverse administrative action was taken" may also be appropriate, depending on the circumstances.

The applicable portion of AFI 51-201 is para. 7.24, which reads:

"Disclosure of Administrative Disposition. In cases where allegations against a suspect are disposed of other than by trial, a victim or witness may want to be informed of the alternate disposition. Victims and witnesses should be provided as much relevant information as possible, consistent with the privacy rights of the accused. In accordance with 5 U.S.C. 552a (the Privacy Act), records and information related to Article 15 punishment and administrative discharge proceedings may be disclosed as a routine use to victims and witnesses of a crime for the purposes of providing information consistent with the requirements of VWAP and the Victims' Rights and Restitution Act of 1990. When analyzing Privacy Act exceptions, consider the Air Force's interest in fostering cooperation of victims and witnesses in the instant case, whether the accused has made any disclosures about the action or disposition that would diminish his/her expectation of privacy, and other relevant factors. Because each case presents unique facts and circumstances, decisions to release information must be reviewed on an individualized basis, in light of the Privacy Act and the exceptions allowing disclosure, as provided therein."



**SPECIAL VICTIMS' COUNSEL
AIR FORCE LEGAL OPERATIONS AGENCY
JOINT BASE MCGUIRE-DIX-LAKEHURST, NEW JERSEY**

18 March 2014

MEMORANDUM FOR TRIAL COUNSEL

FROM: SVC

SUBJECT: SVC Request for Report of Investigation

1. I have been detailed and currently have an attorney-client relationship with VICTIM, a victim of sexual assault. The sexual assault was reported on or about 17 March 2013 and a thorough Air Force Office of Special Investigations (OSI) investigation followed. On 29 January 2014 I was notified that OSI had completed their investigation and published a Report of Investigation (ROI) to the LEGAL OFFICE.
2. In order to effectively represent my client, I request a complete copy of the completed ROI in this case, including but not limited to, written or recorded witness statements, surveillance tape, hospital records, lab reports and any other evidence referenced in or attached to the ROI.
3. These documents are requested pursuant to my client's rights encapsulated in the UCMJ, Article 6(b)(recent change passed by the National Defense Authorization Act for Fiscal Year 2014) and the rights given under AFI 51-201, Chapter 7 and are further supported by the right "to be treated with fairness." *See* Crime Victims' Rights Act of 2004 (CVRA), 18 U.S.C. §3771(a)(8)(civilian predecessor to UCMJ, Article 6(b)); *and* UCMJ, Article 6(b)(containing nearly identical language as the CVRA). These documents are necessary for my client's ability to meaningfully participate in the military justice process. The right to confer with the Government is found in AFI 51-201, paragraph 7.11.5. VICTIM cannot meaningfully confer with the Government regarding the disposition of this case without access to the evidence being considered by the Initial Disposition Authority and his legal advisors.
4. VICTIM has also made a Freedom of Information Act (FOIA) request for a copy of the ROI. Due to the current backlog in processing FOIA requests, I have been informed that the response time is at least six months, and could be as long as one year. This unreasonable delay in VICTIM having access to the investigation and its findings unfairly prejudices her right to confer with the Government in this case. Furthermore, a FOIA request is not necessary in this case. VICTIM doesn't seek the ROI for general public release; she seeks the information regarding the investigation of her reported sexual assault for the purpose of conferring with the Government and expressing a well-informed opinion on her preferred disposition of the case. My client cannot address any concerns that the Disposition Authority has regarding potentially moving the case forward if she does not have access to the same information being considered by the Disposition Authority.
5. In recognition of its requirement to confer with victims of crime on whether to prefer charges and to inform victims on the disposition of their cases, the Government is authorized to release information otherwise protected under the Privacy Act to victims in order to comply with the

requirements of the Victim and Witness Assistance Program (VWAP). There is a blanket “routine use” exception in the Privacy Act Notice for victim disclosure. In the Federal Register Volume 73, Number 236, December 8, 2008 the Air Force gave notice that “documents received or prepared in anticipation of judicial proceedings; witness statements; police reports; or other reports from local, state or federal agencies” may be disclosed to victims for the purposes of providing information consistent with the requirements of the VWAP. A central aim of the VWAP is to “ensure best efforts are made to accord to victims of crime certain enumerated rights.” AFI 51-201, Chapter 7.

6. Accordingly, I request the above referenced documents, on behalf of my client, in order for my client to meaningfully and competently participate in the military justice process and to exercise the rights afforded by Article 6(b) of the Uniform Code of Military Justice and Air Force and DoD regulations.

7. If you have any questions, please contact me at DSN 650-0552, commercial 609-754-0552 or via email at natasha.fitzsimmons@us.af.mil.

//SIGNED//

NATASHA C. FITZSIMMONS, Capt, USAF
Special Victims' Counsel



**SPECIAL VICTIMS' COUNSEL
AIR FORCE LEGAL OPERATIONS AGENCY
RAF LAKENHEATH, UNITED KINGDOM**

31 Jul 2014

MEMORANDUM FOR 48 FW/JA

FROM: AFLOA/CLSV – RAF Lakenheath

SUBJECT: Requests for Records Under FOIA/PA Rules

1. This notice is to request the Report of Investigation of [REDACTED] regarding her alleged assault of [REDACTED] for official use.
2. Paragraph 1 of subsection b of the PA allows for applicable PA records to be released to DoD employees. See 5 U.S.C. § 552a(b)(1). Specifically, the (b)(1) exception states that records from a PA SORN may be disclosed to “those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties.” DoD 5400.11-R, Department of Defense Privacy Program, paragraph C4.2.1, sets forth a three part test that must be met before a record from a PA SORN is provided to a DoD employee under the (b)(1) exception.
 - (a) The DoD employee has a need for the record in the performance of his or her assigned duties;
 - (b) the intended use of the record [by the requester] generally relates to the purpose for which the record is maintained; and
 - (c) only those records as are minimally required to accomplish the intended use are disclosed.
3. whether the accused has made any disclosures about the action or disposition that would diminish his/her expectation of privacy, and other relevant factors.”
4. My client requests that all communication be made through me. If you have any questions, please contact me at DSN 314-226-3339, commercial +44 (0)1638-523339 or via email at micah.smith.14@us.af.mil.

MICAH L. SMITH, Capt, USAF
Special Victims' Counsel

A Victim's Rights

- The right to be reasonably protected from the accused.
- The right to reasonable, accurate, and timely notice of certain proceedings.
- The right not to be excluded from any public hearing or proceeding (unless the military judge or investigating officer determines after receiving clear and convincing evidence that testimony by the victim would be materially altered).
- The right to be reasonably heard at any of the following:
 - *A public hearing concerning the continuation of confinement prior to trial of the accused.
 - *A sentencing hearing relating to the offense.
 - *A public proceeding of the service clemency and parole board relating to the offense.
- The reasonable right to confer with the government.
- The right to receive restitution as provided in law.
- The right to proceedings free from unreasonable delay.
- The right to be treated with fairness and with respect for the dignity and privacy of the victim.

How can you request an SVC?

- * Anyone can contact the SVC office whether or not they have filed a report.

Unrestricted Reports

- Contact your local SVC, SARC, FAP, or Legal Office

-Ramstein SARC 314-480-7272

Restricted Reports

- Contact the SVC, SARC, or Chaplain to ensure the report remains restricted

Other Services Available

Chaplains

North Side 314-480-6148
South Side 314-480-5753

Family Advocacy (FAP) 314-590-6310

Mental Health Clinic 314-479-2390

Legal Office 314-480-5911

Military & Family Life Consultant

0152-0266-3352
0152-2421-1233

For Emergencies

Command Post 314-480-2121/1320

or

112



Air Force
Legal Operations Agency

Special Victims' Counsel

Attorneys-
Capt Maribel Jarzabek
Capt Kelly Adams

Paralegal—SSgt Anna Nakamoto



Building 408, Ramstein AB
(Behind Dry Cleaners)

AFLOA/SVC

Unit 3172

APO AE 09094-3172

Phone: 314-478-4782 (4SVC)

Com: +49 6371 405 4782 (4SVC)

E-mail: afloa.svc.ramstein@us.af.mil



Introduction

In the military, we pride ourselves on being ready for whatever our adversaries throw at us. We plan, we train, we exercise, and we prepare. Unfortunately, no one can fully prepare for what it's like to be the victim of a crime. You may be uneasy or angry, and, in all probability, anxious about what may follow. Surviving a sexual assault can be stressful and the process may make you feel victimized all over again.

The Special Victims' Counsel (SVC) position is designed to make this process a little easier. It is designed to help you understand the process and make sure that your voice is heard. We are here to walk this road with you.

Purpose of SVC

- Empower Victims
- Represent Victims
 - The SVC do not work for anyone on your base or in your chain of command
- Provide Advocacy
 - To military justice actors, including commanders and convening authorities
 - To AF and DOD agencies/offices where there is a nexus to the client's status as a victim
 - To civilian prosecutors/agencies
- Provide confidential legal advice
- Protect Victim's rights and privacy interests
- Provide legal assistance
- Advise Victim on the status of the investigation
- Attend interviews with Victim
- Attend hearings and courts-martial with Victim
 - May include in-court representation—**except in civilian courts**

Phone & Online Support:

Talk with an SVC first about the best service to use for your unique situation.

Safe Helpline

When you don't know what or who to talk to, contact Safe helpline for confidential sexual assault support...24/7, world-wide access to trained professionals.
www.SafeHelpline.org 877-995-5247

Veterans Benefits information and assistance 800-827-1000

Websites

militaryonesource.com 800-342-9647
www.tricareonline.com
www.womenslaw.org

Domestic Violence

National Domestic Violence Hotline 800-799-7233
www.ndvh.org 800-787-3224

National Suicide Prevention Lifeline (NSPL)
800-273-TALK(8255)



**SPECIAL VICTIMS' COUNSEL
AIR FORCE LEGAL OPERATIONS AGENCY
RAF LAKENHEATH, UNITED KINGDOM**

19 July 2013

MEMORANDUM FOR VICTIMS OF CRIME

FROM: AFLOA/SVC – UNITED KINGDOM

SUBJECT: Victim Information Packet

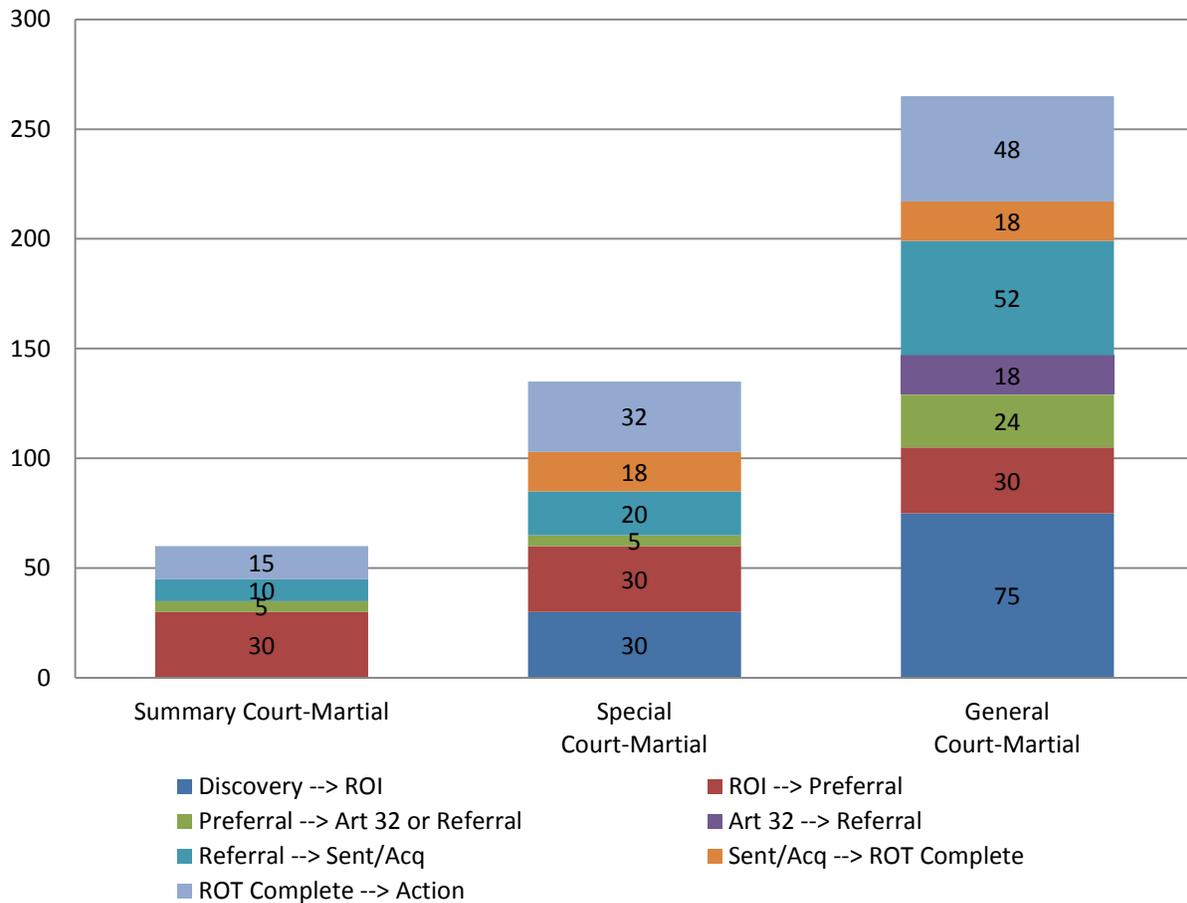
1. In the military, we pride ourselves on being ready for whatever our adversaries throw at us. We plan, we train, we exercise, and we prepare. Unfortunately, no one can fully prepare for what it's like to be the victim of a crime. You may be uneasy or angry, and, in all probability, anxious about what may follow. Surviving a sexual assault can be stressful and the process may make you feel victimized all over again. The Special Victims' Counsel (SVC) position is designed to make this process a little easier. It is designed to help you understand the process and make sure that your voice is heard. We are here to walk this road with you.
2. This information packet is designed to provide you general insight into the investigative and court-martial stages and various roles you may play. It's not intended to be legal advice, because every person and every case is different. Additionally, this packet will provide information about other services that are designed to help you along the way. I recommend you talk with me first about the best service to use for your unique situation.
3. Federal law and Air Force Instruction (AFI) 51-201 explicitly name the following rights for victims of crime:
 - a. To be treated with fairness and respect for your dignity and privacy,
 - b. To reasonable protection from a suspect or the Accused,
 - c. To notification of all court-martial proceedings,
 - d. To be present at all public court-martial proceedings,
 - e. To confer with Trial Counsel in the case,
 - f. To appropriate restitution, when available,
 - g. To information about an Accused's conviction, sentencing, confinement and release,
 - h. To make a personal appearance at a Military Department clemency and parole board.
4. As these rights indicate, you are a valuable person and member of the Air Force Family, and we are committed to providing you support and advocating your rights. If you have any questions, please contact either me or my paralegal, TSgt Tiana Martel, at 01638-523-339 or DSN 226-3339, or after hours, contact the Command Post at 226-4800/238-2121.

MICAH L. SMITH, Capt, USAF
Special Victims' Counsel

The information contained in this packet is NOT legal advice. It is general information regarding victims and the court-martial process. Please speak with your attorney if you have questions about this information or your case.

Expected Court-Martial Time Frame

Courts-martial can take a long time. Normally, cases begin with your report to the Sexual Assault Response Coordinator (SARC). After that, the Air Force Office of Special Investigations (OSI) will investigate your case, and provide a report to the commander of the person who assaulted you. There may be several interviews, forensic evidence to find, and forensic data to be collected and analyzed. All of that investigation takes a while, and we are not even to the court-martial yet. Once the court-martial starts you can generally expect the process to start moving more quickly; however, as the graph below indicates, there are still a lot of steps.



In sum, it's probably going to take longer than you, or I, would like. We will do our best to make sure that things move quickly, but not too quickly. Remember that the SVC exists to answer your questions and make sure your voice is heard. If you have questions, please ask.

YOUR ROLE IN THE MILITARY CRIMINAL JUSTICE SYSTEM

The following is a brief description of the court-martial process and your role in it as a victim and witness. The SVC handling your case will provide you with more detailed information and will be able to answer your questions at each stage of the process.

Stages

- 1) *The Crime* -- The process starts when a crime is committed.

YOUR ROLE: For sexual assaults, you will often be the main witness to the crime. Numerous agencies are available to assist, and the Sexual Assault Response Coordinator (SARC) will be your primary point of contact.

Restricted Reports: Depending on the case you may have the option of making a Restricted report. A Restricted report means that the case will not be investigated. Generally, you can only make a Restricted report to the SARC or a medical provider; you cannot make a Restricted report to your friends, colleagues, First Sergeant, or Commander. It is very important that you do not talk about the assault to any of these people if you want the report to stay restricted.

Unrestricted Reports: If you make an unrestricted report, the Air Force Office of Special Investigations (OSI), the Security Police (SP) or civilian law enforcement will investigate. From their perspective, your role is that of a witness and they will want to get details of the case from you. Your SVC can attend these interviews with you.

- 2) *Pretrial Confinement* -- In very limited circumstances, an Accused's commander may place the Accused in pretrial confinement. There is no bail or bond procedure within the military. A hearing will be held, and if a determination is made that the Accused is likely to flee or commit another serious offense, the Accused may be kept in confinement until trial. However, there are other, lesser alternatives to confinement to ensure your protection, such as a military protective order.

YOUR ROLE: Tell the investigators, Trial Counsel, or your Special Victims' Counsel immediately if you know of anything indicating that the Accused will flee, or if you fear further offenses or violence. You will be informed should the Accused be released from pre-trial confinement after the hearing.

- 3) *Investigation* -- The investigation begins immediately after a crime has been reported or an unrestricted report has been filed. Generally, if the crime was committed by an Air Force member, agents of the OSI will conduct the investigation. If the crime occurred off-base, civilian authorities usually take the lead in the investigation, with OSI working closely with them.

YOUR ROLE: As discussed above, you are often the main witness to the crime. All investigators, military or civilian, are trained in the particular type of case in which you are involved. If you have an interview with investigators make sure you tell the truth. If

you're not sure about an answer, it is o.k. to say, "I don't know." Upon request, your Special Victims' Counsel can be present during these investigative interviews.

- 4) *Preferral of Charges* -- Formal Charges will be read to the Accused, usually by the Accused's commander. This is the first step in going to trial.

YOUR ROLE: You will likely be interviewed by a member of the legal office about the case as they draft the charges. Again, you may have your SVC present during these interviews. You will also be informed of the date of referral and the nature of the charges against the Accused.

- 5) *Resignation or Discharge of the Accused* -- The Accused may request to be allowed to resign or be discharged from the Air Force rather than face a court-martial. You will be informed by Trial Counsel should the Accused submit an offer to resign or be discharged from the Air Force rather than face a court-martial. The commander will likely want to consider your opinion on this before rejecting or granting the request. Your SVC can help you express your desires to the appropriate commander.
- 6) *Article 32 Hearing* -- This occurs after the referral of charges and is similar to a grand jury investigation. At an Article 32 hearing, an Investigating Officer (usually an attorney from another base) will determine whether there is enough evidence to warrant a court-martial. The hearing is conducted much like a trial, and witnesses may be called to testify. Generally, the hearing lasts one day, and the Investigating Officer prepares a report in the next eight days.

YOUR ROLE: You will likely have to appear and testify under oath regarding what you know about the crime. Most likely, the Trial Counsel will have already spoken with you and prepared you for the questions that you will be asked at the hearing. If you have any questions or concerns, bring them to the attention of your SVC as soon as possible. After you testify, the Investigating Officer will usually draft a written summary of your testimony and ask you to come in a few days later to review and sign it. Ensure that it is accurate and covers everything you said before signing it.

- 7) *Referral of Charges by Convening Authority* -- When a case is referred to a court-martial, that means that the convening authority has determined that enough evidence exists to warrant a trial by court-martial. A convening authority is an Air Force officer who has the authority to formally initiate a court-martial. There are three types of court-martial: (1) General Courts-Martial (2) Special Courts-Martial and (3) Summary Courts-Martial. The difference between the three types of courts-martial is the degree of punishment that can be imposed. Summary and Special Courts-Martial have limitations on the severity of punishment while General Courts-Martial have much broader authority.

YOUR ROLE: Like referral, your role is limited, but you will be informed by the Trial Counsel whether the charges will be referred to trial by court-martial or if the charges will be dismissed. If the Convening Authority determines that a court-martial is not appropriate, you have the opportunity to express your opinions to the Convening Authority. Your SVC can help you with this process.

8) *Court-Martial* -- This is the actual trial and there are several phases.

- a) *Pre-trial interviews* -- Before a case goes to court, both the Trial Counsel and the Defense Counsel prepare the case, including viewing the evidence and conducting interviews of all the witnesses.

YOUR ROLE: Both Trial and Defense Counsel will likely want to interview you as a witness to the crime. You do not have to consent to an interview, but if you do not, it could mean that the case does not go to trial. You can have your SVC with you at the pre-trial interviews, and you should discuss any concerns you have with your SVC before you go to the interview. Remember, the SVC is there to represent your interests, not the Trial Counsel's or the Defense Counsel's. They are your attorney.

- b) *Pre-trial motions hearing* -- Sometimes the Military Judge will have a hearing before the case to determine what evidence will be admitted. This doesn't happen in every case, but is something you will want to discuss with your SVC.

YOUR ROLE: This hearing may impact your privacy rights such as discussing your mental health records or your prior sexual history. These things are presumed to be excluded from the trial, but there are some exceptions. You have the right to let the judge know what you would like done with those records (*i.e.* if you don't want them talked about or if you are o.k. with it). Talk with your SVC about your particular case and if there may be any motions regarding your rights.

- c) *Fact Determination Phase* -- If the Accused pleads not guilty to any or all of the crimes, then the Trial Counsel will attempt to prove guilt, on any remaining crimes, beyond a reasonable doubt. A person accused of a crime has the right to decide whether they want to be tried by a military judge or by a panel of members. If an Accused chooses a panel of members, they will be officers or enlisted members senior in grade to the Accused. At the trial, Trial Counsel will present the Government's evidence against the Accused. This evidence may include the testimony of witnesses and physical evidence, such as documents, photographs, clothing, scientific evidence, etc. The defense has the opportunity to cross-examine all of the witnesses called by the Trial Counsel, and the opportunity to present evidence showing that the Accused is not guilty. The Government always has the burden of proving the case beyond a reasonable doubt, because anyone accused of a crime is presumed innocent until proven guilty. After all the evidence has been presented, the members or judge will determine whether the Accused is guilty or not guilty of the crimes he has been charged with committing.

YOUR ROLE: You will likely have to testify under oath at trial. This means being physically present and available. When you testify, you will be placed under oath and asked questions by the Trial Counsel and Defense Counsel. If you are concerned about potential degrading or embarrassing questions that could be asked, tell your SVC. There are lots of rules of evidence that determine what kinds of questions can be asked and what kind of evidence can be admitted. Your SVC can explain these rules to you and how they impact your specific case.

- d) *Sentencing Phase* -- If the Accused is found guilty of one or more charges, the members or the military judge will determine the amount and type of punishment. The procedure is similar to the fact determination phase. The Trial Counsel may call witnesses to show aggravating factors concerning the crimes, such as the impact the offenses have had on the victim or on the Air Force. Also, Trial Counsel may call witnesses to characterize the Accused's performance within the military. The defense may call witnesses to lessen the seriousness of the offense, known as evidence in extenuation and mitigation.

YOUR ROLE: You may have the opportunity to return to the witness stand and testify about how the offenses have affected you, particularly as the victim of the crime.

- 9) *Imposition of Punishment* -- The punishment can include a reduction in grade, forfeiture of pay, imprisonment, or discharge from the Air Force. If the punishment includes confinement, the Accused will be escorted to confinement when the trial ends.

YOUR ROLE: Trial Counsel will inform you of the sentence. Also, there may be some post trial documents for you to sign such as the DD Form 2705, Victim/Witness Notification of Inmate Status. This form gives you basic information about what you information you can receive if an inmate's status changes. If you elect to receive this information, you will be notified when inmate is transferred or released from confinement.

- 10) *Action by Convening Authority* -- After the trial, the convening authority will review the results of the trial and any clemency petition submitted by the Accused. A clemency petition is usually a request by the Accused asking that the punishment be lessened for some reason. The convening authority may also cancel a guilty verdict or reduce a guilty verdict to a lesser offense. The convening authority may reduce or entirely set aside any portion of the findings or sentence, but may not increase the sentence.

YOUR ROLE: You have a right to submit a statement to the convening authority concerning your feelings on whether the Accused should be granted clemency. Let your SVC know if you would like to submit something to the convening authority.

- 11) *Appeal by the Accused* -- The Accused may appeal a guilty verdict, the punishment, or both. If the Accused receives a punitive discharge or confinement for more than one year, the case is automatically reviewed by the Air Force Court of Criminal Appeals (AFCCA). During the appeals process, the Accused will serve his sentence as determined by the trial court. The appeal process can take anywhere from 6 months to 2 years.

- a) *Air Force Court of Criminal Appeals* -- The first level of appeal within the Air Force, this court is composed of several active duty Air Force judges who hear and decide appeals from trial court decisions.
- b) *U.S. Court of Appeals for the Armed Forces* -- After review by the AFCCA, an Accused may petition this court to review their case. This court is comprised of five civilian judges, and it is the highest level of appeal within the military. Decisions of the court are

binding upon all of the services. Under certain circumstances, persons may appeal from this court to the United States Supreme Court.

- c) *United States Supreme Court* -- This is the next and the highest level of appeal. Military cases are rarely heard by the Supreme Court. All decisions are final.

YOUR ROLE: You have a right to know if an appeal is granted and the decision the superior court makes.

- 12) *Release from Confinement* -- Whether released by an appellate court, the convening authority, parole board, or at the natural termination of the period of confinement, eventually the Accused will be released.

YOUR ROLE: You will be provided with the appropriate forms to request notification of the Accused's release from confinement by the Trial Counsel. An Accused serving confinement will eventually be released (unless a life sentence is imposed). Should the Accused try to contact you by telephone, letter, or third person, for whatever reason, while undergoing punishment, notify the legal office immediately. The content and purpose of the Accused's message could affect their parole. Additionally, should you desire to know when the Accused is released from confinement and any other pertinent information about his release, *e.g.*, his parole officer's name and address, the legal office can provide you a point-of-contact.

COMMON TERMS AND DEFINITIONS

Attorneys and paralegals use a lot of words that we don't normally use in everyday life, and sometimes this can be confusing. The following is a list of some of the most common terms, but it is not exhaustive. If someone uses a term or acronym that you don't know, don't hesitate to say, "I don't know what that means." Remember that if the attorney/paralegal was learning about your area of expertise there would be a lot of things they wouldn't know either.

Accused: A person who has been formally charged with a crime.

Affidavit: A sworn statement in writing, confirmed on oath by the party who makes it, before someone who is permitted to administer oaths.

Argument: Attorneys for both the Government and the Defense will present argument at various stages in the trial. The argument is designed to convince either the Military Judge of the jury why they are right.

Appeal: A request made by the defeated party to a higher court for review of the decision.

Apprehension: The seizure, taking, or arrest of a person on a criminal charge.

Articles: Agreements are usually divided into separate paragraphs and each paragraph is referred to as an article. The same term applies to the separate sections of the Uniform code of Military Justice (UCMJ).

Article 31: No person subject to the UCMJ may compel any person to incriminate himself or to answer any questions. Similar to the civilian *Miranda* Rights, a suspect has the right to remain silent, right to attorney, Air Force appointed or Civilian counsel (you pay), right to stop questioning, anything you say can be used against you.

Article 32: An Article 32 hearing is required before criminal charges of an Accused can be referred to a general court-martial, in order to determine whether there is enough evidence to merit a general court-martial. This proceeding is similar to a Grand Jury hearing.

Article 39(a): The military judge may call the court into session without the presence of members to: hear and determine motions, to hear and rule on any matter that may be ruled upon by a military judge, to hold arraignment, and to perform any other procedural function that may be performed by a military judge.

Article 120: This is the part of the UCMJ that makes sexual assault a crime. Your case will likely involve one or more violations of Article 120.

Assault: Any willful attempt or threat to inflict injury on some person, with an ability to carry out the threat. It also includes a display of force to frighten the victim and make him believe that the former is capable of causing bodily harm.

Attempt: The intentional and overt act, which if succeeds, would have been considered as a crime. The attempt to commit a crime in itself is a criminal offense.

Attorney: Sometimes called a lawyer, barrister or solicitor, is a person authorized to practice law. The main responsibilities of attorneys include providing legal counsel, representing and defending their clients before courts and drafting legal documents.

Charge: A formal accusation of an offense against a person, and is considered as the first step to prosecution.

Clemency: An executive member of government of extending mercy to a convicted individual. In the military, clemency is granted by the Convening Authority. Clemency means the forgiveness of a crime or the cancellation (in whole or in part) of the penalty associated with it.

Constitution: This legal term refers to the fundamental law of a state or a nation. It is as per the provisions in the constitution that the government is founded and the divisions of sovereign powers are regulated.

Convening Authority: The person who determines that a court-martial is the appropriate way to handle the charges, and makes a decision regarding clemency if an Accused is found guilty. For Summary and Special courts-martial, it is usually the wing commander. For General courts-martial, it usually the Numbered Air Force commander.

Conviction: A decision taken by a judge after a criminal trial, which finds the Accused guilty of the crime.

Court-Martial: A court-martial is a military court. A court-martial is empowered to determine the guilt of members of the armed forces subject to military law, and, if the Accused is found guilty, to decide upon punishment. A court-martial may be composed of a Military Judge alone or a panel of military members.

Defendant: In the military, this person is normally called the Accused.

Defense: A term used to describe the act of an attorney representing a defendant, to show why the prosecutor does not have a valid case.

Defense Counsel (DC): A defense attorney is hired or appointed and represents the Accused throughout the legal process, including trial.

Dismissal: Two meanings. (1) a final disposal by the tribunal rejecting the case (2) the term used to describe a punitive discharge for a commissioned officer (see below)

Discharge: Discharges are generally categorized as punitive or administrative. Only a court-martial can authorize a punitive discharge.

- **Punitive Discharges:**

- **Bad Conduct Discharge:** A Bad Conduct Discharge (BCD) can only be given by a court-martial (either Special or General) as punishment to an enlisted service-member. Bad conduct discharges are often preceded by a period of confinement in a military prison. Virtually all veterans' benefits are forfeited by a Bad Conduct Discharge; BCD recipients are not eligible for VA disability compensation in accordance with 38 CFR 3.12.
- **Dishonorable Discharge:** A dishonorable discharge (DD) can only be handed down to an enlisted member by a general court-martial for what the military considers the most reprehensible conduct. All veterans' benefits are lost, regardless of any past honorable service, and this type of discharge is regarded as shameful in the military. In many states a dishonorable discharge is deemed the equivalent of a felony conviction, with attendant loss of civil rights
- **Dismissal:** A sentence to a dismissal of a commissioned officer or cadet is, in general, the equivalent of a dishonorable discharge of an enlisted service member. A dismissal deprives one of substantially all benefits administered by the Department of Veterans Affairs. It should be reserved for those who should be separated under conditions of dishonor after conviction of serious offenses of a civil or military nature warranting such severe punishment.

- **Administrative Discharges:**

- **Honorable Discharge:** To receive an honorable discharge, a service member must have received a rating from good to excellent for his or her service. Service members who meet or exceed the required standards of duty performance and personal conduct, and who complete their tours of duty, normally receive honorable discharges.
- **Under Honorable Conditions Discharge (General):** General discharges are given to service members whose performance is satisfactory but is marked by a considerable departure in duty performance and conduct expected of military members.
- **Under Other than Honorable Conditions:** An UOTHC is the most severe form of administrative discharge. This type of discharge represents a departure from the conduct and performance expected of all military members. UOTHC discharges are typically given to service members convicted by a civilian court in which a sentence of confinement has been adjudged or in which the conduct leading to the conviction brings discredit upon the service.

Due Process: A legal principle describing the right to have a fair legal process.

Elements: These are the specifics of the offense. In order to support a finding of "guilty," the government must prove each and every element of the offense, beyond a reasonable doubt.

Evidence: The means of proving or disproving the facts of a case. Evidence can be oral (testimony), documentary, circumstantial, direct or hearsay. There are lots of rules for determining what evidence is allowed at trial. You should discuss these rules with your SVC.

Federal Court: Federal courts are courts having jurisdiction over matters of the US Constitution, labor law, federal taxes, federal crimes, etc. These courts derive their power directly from the constitution. Special and General Courts-martial are federal courts.

Finding: A decision by a judge or jury about a specific factual matter. At the end of a trial, there will be a finding of guilty or not guilty.

Guilty: A finding by legal and competent evidence beyond a reasonable doubt that the Accused committed the acts as charged.

In Camera: Review of evidence by a judge in chamber and outside of the presence of the parties and the public.

Jurisdiction: The legal authority to hear and give a judgment on a case. If a court does not have a valid jurisdiction, the judgment passed does not hold any value.

Members: For special and general courts-martial, the Convening Authority will designate the members of the court-martial panel (the military equivalent of the jury). It is the Accused's choice whether he or she will be tried by a panel of officers, a combined panel of officers and enlisted members, or by the military judge sitting alone. If an Accused chooses enlisted members, at least 1/3 of the panel will be enlisted, but all will be senior in grade and cannot come from the Accused's squadron.

Motion: A request for the court to take a particular action. For example, a person can make a motion for the court to admit certain evidence or a motion for certain evidence to be excluded. Motions can be made orally or in writing.

Not Guilty: Also referred to as an acquittal. Prohibits the retrial of the Accused for the same offense, even if new evidence surfaces that further implicates the Accused. It does not mean that the Accused is innocent or that the facts as alleged did not happen, only that the evidence presented did not prove the charges beyond a reasonable doubt.

Offense: A violation of law or an act which contravenes the criminal law of the state in which it occurs. Crime and offense are often used interchangeably.

Parole: The release of a prisoner from imprisonment before the full sentence has been served. Although not available for all prisoners, parole is usually granted for good behavior on the condition that the person regularly reports to a supervising officer for a specified period. Applications for parole are sent to the AF Clemency and Parole Board.

Paralegal: A paralegal is a person who performs substantive and procedural legal work as authorized by law, without a law license, which would have been performed by an attorney in the absence of the paralegal.

Perjury: An intentional act of lying or providing false information to a court-martial.

Pleas: The formal declaration by an accused to a court-martial concerning his or her acceptance of the charges as alleged.

Pre-Trial Agreement (PTA): An agreement between the Government and the Accused concerning the charges before the court-martial. For example, a PTA may contain an upper limit on a sentence in exchange for the Accused pleading guilty. The Government must consult with a victim of sexual assault before entering into a PTA with an Accused.

Reasonable Doubt: A “reasonable doubt” is not a fanciful or ingenious doubt or conjecture, but an honest, conscientious doubt suggested by the material evidence or lack of it in the case. It is an honest misgiving generated by insufficiency of proof of guilt. “Proof beyond a reasonable doubt” means proof to an evidentiary certainty, although not necessarily to an absolute or mathematical certainty. The proof must be such as to exclude not every hypothesis or possibility of innocence, but every fair and rational hypothesis except that of guilt. The rule as to reasonable doubt extends to every element of the offense, although each particular fact advanced by the prosecution which does not amount to an element need not be established beyond a reasonable doubt.

Record Sealing: In some cases, the court records are sealed, so as not to make it accessible to public as a public record. If anyone wants to review such records, court permission is required, and otherwise such records will be kept sealed. This may be important if portions of a victim’s mental health records are admitted during trial or if a victim’s prior sexual history is discussed.

Restraint: This means to confine, to limit or to deprive of an act. Could also mean any limiting condition put on a person’s liberty, such as restriction or arrest in quarters.

Resignation In Lieu Of (RILO): Separation of an Accused in lieu of trial by court-martial is an administrative procedure that is available to resolve disciplinary matters and may be used in appropriate cases. Whether such administrative action is appropriate in a given case is a matter within the discretion of the approval authority.

Military Rules of Evidence (M.R.E.): Rules that govern whether, when, how, and for what purpose, proof of a legal case may be placed before a judge or members for consideration.

M.R.E. 412: Discusses the relevance of alleged victim’s sexual behavior or sexual predisposition and whether the information is admissible in a court-martial.

M.R.E. 502: Discusses lawyer-client privilege. A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made to their lawyer, lawyer’s representative, or client’s representative.

M.R.E. 513: Discusses psychotherapist-patient privilege. A patient has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made between the patient and a psychotherapist or assistant to a psychotherapist.

M.R.E. 514: Discusses Victim Advocate-Victim privilege. A victim has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made between the victim and a victim advocate.

M.R.E. 615: Discusses the exclusion of witnesses in a court-martial. At the request of the Trial Counsel or Defense Counsel, the military judge shall order witnesses excluded so that they cannot hear the testimony of other witnesses.

Sentence: A punishment given to an Accused person who has been convicted of a crime.

Testimony: The statements made by a witness under oath in a legal proceeding. This testimony is treated as evidence.

Trial Counsel: A Trial Counsel is a person who prosecutes a case on behalf of the government.

Waiver: A voluntary and intentional relinquishment of something, especially some known rights. It can be done by express statement or by conduct.

Uniform Code of Military Justice: The Uniform Code of Military Justice is the foundation of military law in the United States. It was established by the United States Congress in accordance with the authority given by the United States Constitution in Article I, Section 8, which provides that “Congress shall have power to make rules for the government and regulation of the land and naval forces.”

Voir Dire: The process by which attorneys select or reject certain jurors to hear a case. Prospective jurors are questioned about their backgrounds and potential biases before being chosen to sit on a jury.

VICTIM REQUEST FOR RECORD OF TRIAL

U.S. v. Tyler W. Crowell

PRIVACY ACT STATEMENT

AUTHORITY: MCM, Article 54. Record of Trial

PRINCIPAL PURPOSE: "In the case of a general or special court-martial involving a sexual assault or other offense covered by section 920 of this title (article 120), a copy of all prepared records of the proceedings of the court-martial shall be given to the victim of the offense if the victim testified during the proceedings. The records of the proceedings shall be provided without charge and as soon as the records are authenticated. The victim shall be notified of the opportunity to receive the records of the proceedings."

Read the statements that follow and place an "X" on the line next to your response. Check one only.

_____ I REQUEST A COPY OF THE RECORD OF TRIAL IN THIS CASE. PLEASE PROVIDE ME A COPY AS SOON AS THE RECORDS OF THE PROCEEDINGS ARE AUTHENTICATED.

Select One: _____ hard copy _____ soft copy (CD)

Please send my copy of the Record of Trial to the following address:

Telephone Number (Optional): _____

_____ I REQUEST A COPY OF THE RECORD OF TRIAL IN THIS CASE. PLEASE PROVIDE ME A COPY WHEN ACTION IS TAKEN IN THIS CASE.

Select One: _____ hard copy _____ soft copy (CD)

Please send my copy of the Record of Trial to the following address:

Telephone Number (Optional): _____

_____ I DO NOT REQUEST A COPY OF THE RECORD OF TRIAL IN THIS CASE.

PRINTED NAME OF VICTIM: [REDACTED]

SIGNATURE OF VICTIM: [REDACTED]