

# The Advisor



## In This Issue

**CDR Michael Holifield,  
CNRSE Staff Judge Advocate and Director, Command Services**

Two areas have received appropriately increased attention in recent months: Sexual assault and victim/witness rights. As you'll read in this month's edition, the Navy has established strict reporting requirements to ensure nothing falls between the proverbial cracks. First, rights notification of victims and witnesses (of any crimes, not just sexual assault) must be documented under VWAP. Second, all allegations of sexual assault require consultation with a judge advocate before disposition. The CO still makes the final call, of course; the requirement simply ensures he or she knows all the available options.

### Highlights:

- Holiday Ethics Rules
- Gift Acceptance
- New Rules for Handling Sexual Assault Cases

As we move slowly through the summer months' heat and humidity, take heart that winter is only 18 weeks away. And, as we all know, winter holds several certainties: Daylight will diminish, ducks and retirees will flee south, and commands will have holiday parties. We cannot do much to affect the ways of the sun, mallards or interstate-choking Winnebagos, but we can help you avoid some of the pitfalls common to holiday party gift-giving and fundraising. To help you get in front of the yuletide curve, we offer a primer on holiday ethics rules now, even though the heat index is still over 100.

We're still awaiting word from Guinness, but this edition of The Advisor—at 12 pages—may very well be the largest ever published. As you read the articles herein, know that you are getting the most up-to-date, most thoroughly researched and, well, just plain *most* information a no-budget, collateral duty legal publication can provide. Enjoy.

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## Don't Ask, Don't Tell Ends Shortly

On 22 July 2011, President Obama, Secretary Panetta, and Chairman of the Joint Chiefs of Staff, Admiral Mullen, submitted a one-page written certification to Congress that the military is ready to implement repeal of Don't Ask, Don't Tell (DADT). Following a 60-day waiting period, DADT will end on Tuesday, 20 September 2011.

All commands and activities should have conducted Tier 3 training with all personnel. Sailors must understand that all personnel should be treated with respect, dignity, and compassion regardless of sexual orientation. The Navy expects little, if any, disruption to operations because of the repeal of DADT. However, there are potential issues that may arise including harassment, bullying, inappropriate behavior in the workplace, discriminatory application of rules, housing arrangements, and eligibility for benefits. Please coordinate with your installation SJA if you encounter any issues related to the repeal of DADT.



22 July 2011: President Obama certifies repeal of DADT



*VWAP continues to be a high-viz issue that receives the attention of Congress, senior military leadership, and the IG.*

## WHO IS A VICTIM AND WITNESS UNDER VWAP? It's not just for sexual assaults and domestic violence.

LCDR (Sel) Cheryl Ausband, SJA, NAS Pensacola

The Victim and Witness Assistance Program (VWAP) was established to ensure that victims and witnesses are kept informed about their rights and responsibilities in the criminal justice system so that they understand and can better participate in the system.

But who are the victims and witnesses we are looking to protect? Per DOD/DON instructions, a **victim** is a person who has suffered direct physical, emotional, or pecuniary (monetary) harm as a result of the commission of a crime committed in violation of the UCMJ, or in violation of the law of another jurisdiction in cases where military authorities have been notified. This definition includes active duty personnel, civilians, and their family members. It does not include an individual involved in the crime as a perpetrator or accomplice. A **witness** is a person who has information or evidence about a crime, and provides that knowledge to a DoD component about an offense within the component's investigative jurisdiction. This definition does not include a defense witness or an individual involved in the crime as a perpetrator or accomplice.

So what does that mean? It essentially means you are a victim if a crime is committed and it impacts you physically, mentally, or in the pocket-book. This could range from the victim of a sexual assault or domestic violence, theft or a car accident. It does not matter the severity of the crime or where it occurred so long as either NCIS or your command has been notified. It doesn't matter if there is ultimately no punishment or the case is dismissed, if a crime was committed and it affected you in one of those three ways, then you are a victim.

What about the witness? That is even broader. If you have information about a crime and provide it to either NCIS, security or the command, then you are a witness. It again could be a major assault, theft, car accident or even to a false official statement. If you have and provide information to a military source, then you are a witness under the VWAP program.

And what if you are? You should be notified of your rights and provided certain forms which provide that information to you. If you have questions about what information you have or have not received you can contact your command's Victim and Witness Assistance Coordinator or your local Region Legal Service Office.



*There is no exception for military or law enforcement personnel. If you are convicted of domestic violence, then you cannot possess a firearm. This may impact your ability to stand watch or stay in the Navy.*

## DOMESTIC VIOLENCE & THE LAUTENBERG AMENDMENT

LT Jesse Adams, SJA, NS Mayport

The Lautenberg Amendment (18 USC §922), passed in 1996, was an amendment to the Gun Control Act of 1968. The Amendment makes it a felony for any person who has been convicted of a misdemeanor crime of domestic violence to ship, transport, possess or receive firearms or ammunition. The Amendment also makes it a felony for any person to sell or otherwise dispose of a firearm or ammunition to any person knowing or having reasonable cause to believe that such a person has been convicted in any court of a misdemeanor crime of domestic violence. It's important to note that there is no exception for military or law enforcement personnel.

A "qualifying conviction" includes all Special and General Courts-Martial, and civilian felony convictions adjudged after 27 November 2002 for crimes of domestic violence. However, the term qualifying conviction does not include foreign convictions, convictions at Summary Courts-Martial, or the imposition of nonjudicial punishment. The Lautenberg Amendment does apply to small arms such as rifles, pistols, shotguns and similar weapons designed to be employed by an individual, but does not apply to major military weapons systems or crew-served military weapons and ammunition. This means that a Master-at-Arms, or any other sailor who is required to carry a weapon, could lose their ability to carry their weapon and thus become unqualified to perform their duty. This could result in a change in rate or possibly even administrative separation.

## ACCEPTANCE OF GIFTS

LT Matthew C. Anderson, SJA, NAS Corpus Christi

Anyone who has been in a Base Commanding Officer's (CO's) Office could not help but notice the plaques, photos, models, and assortment of other chotchkies lining every piece of free space in the office. So most of us have had the experience where a commanding officer approaches the JAG with something of significant value, say \$100, that they were offered or gifted. What do you do?

Would your CO be offered this gift if he was NOT a CO? Does it have some value that is over \$20? (YES!) Does it fit another exception to the gifts rule? Is it from a prohibited source? There are not a lot of ways to "yes" in this scenario.

You keep hitting the stumbling block that this is a \$100 gift, given to your CO because of his official position. As you are about to say those two horrible letters "N-O", you notice there is a plaque at the bottom: "Given to Naval Air Station for 100 years of Naval Aviation" and the light comes on: this is a gift to the Air Station, to the Navy.

However, can your CO accept a gift on behalf of the Navy? As an O-6, most likely, he cannot. Per OPNAVINST 4001.1F and SECNAVINST 4001.2J, only certain non-Flag commands can accept gifts on behalf of the U.S. Navy. Those commands must have a staff judge advocate on staff and include Naval Sea Systems Command; Naval Air Systems Command; Naval Facilities Engineering Command; Naval Supply Systems Command; and Space and Naval Warfare Systems Command. Otherwise, only a Flag Officer who holds command may accept a gift for \$12,000 or less, on behalf of the Navy. Our Flag for installations is of course, Commander, Navy Region Southeast.

Some points to remember: the bigger the gift, the higher ranking the approver must be. If the gift is valued at \$12,000 or greater, you will need approval from the entire chain of command up to the Chief of Naval Operations and the Vice Chief of Naval Operations. Gifts of \$60,000 or more must be approved by the Under Secretary of the Navy, as well as any gift of real property. In other words, even these gifts are not impossible for the Navy to accept, you will just need time to get approval from the appropriate people.

There are also enumerated criteria for acceptance of gifts on behalf of the Navy. In short, they boil down to: would the gift be against another regulation; would it be improper based on ethical standards; or would it not be in the best interest of the Department of the Navy to accept these gifts? If the answers remain no, continue with the request.

Finally, advise your CO that the gift may be kept as a gift to the base, so long as it is approved by Commander Navy Region Southeast. Next, write your letter justifying why it is good for the Command to have this gift sitting in the CO's waiting area, why it is not a conflict of interest for the CO and why ultimately, Region Southeast's JAG should advise his CO to accept this gift on behalf of the Navy, and of your base.

At the end of the day, you've done your job protecting the Command, and there is a brand new chotchkie in the CO's waiting room!



There are many different ways to "get to yes"—but you have to know the rules. No gift is worth your CO's career.



*If the Navy could get sued, contact a JAG for direction on a litigation report.*

## Litigation Reports

LT Steven Gonzales, SJA, NAS Forth Worth JRB

Litigation-report investigations (sometimes called LITREPs) are primarily designed to assist the government defend its interests when an event occurs that may result in claims or litigation against or for the government. When such an event occurs, a judge advocate or OJAG (Code 15) should immediately be contacted since litigation-reports must be conducted under the direction of a judge advocate. Unlike other investigations, a litigation-report can be protected from release to other parties; therefore, commands and personnel must safeguard the information collected.

After a judge advocate is designated, the command

shall convene a litigation-report that includes the following language: "This investigation is being convened and your report is being prepared in contemplation of litigation and for the express purpose of assisting attorneys representing the interests of the United States in this matter." The completed report shall be clearly labeled "FOR OFFICIAL USE ONLY: LITIGATION/ATTORNEY WORK PRODUCT." The course, scope and method of the investigation should be thoroughly vetted by the judge advocate in advance, and statements shall NOT be signed by witnesses. Opinions and recommendations, if included, are the responsibility of the judge advocate. Reports should be completed within 30

days with extensions memorialized in the preliminary statement. Convening Authority endorsements should address extensions and limit comments to the administration or management of the command.

In conclusion, commands should understand that litigation-reports are designed to collect and protect information under the direction of a judge advocate. Additionally, Chapter II of JAGINST 5800.7E should be thoroughly reviewed prior to initiating a litigation-report.

Note: Additional information related to claims or admiralty incidents can be found in Chapters VIII and XII of JAGINST 5800.7E.



## DOJ Records Preservation Order

The Department of Justice (DOJ) and the Office of the Judge Advocate General (OJAG) are advising all commands and activities that any record relating to any allegations of sexual assault, sexual harassment, or domestic violence must be preserved.

No Freedom of Information Act (FOIA) searches for responsive documents are required at this time. This direction is only to preserve and not destroy relevant records until this litigation is complete—even if normal procedures or record disposition guidelines would dictate otherwise. This guidance applies to records of ANY allegations or investigations or resulting actions (NJP, ADSEP, courts-martial etc) relating to any claims of sexual assault, sexual harassment, or domestic violence.

Your local SJA will assist you with whatever questions you have. As we all know, there is currently an enormous amount of scrutiny on how the military handles these sensitive cases. Our goal is not to dictate the outcome of these cases but rather to ensure that they are handled fairly, documented properly, and disposed of in accordance with all legal rules.

# What is an Official Event?

LT Adam Brandon, Assistant SJA, CNRSE

An official event directly relates to DOD missions or purposes. Official purposes are those that are specifically provided for by law or essential for successful completion of a DOD function, action, or operation. To put it another way, official events are functions for which expenditure of official funds is authorized. Commands must protect federal property and can only use federal resources to support authorized purposes. Government resources are for the benefit of the government. Except where specifically authorized by statute, government resources should be used solely for the benefit of the government.

The tricky part is that, sometimes, official events intermingle with the unofficial activities of DOD personnel. While Naval personnel (acting in a private capacity) are permitted to plan unofficial functions to coincide with official Navy functions, personnel should exercise caution when doing so, to ensure that there is no appearance of impropriety.

DOD ethics gurus have summarized the rules as they apply to the most frequently asked questions. These guidelines are summarized below:

**CHANGE-OF-COMMAND/RETIREMENT CEREMONIES:** Change-of-commands/retirements involving the coupling of official and unofficial functions are especially susceptible to negative appearances and, without careful accounting, fiscal law violations. Change of command ceremonies are official functions for which appropriated funds may be expended. Retirement ceremonies coinciding with a change of command are official functions. Retirement ceremonies that do not coincide with a change of command ceremony are official functions only if the commanding officer approves the retiring member's request for a command-sponsored retirement ceremony. See MILPERSMAN 1800-010 for further guidance on command-sponsored retirement ceremonies.

**REENLISTMENT CEREMONIES:** Reenlistment ceremonies are official. But a

reception after the reenlistment ceremony is not official. The relevant reference is MILSPERMAN article is 1160-020. Also, BUPERSINST 1710.11C section 406 discusses use of MWR Unit Recreation Funds to support re-enlistment and award ceremonies. That instruction is available at <http://www.public.navy.mil/bupers-npc/reference/instructions/BUPERSInstructions/Documents/1710.11C.pdf>.



**RECEPTIONS AFTER OFFICIAL CEREMONIES:** Receptions related to any of these ceremonies are not official functions; therefore, the command may not use appropriated funds solely for such a reception. Resources already in place to support a ceremony (bleachers, tents, etc.), however, may be used for a related reception following the ceremony. Also, an unofficial event like a reception should not adversely affect performance of official duties, be of reasonable duration and frequency, be performed on personal time (e.g., off-duty on during meal time), not reflect adversely on the Navy, and create no additional cost to the Navy.

**NON-MILITARY EVENTS:** Personal use of DOD assets that is unrelated to the mission is never authorized. If an event is unrelated to the mission, then it is not a personal event and federal resources may not support it. Personnel must use official time in an honest effort to perform official duties, unless authorized under law or regulation to use official time for other purposes. You cannot "volunteer" during working hours for civic/community/organizational events. You cannot encourage, direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties.

Where you have questions about the appropriate use of resources or the designation of functions as "official events", please do not hesitate to contact a SJA.

## Holiday Ethics Rules

LT Kevin Mejeur, SJA, NAS Jacksonville

The holiday season is traditionally a time of parties, receptions, and exchanging of gifts. For federal employees, a host of ethical considerations accompany these opportunities. The DoD ethics rules governing interactions during the holiday season fall into three general categories: Relations with Prohibited Sources - Generally, Relations with Prohibited Sources - DoD Contractor Employees, and Relations between Federal Employees. The applicable rules are summarized below to ensure that the holidays remain a jolly and ethical season for you and your personnel.



*“May the holidays remain a jolly and ethical season for you and your personnel.”*

### I. Relations with Prohibited Sources - Generally

Federal personnel are generally prohibited from accepting gifts offered because of their official positions or offered by a “prohibited source.” A prohibited source is anyone who a) seeks official action by the employee’s agency, b) does business or seeks to do business with the employee’s agency, c) conducts activities regulated by the employee’s agency, d) has interests that may be substantially affected by the employee’s performance of duty, or e) is an organization composed of members described above. Though the definition of “prohibited source” is quite broad, several exceptions apply to the general rule stated above, particularly in the context of holiday parties, open-houses, and receptions. Per federal regulations, Federal employees may:

- Accept gifts (other than cash) **not exceeding \$20** from a prohibited source, as long as the total amount of gifts that the personnel accepts from that source does not exceed \$50 for the year.
- Accept gifts from employees of prohibited sources (including DoD contractors) that are based on a **bona fide personal relationship**.
- Attend an open-house or reception sponsored by a prohibited source, and accept any gift of refreshments, if it qualifies as a **widely-attended gathering** and the employee's supervisor determines that it is in the agency's interest for the employee to attend.
- Accept event invitations that are open to the public, all Government employees, or all military personnel.
- Accept snacks and refreshments that do not constitute a meal.
- Accept invitations offered to a group or class that is not related to Government employment. (For example, if your office is located in a civilian office building, a party hosted by the owner of the building for all tenants.)
- Accept attendance based on an outside business or other non-DoD oriented relationship. (For example, a Federal employee’s spouse works at Boeing. The Federal employee may accompany the spouse to the Boeing employee’s holiday party since the invitation is to the spouse as an Boeing employee, and not to the Federal employee because of his or her position.)

### II. Relations with Prohibited Sources – Contractor Employees

Applying the DoD ethics rules regarding prohibited sources to DoD contractor employees can be particularly tricky, as they often work hand-in-hand with Federal employees. Even so, the guidelines discussed above still govern such interactions, as contractor employees qualify as prohibited sources. Beyond the DoD ethics rules, many contractor employees have their own codes of ethics with which they must comply. As a result, Federal employees should consider the following before offering holiday gifts and/or opportunities to contractor employees:

- Contractor employees may attend office parties during non-duty hours, as long as they make fair share contributions to the refreshments (equal share of cost, potluck items). Having said that, contractor participation is supposed to be voluntary, so Federal employees must take care not to pressure them for contributions.
- When an office party cuts into duty hours, those planning the event should consult the contracting officer and ethics counselor in advance before inviting contractor employees, as the contractor will need to decide whether its employees will be permitted to attend. If so, the contractor must also decide whether attendance will be in a paid or unpaid status.



## Holiday Ethics Rules—continued

- Federal employees may not ask contractor employees to contribute money toward a gift for the office supervisor, as it is considered soliciting a gift from a prohibited source. (Nor, for that matter, may they solicit holiday-gift donations from other Federal employees.) Even when offered voluntarily, Federal employees must a contractor employee's contribution.
- Office gift exchanges should not generally include contractor employees, unless an ethics counselor has reviewed and approved the proposed format.
- Federal employees may invite contractor employees to privately-hosted parties, and provide associated food and refreshments. Contractor employee's ability to accept will be governed by their employer's ethics rules.
- When attending a private party hosted by a Federal employee, contractor employees may bring a hospitality gift, so long as the gift either a) does not exceed \$20 in value, or b) is edible and is shared with all guests.
- Where a contractor/contractor employee invites Federal employees to a private party, the Federal employees must generally decline, unless one of the aforementioned exceptions apply. [See section I]

### III. Relations between Federal Employees

In general, Federal employees who serve in a supervisory position may not accept gifts from subordinates or Federal employees who receive less pay. However, during the holidays, supervisors are permitted to accept customary personal hospitality at the residence of a subordinate. In addition, supervisors may accept seasonal, non-cash gifts of \$10 or less in value from subordinates (as holidays only occur on an occasional basis), accept food and refreshments shared in the office, and/or share in the expenses of an office party. Subordinate employees may attend parties hosted by a supervisor or co-worker without restriction. Likewise, ethics rules do not restrict the giving of gifts to peers or subordinates, though the application of common sense and good taste is always appropriate.

### IV. Other Notes

The following assorted reminders may also prove beneficial, as you prepare your holiday festivities:

- Federal employees may attend social events sponsored by non-prohibited sources if no one is charged admission (e.g., most holiday receptions and open-houses).
- Employees may not solicit outside sources for contributions for a command party. This includes solicitation of funds, food, and items.
- Beware that door prizes or drawings could involve gambling, which would require compliance with state statutes and Federal regulations. DoD regulations prohibit gambling on Federal property or while in a duty status.
- Office parties are generally unofficial events. As such, commands may not use appropriated funds to pay for them.
- In a similar vein, participation in holiday social events is generally personal, not official, and therefore use of government vehicles to/from such events would not be authorized. However, commands or personnel can request legal review on a case-by-case basis.
- Finally, personnel may not use appropriated funds to purchase and send greeting cards.

For more guidance on applying the DoD Standards of Conduct, or clarification on any matters discussed above, contact your local Ethics Counselor (CNRSE SJA) or the installation Staff Judge Advocate.



*The last thing your holiday party needs is an IG complaint. Now is the time to get ahead of any ethics issues.*

# New Rules for Handling Sexual Assault Cases

## Sexual Assault Disposition Report Instructions

OPNAVINST 3100.6J was updated and released on 22 December 2009. It contains a new requirement for convening authorities to consult with a judge advocate before disposing of a sexual assault case. The close-out report must include the name, command, and contact information of the judge advocate who was consulted.

SJAs must ensure convening authorities use the standardized form on the opposite page to document the disposition of all sexual assault cases. SJAs may not deviate from the disposition options found on the form as those disposition options are derived from DoD policy and are reported to Congress. A completed copy of the form should be provided to NCIS for the investigative file within 10 days after the date of disposition. A copy should be retained by the SJA.

This form should be used for sexual assault cases that involve adult victims and are not domestic violence cases. Use the definition of sexual assault below to determine what constitutes a sexual assault. The NCIS case number can be obtained from the investigating agent.

For cases in which no administrative or disciplinary action was taken for a sexual assault offense, please select ONLY ONE category. If no administrative or disciplinary action is taken in a case, select the category that best describes the basis for not taking action using the definitions below. If disciplinary or administrative action is taken with respect to a non-sexual assault offense, check "probable cause for only non-sexual assault offense."

If ANY administrative or disciplinary action is taken with respect to any sexual assault offense, report all actions taken. Note, the action MUST be taken for one of the sexual assault offenses listed below. For example, if a Convening Authority prefers charges that are later resolved at NJP for a sexual assault offense, the report would include both the preferral and the NJP or administrative action taken. If no action is taken after preferral (charges dismissed), only check "court-martial charge preferred."

The date of disposition is the date action was initiated by the Convening Authority or the day the Convening Authority decided that no action would be taken. For cases that are preferred, the disposition date is the date of preferral if charges are not referred. Otherwise, the disposition is court-martial referred and the date of disposition is the date of trial.

## Definitions

**Sexual Assault:** Intentional sexual contact, characterized by use of force, threats, intimidation, abuse of authority or when the victim does not or cannot consent. The following offenses and their equivalent civilian statutes constitute sexual assault: (1) Rape, (2) Forcible Sodomy (oral or anal sex), (3) Aggravated Sexual Assault, (4) Aggravated Sexual Contact, (5) Abusive Sexual Contact, (6) Wrongful Sexual Contact, (7) Indecent Assault, or (8) Attempts to commit any of these offenses

**Unfounded:** Determination that the allegations, as made against the alleged offender, do not meet all the legal elements of

any of the SAPR sexual assault offenses. These cases are either false or baseless.

**Civilian or Foreign Authority - Person subject to the UCMJ:** A civilian or foreign authority has a sexual assault allegation for action or disposition and the alleged offender is subject to the Uniform Code of Military Justice (UCMJ).

**Civilian or Foreign Authority - Person NOT subject to the UCMJ:** A civilian or foreign authority has a sexual assault allegation for action or disposition and the alleged offender is not subject to the UCMJ.

**Offender Unknown:** The investigation is closed because the offender is unknown.

**Probable Cause for only Non-Sexual Assault Offense:** The commander took action on a non-sexual assault offense because the allegations made did not meet the required elements of, or there was insufficient evidence for, any of the above UCMJ offenses constituting the SAPR definition of sexual assault, but the allegations did meet the required elements of, and sufficient evidence for, another offense under the UCMJ (e.g., adultery, simple assault, assimilated crime under Article 134, UCMJ).

**Offender's or Victim's Death:** Commander action is precluded due to the death of the alleged offender or victim.

**Victim Declined to Participate in the Military Justice Action:** Commander action is precluded or declined because the victim has declined to further cooperate with military authorities or prosecutors in a military justice action.

**Insufficient Evidence of any Offense:** Although the allegations made against the alleged offender meet the required elements of at least one of the criminal offenses that constitute the SAPR definition of sexual assault, there is not enough evidence to legally prove those elements beyond a reasonable doubt and proceed with the case. (Note: If the reason for concluding that there is insufficient evidence is because the victim declined to cooperate, then that reason for being unable to take action should be entered as "victim declined to participate in the military justice action".)

**Statute of Limitations:** Determination that pursuant to Article 43 of the UCMJ the applicable statute of limitations has expired and the case may not be prosecuted.

**Court-Martial Charge Preferred (Initiated):** A court-martial charge was preferred (initiated) for at least one of the offenses that constitute the SAPR definition of sexual assault. See Rule for Courts-Martial 307 and 401.

**Nonjudicial Punishment (Article 15, UCMJ):** Disciplinary action for at least one of the offenses that constitute the SAPR definition of sexual assault was initiated pursuant to Article 15, UCMJ.

**Administrative Discharge:** Commander action to involuntarily separate the offender from military service.

**Other Administrative Action:** In the absence of an administrative discharge action, any other administrative action that was initiated (including corrective measures such as counseling, admonition, reprimand, exhortation, disapproval, criticism, censure, reproach, rebuke, extra military instruction, or other administrative withholding of privileges or any combination of the above).

**SEXUAL ASSAULT DISPOSITION REPORT**

Information regarding the accused:

Name: \_\_\_\_\_  
Rank: \_\_\_\_\_ SSN: \_\_\_\_\_

NCIS case number: \_\_\_\_\_  
OPREP Initial Report Message DTG: \_\_\_\_\_  
Date of Disposition Decision: \_\_\_\_\_

Please check the disposition for the report:

- Offender's or Victim's Death
- Civilian or Foreign Authority - Person NOT Subject to the UCMJ
- Civilian or Foreign Authority - Person Subject to the UCMJ
- Statute of Limitations
- Probable Cause for Only Non-Sexual Assault Offense
- Victim Declined to Participate in the Military Justice Action
- Offender Unknown
- Insufficient Evidence of any Offense
- Unfounded
- Commander Declined Action Pursuant to RCM 306(c)(1)
- Court-Martial Charge Preferred

Charged offense(s): \_\_\_\_\_

- Court-Martial Charge Referred

Result of trial: \_\_\_\_\_

Sentence adjudged: \_\_\_\_\_

PTA limits on sentence adjudged, if any: \_\_\_\_\_

- Civilian Charges filed:

Charged offense(s): \_\_\_\_\_

Result of trial: \_\_\_\_\_

Sentence: \_\_\_\_\_

- Nonjudicial Punishment (Article 15, UCMJ)
- Administrative Discharge
- Other Administrative Action

Judge Advocate advisor:

Name and rank: \_\_\_\_\_  
Command: \_\_\_\_\_  
Contact information: \_\_\_\_\_

Convening Authority:

Name and rank: \_\_\_\_\_  
Command: \_\_\_\_\_  
Signature and date: \_\_\_\_\_

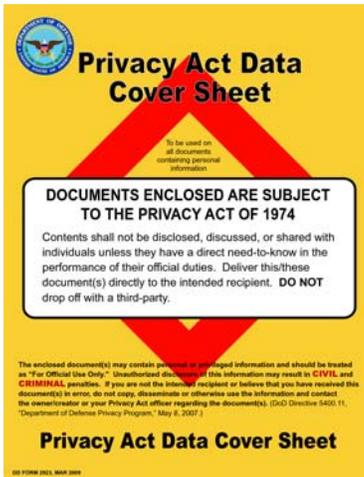
## How to Make a Privacy Act Request

The Privacy Act of 1974 governs the collection, maintenance, use and dissemination of Personally Identifiable Information (PII) about individuals that is maintained in a system of records by a federal agency like the Department of the Navy. A system of records is a group of records under the control of an agency from which information is retrieved by the name of the individual or by some personal identifier such as your SSN or personal phone number. The Privacy Act requires that agencies give the public notice of their systems of records by publication in the Federal Register. The Privacy Act prohibits the disclosure of information from a system of records absent the written consent of the subject individual, unless the disclosure is pursuant to a statutory exception.

Under the Privacy Act, you can gain access to your records and correct inaccuracies. You can also provide written authorization for your representative to act on your behalf. If you are a parent or legal guardian, you can seek records on behalf of your minor child if you are determined to be acting in the minor's best interest. You also have the right to amend a nonexempt record if it is inaccurate, irrelevant, untimely, or incomplete. Furthermore, you can sue the government for violations of the statute, such as permitting unauthorized individuals to read your records.

To make a Privacy Act request, put it in writing and label both the request and the envelope: "PRIVACY ACT REQUEST." If possible, identify the specific system of records that you wish to have searched. Because Privacy Act requests must be signed, the Navy cannot process most e-mail requests.

The Privacy Act allows you to request amendments to erroneous information about you. This, however, only applies to matters of fact and not matters of opinion. The procedures for requesting amendment are to submit the request in writing (except for routine administrative matters, such as change of address and telephone number). In your request, you should include a description of the information to be amended, the reason for amendment, the type of amendment sought, and copies of available evidence supporting the request. Remember that the burden of proof rests with you. Your request will normally be acknowledged within 10 working days and a determination will be made within 30 working days. If your request for amendment is denied, you will be promptly notified in writing and given the opportunity to appeal the determination and/or submit a statement of disagreement that will be maintained with the file in question.



## Reporting Officer Misconduct to PERS

MILPERSMAN 1611-010 establishes when commands **must** notify Navy Personnel Command (PERS) of cases involving officer misconduct.

- **Courts-martial:** When court-martial charges have been preferred against an officer, the CO must send a copy of the charges and specifications with explanatory information to PERS-834.
- **NJP:** When a final decision is made to impose NJP on an officer, the command must notify PERS-PERS-834. If a recommendation is to be made to detach for cause, then notify PERS-4 as well.
- **Civil offenses:** Where an officer has been arrested in connection with, or charged with, a civil offense which would constitute an offense if charged under the UCMJ, the CO should report initial pertinent information to PERS-834 by e-mail. This includes drunk, impaired, or reckless driving.
- **Any matter requiring action by PERS:** Commands should notify PERS-834 of incidents involving officer performance, conduct which may be of widespread public interest, or those which will require action by PERS concerning the officer's status. This category includes substantiated FAP cases.

Commands that do not report officer misconduct may violate Navy regulations and policy. Non-reporting commands assume a great deal of risk. Article 138 complaints, IG investigations, and FOIA requests give outsiders the tools to discover whether your command treats officer misconduct seriously. In light of the DOJ order to preserve documents (see article on page 4), it is likely that your command's officer misconduct case will be scrutinized in the near future.