



DEPARTMENT OF THE ARMY
OFFICE OF THE JUDGE ADVOCATE GENERAL
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DAJA-ZA

16 October 2023

MEMORANDUM FOR JUDGE ADVOCATE LEGAL SERVICE PERSONNEL

SUBJECT: POLICY MEMORANDUM 23-01 – Public Access to Court-Martial Dockets, Filings, and Records Pursuant to Article 140a, Uniform Code of Military Justice (UCMJ)

1. This policy memorandum addresses the policies and procedures for providing public access to military justice dockets, filings, trial-level court documents, and appellate documents pursuant to Article 140a, UCMJ.

2. References.

a. 5 U.S.C. § 552a; The Privacy Act

b. 10 U.S.C. § 940a, Article 140a, UCMJ; Case management; data collection and accessibility

c. General Counsel of the Department of Defense Memorandum for Secretaries of the Military Departments (Revised Uniform Standards and Criteria Required by Article 140a, Uniform Code of Military Justice), 17 January 2023

3. Background.

a. Article 140a, UCMJ, requires, to the greatest extent practicable, that the public shall have access to military justice dockets, filings, trial-level court documents, and appellate documents. On 17 January 2023, the Department of Defense issued revised guidance on the implementation of Article 140a.

b. Public access under Article 140a is distinct from the right to request Federal records, including court-martial records, under the Freedom of Information Act, 5 U.S.C. § 552.

4. Definitions. Definitions of relevant terms are provided in enclosure 1.

5. Policy.

a. Dockets. **Current dockets shall be accessible by the public for all general and special courts-martial and the Army Court of Criminal Appeals (ACCA)** in accordance with the guidance below. Docket information will be provided and updated on an ongoing basis.

(1) The trial court dockets will include the name of the case, the location of the hearing, the type of hearing, the military judge presiding over the hearing, and the counsel assigned to the case. The name of the case, the location of the hearing, and the type of case will be updated on an ongoing basis. The names of counsel assigned to the case and the military judge presiding over the hearing may be updated and made accessible at a reasonable time following the hearing. The docket may be limited to hearings conducted after the case has been referred to court-martial. The docket shall not include preliminary hearings, or any hearing conducted under the authority of Article 30a, UCMJ.

(2) The ACCA docket will include a list of all cases pending before the court and an oral argument schedule which includes the name of the case, the panel to which the case is assigned, and the date and location of any scheduled oral argument.

b. Required Publication of Filings and Documents.

(1) For every special or general court-martial in which there is a finding of guilty for at least one specification, the appropriate authority, identified in enclosure 4, will make publicly accessible all filings and trial-level court documents, as defined and listed in enclosure 1.

(2) For every ACCA case, the appropriate authority, identified in enclosure 4, will make publicly accessible all appellate documents, as defined and listed in enclosure 1.

(3) Absent extraordinary circumstances, all required court filings and records made publicly accessible under this section will be available as soon as practicable but no later than 45 calendar days after the certification of the record of trial (at the trial court level) or after the ACCA issues a decision (at the appellate level). Publication of this information will be made in accordance with the instructions in this policy.

c. **Additional Public Access in Specific Cases.** In addition to those filings and documents listed above, and upon receipt of a request by a member of the public, the appropriate authority, identified in enclosure 2, may make publicly accessible the following items, subject to the guidance provided in enclosure 2.

(1) Filings and trial-level court documents from on-going courts-martial or completed courts-martial prior to certification of the record of trial.

(2) Filings and trial-level court documents from completed courts-martial in which there were no findings of guilt.

(3) Other items generated during the court-martial process but not included in the definitions of filings, trial-level court documents, or appellate documents, and which are not required to be made publicly accessible.

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d. Any item made publicly accessible must comply with the Privacy Act and other applicable laws and regulations related to the protection of personal, governmental, and classified information or otherwise sealed materials. Consistent with that guidance, all information will be redacted in accordance with enclosure 3 and enclosure 4.

6. Training.

a. The Judge Advocate General's Legal Center and School (TJAGLCS) will continue to incorporate Article 140a, UCMJ, training into the Judge Advocate Basic and Graduate Courses, the Military Justice Leader's Course, the Military Judge's Course, Noncommissioned Officer Education System courses administered by TJAGLCS, and the Court Reporter Basic and Advanced Courses.

b. Staff Judge Advocates, the ACCA Clerk of Court, and Chiefs of the Government Appellate Division and the Defense Appellate Division shall ensure practitioners are trained in the redaction of court-martial filings and records prior to performing redactions required under this policy. Training will include certification that the practitioner has read this policy, including its enclosures.

7. Enforceability. Inability or failure to comply with this instruction shall not constitute grounds for assignment of error on appellate review and shall not create any cause for relief against an otherwise valid judicial hearing.

8. This policy supersedes Policy Memorandum 22-10 and is effective immediately.

9. Proponent. The Office of The Judge Advocate General is the proponent for this policy. The point of contact is the Chief, Criminal Law Division at 571-256-8131.



STUART W. RISCH
Lieutenant General, USA
The Judge Advocate General

4 Encls

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Enclosure 1 to TJAG Policy Memorandum 23-01: Definitions

1. Trial-Level Court Documents:

- a. The charge sheet.
- b. Convening order(s).
- c. Court rulings and orders.

(1) A court ruling and any accompanying order that is a written determination by a military judge on an interlocutory question and all questions of law raised during the court-martial, after charges have been referred. Questions of law and interlocutory questions include all issues which arise during trial other than the findings (that is, guilty or not guilty), sentence, and administrative matters (See R.C.M. 801(e)).

(2) "Ruling" does not include Article 30a orders, protective orders and seals, subpoenas, warrants, court notices (i.e., contempt notices), special findings, trial management orders, or instructions.

- d. Statement of trial results.
- e. Action by the convening authority pursuant to RCM 1109 or RCM 1110.
- f. Entry of judgement.

2. **Appellate Documents:** all pleadings, notices, petitions, and requests submitted to the Army Court of Criminal Appeals (ACCA) by a party, other petitioner, or amicus curiae, as well as ACCA's orders and opinions. This includes initial and responsive briefs, merits submissions, and motions. It does not include any supporting evidence or attachments.

3. **Filings:** all pleadings, notices, petitions, and requests submitted to a trial court or military judge. Filings do not include any evidence or matters submitted in support or any pleading, notice, petition, or request.

a. **Pleadings** include all motions and responses filed with the trial court, including briefs to the court at the request of the military judge. The motion, response, or brief does not include any supporting documentation offered by a party in support of the motion or response. All supporting documentation shall be filed as separate appellate exhibits and will not be made publicly accessible.

b. **Notices** include all formal notices provided to the trial court. Notices do not include emails sent to the trial court or notices submitted between counsel even if such notices are provided to the military judge (including, but not limited to, Section III disclosures or notices of certain defenses under R.C.M. 701(b)(2)). Notices to the trial court will be made publicly accessible if submitted as a formal notice rather than an informal email. This includes, but is not limited to the following:

- (1) Notice of appearance of civilian defense counsel or special victims' counsel.
- (2) Government's notice of appeal (R.C.M. 908).
- (3) Parties' notice of plea agreement (R.C.M. 910), but not the actual agreement.
- (4) Notice of pleas and forum.

c. **Requests** include all matters submitted by counsel to the trial court as a formal, written filing. This does not include informal requests submitted to the trial court to address logistics, requests for R.C.M. 802 conferences, or informal email requests. Requests submitted by counsel to the trial court include, but are not limited to:

- (1) Requests for relief from subpoena or other process (R.C.M. 309).
- (2) Requests for forum composition (R.C.M. 503, 903).
- (3) Requests for deposition (R.C.M. 702).
- (4) Requests for inquiry into the mental capacity or mental responsibility of the accused (R.C.M. 706).
- (5) Requests for closed court-martial proceedings (R.C.M. 806).
- (6) Requests to issue or amend protective orders (R.C.M. 701; Mil. R. Evid. 505, 506).
- (7) Requests for instructions (R.C.M. 920, 1005).
- (8) Requests for additional information from members in questionnaires (but not the questionnaire responses of members) (R.C.M. 912).
- (9) Requests for a view or inspection (R.C.M. 913).

4. The following documents are **not** considered filings, trial-level court documents, or appellate documents and will not be made publicly accessible except in accordance with enclosure 2.

- a. Member questionnaire responses and member data sheets.
- b. Article 30a record of proceedings.
- c. Article 30a recordings.
- d. Requests submitted in conjunction with an Article 30a report.
- e. Article 30a motions.
- f. Article 32 preliminary hearing reports.

- g. Article 32 preliminary hearing recordings.
- h. Requests submitted in conjunction with an Article 32 report.
- i. Article 32 waivers.
- j. Article 32 motions.
- k. Article 34 pretrial advice to the convening authority.
- l. Article 34 written determination by special trial counsel.
- m. Prosecution exhibits.
- n. Defense exhibits.
- o. Evidence offered for consideration on motions, bench briefs, notices, or requests.
- p. The recording of any court session.
- q. The transcript of any proceedings.
- r. Deposition record of proceedings.
- s. The following court orders:
 - (1) Article 30a orders.
 - (2) Protective orders and sealing orders (along with the accompanying filing or court record being protected or sealed).
 - (3) Subpoenas.
 - (4) Warrants.
 - (5) Non-substantive pretrial orders.
- t. Contempt findings/orders.
 - u. Pre-trial matters, including: witness lists, request for instructions, request for judicial notice, proposed voir dire, flyer, seating charts, findings worksheet, and sentencing worksheets.
- v. Special findings.
- w. Findings instructions or sentencing instructions.
- x. Plea agreements or stipulations of fact.

- y. Stipulations of expected testimony.
- z. Controlled test materials.
 - aa. Filings or orders relating to evidence of uncharged misconduct deemed irrelevant or inadmissible by a military judge under Mil. R. Evid. 404(b), 608, or 609.
 - bb. Petitions/applications for writs.
 - cc. Filings or orders relating to privileged material deemed inadmissible by a military judge.
 - dd. Trial-level appellate exhibits not included in paragraphs 1-3 above.
 - ee. Privileged material filings and orders when deemed irrelevant or inadmissible by the military judge.
 - ff. Law enforcement investigation reports or records.
 - gg. Results from inquiry into the mental capacity or mental responsibility of the accused.
 - hh. Medical or mental health records.

Enclosure 2 to TJAG Policy Memorandum 23-01: Guidance Regarding Additional Public Access in Specific Cases

1. The following categories of items generated during the court-martial process may be made publicly accessible only when approved in accordance with this policy:

a. Filings and trial-level court documents from on-going courts-martial or completed courts-martial prior to certification of the record of trial.

b. Filings and trial-level court documents from completed courts-martial in which there were no findings of guilty.

c. Other items generated during the court-martial process but not included in the definitions of filings, trial-level court documents, or appellate documents, and which are not required to be made publicly accessible. (Including but not limited to those items listed in paragraph 4 of enclosure 1).

2. Any Judge Advocate Legal Services personnel who receive a public request for any trial-level item listed above will forward that request to the relevant General Court-Martial Convening Authority's servicing legal office. A request for any appellate-level document will be forwarded to the Chief of the relevant appellate division. Upon receipt, the Staff Judge Advocate (SJA) or Chief of the Government Appellate Division (GAD) or the Chief of the Defense Appellate Division (DAD) will make an initial determination whether to make publicly accessible the requested item, considering the factors in paragraph 3, below. When appropriate, SJAs should consult with special trial counsel.

a. If the SJA or Chief of GAD or DAD determines the requested item will not be made publicly accessible, the SJA or Chief of GAD or DAD will notify the requesting party. The SJA or Chief of GAD or DAD will also notify the Office of The Judge Advocate General (OTJAG) Criminal law Division (CLD) the request was denied. The requesting party may then request a supplementary review by the Chief, OTJAG CLD. The Chief, OTJAG CLD will then make the final decision as to whether the requested item will be publicly accessible.

b. If the SJA or Chief of GAD or DAD determines the requested item should be made publicly accessible, the SJA or Chief of GAD or DAD will provide a written recommendation and a copy of the requested item to the Chief, OTJAG CLD who will make the final decision.

c. The Chief, OTJAG CLD is the approval authority for public access to any item contemplated by this enclosure.

3. In determining whether to provide public access to an item contemplated by this enclosure, the appropriate authority must balance the public interest in disclosure of the item(s) requested against the privacy interests of the accused, minors, and victims of crimes after appropriate redaction. The appropriate authority should consider the following, non-exhaustive factors in making the decision:

a. **Severity of the Offense.** The more severe the offense, the greater the public interest in disclosure. In assessing this factor, consider whether there has been property damage or loss greater than \$2 million; whether the offense is punishable by death with at least one aggravating factor as defined in RCM 1004; whether the alleged offense resulted in death; or whether the offense constitutes a grave breach or serious crime under the Law of Armed Conflict.

b. **Strength of the Evidence and Result of the Trial.** All accused are entitled to the presumption of innocence and courts have consistently held that individuals who are acquitted of crimes are afforded greater privacy interests than those who are convicted. As a result, information related to courts-martial resulting in a dismissal of charges or an acquittal should not be made publicly accessible absent substantial public interest. Similarly, in assessing on-going cases, the possibility of acquittal requires more weight be given to individual privacy interests.

c. **Accused's Position and Level of Responsibility.** In assessing this factor, consider whether the accused is a general officer; serving in a command billet in the grade of E-9 or O-5 or above; or serving in a position of special trust, such as a drill sergeant, instructor, victim advocate, or other similar position. Public interest is also greater when the accused's position or authority was relevant to or used in the commission of the alleged offense.

d. **Existing Public Attention.** In cases which have already received substantial public attention, there is greater public interest in increasing transparency and preventing the dissemination of false or misleading narratives.

e. **Foreign Relations.** In cases which occur in foreign countries, or involve foreign persons, consideration should be given to whether public access to information would promote U.S. foreign relations.

f. Public access under Article 140a, UCMJ, is distinct from the right to request Federal records, including court-martial records, under the Freedom of Information Act, 5 U.S.C. § 552.

4. If the Chief, OTJAG CLD determines the requested item should be made publicly accessible, access will be granted as expeditiously as practicable, absent extraordinary circumstances.

5. Items made publicly accessible under this process should be posted to the Army Court-Martial Public Record System (ACMPRS) or the Army Court of Criminal Appeals Appellate Library. When items are posted, the SJA or Chief of GAD or DAD will notify the requestor and, as appropriate, the accused, the victim(s), and counsel.

Enclosure 3 to TJAG Policy Memorandum 23-01: Items to be Redacted

1. Staff Judge Advocates, the Chief of the Government Appellate Division, and the Chief of the Defense Appellate Division are responsible for causing redaction of the following items from all filings and court records:

- a. Social Security numbers.
- b. Tax identification numbers.
- c. Service-specific employee ID number and DoD ID number, including DoD ID numbers embedded in digital signatures.
- d. Home addresses.
- e. Telephone numbers.
- f. Email addresses.
- g. Dates of birth.
- h. Financial account numbers.
- i. Names of minors – replace with initials or completely redact.
- j. Crime victim names – completely redact. The use of initials is not permitted.
- k. “Wet” (Manual) signatures of all personnel (only the signature, not the entire signature block).
- l. Law Enforcement names. The Army Court of Criminal Appeals (ACCA) may leave law enforcement names unredacted when the court determines inclusion is necessary.
- m. All third-party names, including witnesses or other persons named in any filing or record (replace with initials or completely redact). Leave the rank of the military members unredacted. The ACCA can leave third-party names unredacted when the court determines inclusion is necessary.
- n. Information concerning a person’s medical or mental health condition, diagnosis, or treatment not admitted at trial.
- o. Classified information.
- p. Evidence related to a victim’s or witness’s ancillary misconduct deemed irrelevant or inadmissible by a military judge.
- q. All panel members’ names, including excused members and members that sat on the court-martial, and alternate members. Leave the rank of the military members unredacted.

r. All court-martial support personnel names, including the court reporter and bailiff. Leave the rank of the military members unredacted. Do not redact the name of the counsel or military judge.

s. Information that could identify a confidential source or undercover law enforcement officer or operation.

t. Information considered privileged in civil litigation. Specific privileged information includes:

(1) Deliberative Process Privilege/Judicial Privilege.

(2) Attorney-Client Privilege.

(3) Information Subject to the Attorney Work-Product Doctrine.

(4) Government Trade Secret Privilege.

(5) Safety Investigation Privilege.

(6) Presidential Communications Privilege.

u. Any other information about a person if disclosure would constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. § 552(b)(6).

v. Any other information about a person compiled for law enforcement purposes, to the extent that its disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy pursuant to 5 U.S.C. § 552(b)(7)(C).

Enclosure 4 to TJAG Policy Memorandum 23-01: Implementation Requirements

1. The following applies to U.S. Army trial court dockets, filings, and court records. All trial court dockets must be accessible by the public.

a. Entries made into eDocket will populate the appropriate record in the Army Court-Martial Public Record System (ACMPRS) and will be immediately publicly accessible.

b. Counsel (i.e., defense counsel, trial counsel, and special victims' counsel) shall minimize the use of personally identifiable information (PII) and information requiring redaction to the maximum extent possible in all pleadings and documents. Consistent with the Rule of Practice Before Army Courts-Martial (unless otherwise directed by the military judge), counsel will omit enclosures or attachments in filings.

c. Upon certification of the record of trial, the Staff Judge Advocate (SJA) shall cause any filings and court records defined in enclosure 1 to be redacted in accordance with enclosure 3 and uploaded into the appropriate record in ACMPRS. If a court-martial results in findings of not guilty to all charges and specifications, no filings or records will be made publicly accessible except as provided in enclosure 2. Filings and records will be uploaded to ACMPRS within 45 calendar days of certification of the record of trial pursuant to R.C.M. 1112 absent extraordinary circumstances. The SJA may delegate the approval authority to make documents described in enclosure 4 publicly accessible to a deputy SJA, chief of military justice, or senior military justice operations NCO. Further delegation is not authorized.

d. Prior to uploading any filing or court record into ACMPRS, the SJA (or delegate) will ensure compliance with this policy. Any filing or court ruling lacking proper redactions will be returned to the records custodian for correction.

e. All filings and records will be uploaded as individual files and marked with the appropriate label from the menu provided by ACMPRS. User-generated labels, file names, and descriptors will include no information listed in Enclosure 3.

f. The SJA will ensure the case record in Military Justice Online is annotated indicating that all filings and court records were redacted in accordance with this policy and public access provided through ACMPRS.

2. The following applies to the docket, filings, and court records of the Army Court of Criminal Appeals (ACCA).

a. The ACCA docket shall be publicly accessible, updated periodically at the Appellate Library. This information will be transferred into ACMPRS and posted under the name of the accused.

b. The Clerk of Court is the approval authority and responsible for posting all notices, orders, and decisions of the court to the Appellate Library. For purposes of Article 140a,

UCMJ, the Chief, Government Appellate Division (GAD) and the Chief, Defense Appellate Division (DAD) are approval authorities and are responsible for posting pleadings and motions filed by counsel assigned to their divisions to the Appellate Library. The Chiefs of GAD and DAD may delegate this responsibility to branch chiefs. Further delegation is not authorized.

c. Appellate counsel shall comply with the Army Court of Criminal Appeals Rules of Appellate Procedure (ACCA Rules) in force at the time of making a filing with respect to the contents of filings. All redactions must be performed in accordance with enclosure 3 and the ACCA Rules. Motions, other than motions to attach, and pleadings, including briefs, answers, replies, and petitions, shall not include any enclosures or attachments thereto. Documents from outside the record, including affidavits and declarations, included with a motion to attach approved by ACCA, shall be redacted in accordance with enclosure 3 prior to posting to the Appellate Library.

d. Chiefs of GAD and DAD shall ensure all pleadings and motions filed by their respective counsel with the court are posted with appropriate redactions to the Appellate Library as soon as practicable and certify that the documents have been redacted in accordance with this policy. After ACCA issues an opinion or order terminating an appeal, the Office of the Clerk of Court will post the decision or order to the Appellate Library as soon as practicable. Certification of compliance with this policy shall be documented in the Army Court-Martial Information System (ACMIS).

e. All filings and records uploaded to ACMPRS, and the Appellate Library will be accessible by the public indefinitely unless required to be removed by proper authority. Information made publicly accessible in error may only be directed to be removed by the SJA, ACCA Clerk of Court, or the Chiefs of GAD or DAD.