

§§ 720.26–720.29 [Reserved]**Subpart C—Production of Official Records****§ 720.30 Production of official records in response to court order.**

(a) *General.* Where unclassified naval records are desired by or on behalf of litigants, the parties will be informed that the records desired, or certified copies thereof, may be obtained by forwarding to the Secretary of the Navy, Navy Department, Washington, DC, or other custodian of the records, a court order calling for the particular records desired or copies thereof. Compliance with such court order will be effected by transmitting certified copies of the records to the clerk of the court out of which the process issues. See the provisions in the Secretary of the Navy Instruction 5211.5 series which set forth the additional requirement that reasonable efforts be made to notify all individuals to whom the record pertains of (1) the disclosure, and (2) the nature of the information provided, when the court order has become a matter of public record and the record is contained in a system of records as defined in the Secretary of the Navy Instruction 5211.5 series. If an original record is produced by a naval custodian, it will not be removed from the custody of the person producing it, but copies may be placed in evidence. Upon written request of one or more parties in interest or their respective attorneys, records which would be produced in response to a court order as set forth above may be furnished without court order when such records are not in a 'system of records' as defined by the Privacy Act (5 U.S.C. 552a) except as noted in paragraphs (b) and (c) of this section. In determining whether or not a record contained in a "system of records" will be furnished in response to a written request for that record, consideration shall be given to the provisions of the Secretary of the Navy Instruction 5720.42 series. If the record is in a "system of records," it may be produced upon written request of one or more parties in interest or their respective attorneys in the absence of a court order only if the individuals to whom the record pertains give written

consent to the production or if the production is otherwise authorized under the Privacy Act and the Secretary of the Navy Instruction 5211.5 series. Whenever compliance with a court order for production of Department of the Navy records is deemed inappropriate for any reason, such as when they contain privileged or classified information, the records and subpoena may be forwarded to the Secretary of the Navy (Judge Advocate General) for appropriate action, and the parties to the suit so notified. Any release of classified information for civil court proceedings (whether civil or criminal in nature) must also be coordinated within the office of the Chief of Naval Operations (OP-009D) in accordance with the Chief of Naval Operations Instruction 5510.1 series.

(b) *Records in the custody of National Personnel Records Center.* Court orders, *subpoenas duces tecum*, and other legal documents demanding information from, or the production of, service or medical records in the custody of the National Personnel Records Center involving former (deceased or discharged) Navy and Marine Corps personnel shall be served upon the General Services Administration, 9700 Page Boulevard; St. Louis, MO 63132, rather than the Department of the Navy. In the following situations, the request shall be forwarded to the Secretary of the Navy (Judge Advocate General).

(1) When the United States (Department of the Navy) is one of the litigants.

(2) When the case involves a person or persons who are or have been senior officers or officials within the Department of the Navy; and

(3) In other cases considered to be of special significance to the Judge Advocate General or the Secretary of the Navy.

(c) *Exceptions.* Where not in conflict with the foregoing restrictions relative to personal information, the release of which would result in a clearly unwarranted invasion of personal privacy, the production in Federal, State, territorial, or local courts of evidentiary material from investigations conducted pursuant to this Manual, and the service, employment, pay or medical records (including medical records

of dependents) of persons in the naval service is authorized upon receipt of a court order, without procuring specific authority from the Secretary of the Navy. When the request for production involves material related to claims in favor of the Government, notification should be made to the affirmative claims office at the naval legal service office having territorial responsibility in the area. Where travel is involved, it must be without expense to the Government.

(d) *Medical and other records of civilian employees.* Production of medical certificates or other medical reports concerning civilian employees is controlled by the provisions of Executive Order 10561, 19 FR 5963, as implemented by Federal Personnel Manual, chapter 294, and chapter 339.1-4 (reprinted in MANMED article 23-255(6)). Records of civilian employees other than medical records may be produced upon receipt of a court order without procuring specific authority from the Secretary of the Navy, provided there is not involved any classified or For-Official-Use-Only information, such as loyalty or security records. Records relating to compensation benefits administered by the Bureau of Employees' Compensation may not be disclosed except upon the written approval of that Bureau (20 CFR 1.21). In case of doubt, the matter should be handled in accordance with the provisions of subsection a above. Where information is furnished hereunder in response to a court order, it is advisable that certified copies rather than originals be furnished and that, where original records are to be produced, the assistance of the U.S. Attorney or U.S. Marshal be requested so that custody of the records may be maintained.

[38 FR 6021, Mar. 6, 1973, as amended at 48 FR 4466, Feb. 1, 1983]

§ 720.31 Production of official records in the absence of court order.

(a) *General.* Release of official records outside the Department of the Navy in the absence of a court order is governed by the Privacy Act (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552). The following sources pertain: SECNAVINST 5211.5 series (Pri-

vacy) and SECNAVINST 5720.42 series (Freedom of Information).

(b) *Release of JAG Manual Investigations, Court-Martial Records, Articles 69 and 73 Petitions, and Article 138 Complaints of Wrongs.* Except as provided in this section, only the Assistant Judge Advocates General (Civil Law) and (Military Law) shall make determinations concerning the release of the records covered herein if less than a release of the complete requested record will result. In all other instances the Deputy Assistant Judge Advocates General, who have cognizance of the record(s) in issue, may release such records. Local record holders are reminded that the authority to release records does not necessarily include denial authority.

(1) *JAG Manual Investigations (including enclosures).* Any request for release outside the Department of the Navy shall be forwarded to the Assistant Judge Advocate General (Military Law) for determination, except that Privacy Act requests for release shall be forwarded to the Assistant Judge Advocate General (Civil Law) for determination.

(2) *Court-martial records and Articles 69 and 73 petitions.* These are matters of public record and may be released by any local holder. Court-martial records should be released only following proper authentication.

(3) *Article 138 Complaints of Wrongs.* Forward as in paragraph (b)(1) of this section.

(c) *Affirmative claims files.* Affirmative claims files (including Medical Care Recovery Act files), except to the extent that such files contain copies of reports of investigations prepared under the Manual of the Judge Advocate General, or classified or privileged information, may be released by local holders to insurance companies to support claims; to civilian attorneys representing the injured party's and the Government's interests; and to other components of the Department of Defense, without the prior approval of the Judge Advocate General, provided that the amount of the claim is within the monetary settlement authority of the releaser. When the request for production involves material related to