

Army Programs

Processing of Court Orders, Subpoenas, Privacy Act (PA) Requests and Freedom of Information Act (FOIA) Requests

Headquarters
U.S. Army Medical Department Activity
Fort George G. Meade
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SUMMARY of CHANGE

MEDDAC MEMO 25-1

Processing of Court Orders, Subpoenas, Privacy Act (PA) Requests, and Freedom of Information Act (FOIA) Requests

Specifically, this revision—

- o Has been published in a new format that includes a cover and this “Summary of Change” page.
- o Reformats the title page. The Contents section now includes the page numbers that the various chapters and paragraphs begin on.
- o Updates the responsibilities paragraph to reflect current staffing within the facility (para 1-4).
- o The title of AR 600-85 has been updated to reflect the AR’s current title, Army Substance Abuse Program (ASAP) (para 3-4 and appendix A).
- o A new paragraph 3-5 has been added to implement a presidential order, implemented by the Secretary of Defense, the Secretary of the Army, and the Surgeon General, that places additional restrictions on the release of information by making exemption (b)(6) of the FOIA applicable throughout the Department of Defense (that is, to all units and activities in all the armed services). In accordance with this order, personally identifying information of U.S. Army Medical Command personnel, contractors, and family members will be withheld. All directories (including telephone directories and lists of IMPAC cardholders), rosters, detailed organizational charts, etc., that identify individuals are considered lists of personally identifying information that should be withheld under the FOIA.
- o Paragraphs 3-5 through 3-9 have been renumbered 3-6 through 3-10.

Information Management

Processing of Court Orders, Subpoenas, PA (PA) Requests, and Freedom of Information Act (FOIA) Requests

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History. This is the second revision of this memorandum. It was originally published on 6 December 1994.

Summary. This memorandum establishes general guidance for the processing of court orders and subpoenas, and requests for records under the provisions of the PA and Freedom of Information Act.

Applicability. This memorandum applies to Headquarters, U.S. Army Medical Department Activity, Fort George G. Meade (MEDDAC) (that is, Kimbrough Ambulatory Care Center (KACC)).

Proponent. The proponent of this regulation is the MEDDAC Administrative Services Officer.

Suggested improvements. Users of this publication are invited to

send comments and suggested improvements, by memorandum, directly to the Commander, U.S. Army Medical Department Activity, ATTN: MCXR-ZX, Fort George G. Meade, MD 20755-5800, or to the MEDDAC's Command Editor by fax to 677-8088 or e-mail to john.schneider@na.amedd.army.mil.

Distribution. Distribution of this publication is by electronic medium only.

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Chapter 1 Introduction

1-1. Purpose

This memorandum establishes responsibilities and general guidance for the processing of court orders and subpoenas, and requests for records under the provisions of the FOIA and PA.

1-2. References

Required publications, related publications and prescribed forms are listed in appendix A.

1-3. Explanation of abbreviations and terms

Abbreviations used in this regulation are explained in the glossary.

1-4. Use of male gender pronouns

Within this publication, the male gender pronouns “he,” “him” and “his” also represent the female gender pronouns “she,” “her” and “hers”.

1-5. Responsibilities

a. *The Chief, Patient Administration Division (PAD).* The Chief PAD will, as KACC’s Records Custodian, will sign DA Form 4 (Department of the Army Certificate for Authentication of Records), certifying that records being provided in response to a court order or subpoena are true copies and that they are the only records on file within the medical treatment facility that were discovered in response to the court order or subpoena.

b. *The Administrative Services Officer.* The Administrative Services Officer is the FOIA/PA Officer for KACC and will—

(1) Ensure that all court orders, subpoenas, FOIA and PA requests are processed expeditiously, in accordance with (IAW) applicable regulations.

(2) Refer court orders, subpoenas, FOIA and PA requests to the Office of the Staff Judge Advocate (SJA), Fort George G. Meade (FGGM), or to the FOIA/PA Officer, U.S. Army Medical Command (MEDCOM), to obtain guidance or assistance when deemed necessary.

(3) Coordinate with Patient Affairs, PAD, to obtain copies of medical records in response to court orders and subpoenas.

(4) Coordinate the collection of records within the facility in response to FOIA and PA requests.

(5) Mail all responses FOIA and PA requests IAW applicable regulations.

c. *The Patient Affairs clerk.* The NCOIC, Patient Affairs will ensure that all records respondent to court orders and subpoenas are expeditiously located and copied, that DA Form 4 (or a similar form provided by the court or attorney) is completed and signed by the Chief, PAD, and that the response is mailed in sufficient time to be received by the court/attorney by the required date, as specified on the court order or subpoena.

d. *Staff personnel.* Staff personnel will—

(1) Immediately inform the FOIA/PA Officer whenever a court order, subpoena, FOIA request or PA request is received and will take no other action until instructed to do so by the FOIA/PA Officer.

(2) Provide records in response to court orders, subpoenas, FOIA and PA requests whenever required by the FOIA/PA Officer.

Chapter 2

Processing Procedures for Court Orders and Subpoenas

2-1. What to do if you receive a court order or subpoena

Any member of the staff who receives a court order or subpoena to appear in court, or to provide records to a court or an attorney, or both, must provide a copy of the court order or subpoena to the FOIA/PA Officer as quickly as possible. If records are required to be provided, inform the FOIA/PA Officer whether the requested records exist. If appearance in court is required, inform the FOIA/PA Officer of anything that you believe may prevent you from doing so.

2-2. Determining legal sufficiency of court orders and subpoenas

The FOIA/PA Officer will review the court order or subpoena to ensure it complies with AR 340-21, paragraph 3-1 (signed by a judge of a court of competent jurisdiction) or that it is accompanied by an authorization to release the records that is signed by the individual to whom the records pertain or, if that individual is a minor, by his parent or legal guardian.

a. If the court order or subpoena is signed by a judge or is accompanied by a release signed by the individual or his parent or legal guardian, forward the action to Patient Affairs to be completed and responded to.

b. If the court order or subpoena is not signed by a judge or accompanied by a signed release, as described in paragraph *a* above, the FOIA/PA Officer will call the office of the attorney from which the request originated and explain that the court order or subpoena is insufficient to meet the Army's requirement for turning over the requested records (or appearing in court) because the Army is a Federal agency and is subject to the provisions of the PA, and that it is therefore necessary to have a new court order or subpoena signed by a judge or to have a release signed by the individual. The FOIA/PA Officer will also advise the attorney whether there are any records available. (If an attorney knows there are no records to be had, he will often drop the matter at that point.) If the attorney desires to pursue the matter, even if there are no records available, the FOIA/PA Officer will instruct him to fax the new documentation to the FOIA/PA Officer's fax number. If the attorney will not accept the FOIA/PA Officer's decision in the matter, the FOIA/PA Officer will inform the attorney that he will forward the court order or subpoena to the SJA, who will provide the attorney the same information in writing and will caution the attorney that taking such action could significantly slow down the process because it may be several days before the SJA can get the response out. The FOIA/PA Officer will then hold the action until such time as the new documentation arrives. If the documentation does not arrive within one week, the FOIA/PA Officer will call the attorney's office again to remind him.

(1) If the proper documentation is received from the attorney, the FOIA/PA Officer will forward the action to patient Affairs to be completed and responded to.

(2) If the documentation fails to arrive within one month of the date that the attorney was originally contacted, the FOIA/PA Officer will file the unqualified court order or subpoena along with all associated documentation IAW AR 25-400-2.

2-3. Responding to court orders and subpoenas that request records

The FOIA/PA Officer will forward all valid court orders and subpoenas that direct records to be provided to a court or an attorney to Patient Affairs. Patient affairs will obtain the documents, copy them, complete the DD Form 4 or similar document provided with the court order or subpoena, mail the response to the appropriate address, and maintain a copy of the transaction on file.

2-4. Responding to court orders and subpoenas that direct appearance in court

If a valid court order or subpoena directs a member of the staff to appear in court as a witness, the FOIA/PA Officer will take one of the following actions:

a. If the court order or subpoena is for a member of the staff to appear in court as a witness with records, the FOIA/PA Officer will contact the office of the attorney that initiated the court order or subpoena and ask if it is really necessary for that person to appear as a witness, or if the records themselves along with a DA Form 4, certifying them to be true copies, will be sufficient.

b. If the attorney insists on the individual appearing in court as a witness, contact the individual and see if he is willing to do so.

(1) If the individual is willing to appear in court as a witness, provide him a copy of the subpoena (if he does not already have a copy), inform him to comply with the subpoena, and contact the attorney again to inform him that the individual will appear as directed by the judge.

(2) If the individual does not wish to appear in court as a witness, ask him why. Whether or not you are given a reason, contact SJA for guidance. Find out from SJA if they wish to pursue the matter with the originating attorney or if they want the FOIA/PA Officer to do so.

2-5. Assessment of fees

Patient Affairs will charge requesters only for reproduction of requested documents. Normally, there will be no charge for the first copy of a record provided to an individual, or to an attorney representing the individual, to whom the records pertain. Thereafter (or otherwise), fees will be computed as set forth in AR 25-55.

Chapter 3

About FOIA requests and Processing Them

3-1. What constitutes a FOIA request?

A FOIA request is a written request for Department of Defense (DoD) records, made by any person, including a member of the public (U.S. or foreign citizen), an organization, or a business, but not including a Federal agency or a fugitive from the law that either explicitly or implicitly invokes the FOIA, DoD Directive 5400.7, or AR 25-55.

3-2. Agency record

See AR 25-55, paragraph 1-402.

3-3. Use of the word “Component” within this memorandum

Within the Department of the Army (DA), the word “Component” with regard to the FOIA, as defined by the DoD and DA, pertains to DA. (See the glossary for the definition of “Component.”) By definition of DoD and DA, Headquarters, Department of the Army (HQDA) is the FOIA Component for the entire Army. No subordinate element of HQDA can be a FOIA Component.

Within this memorandum a number of paragraphs are extracted verbatim from AR 25-55, the Army's FOIA regulation. AR 25-55 uses the term "Component" inappropriately in many instances when it refers to policy and procedure to be followed by subordinate elements of HQDA. Therefore, because this memorandum concerns KACC's FOIA Program, the term "Component" within this memorandum should be understood to be applicable to KACC. Where it is not, it will be so stated.

3-4. Requests from private parties for release of medical records

The provisions of the FOIA are reserved for persons with private interests as opposed to federal or foreign governments seeking official information. Requests from private persons will be made in writing, and will clearly show all other addresses within the Federal Government to whom the request was also sent. This procedure will reduce processing time requirements, and ensure better inter- and intra-agency coordination. Components are under no obligation to establish procedures to receive hand delivered requests. Foreign governments seeking information from DoD Components should use established official channels for obtaining information. Release of records to individuals under the FOIA is considered public release of information, except as provided for in AR 25-55, paragraphs 1-505 and 3-200, which will be determined by The Surgeon General's Initial Denial Authority (IDA). The KACC FOIA/PA Officer will release medical records, upon request, to the persons specified below, even though these records are exempt from release to the general public. The 10-day limit (see AR 25-55, paragraph 1-503) applies. In accordance with AR 25-55, paragraph 5-101, the FOIA/PA Officer will release information—

- a. On the condition of sick or injured patients to the patient's relatives.
- b. That a patient's condition has become critical to the nearest known relative or to the person the patient has named to be informed in an emergency.
- c. That a diagnosis of psychosis has been made to the nearest known relative or to the person named by the patient.
- d. On births, deaths, and cases of communicable diseases to local officials (if required by local laws).
- e. Copies of records of present or former soldiers, dependents, civilian employees, or patients in DA medical facilities will be released to the patient or to the patient's representative on written request. The attending physician can withhold records if he or she thinks that release may injure the patient's mental or physical health; in that case, copies of records will be released to the patient's next of kin or legal representative or to the doctor assuming the patient's treatment. If the attending physician deems it prudent to withhold certain records, he will forward them to the FOIA/PA Officer; however they will be separated from the rest of the records and will be covered with a typed memorandum giving the reason(s) they should be withheld from the patient and the name, address, and telephone number of a responsible individual, as specified above, who the FOIA/PA Officer should mail those records to. If the patient is adjudged insane, or dies, the copies will be released, on written request, to the patient's next of kin or legal representative.
- f. Copies of records may be given to a Federal or State hospital or penal institution if the person concerned is an inmate or patient there.
- g. Copies of records or information from them may be given to authorized representatives of certain agencies. The National Academy of Sciences, the National Research Council, and other accredited agencies are eligible to receive such information when they are engaged in cooperative studies, with the approval of The Surgeon General of the Army. However, certain information on drug and alcohol use cannot be released. AR 600-85 covers the Army Substance Abuse Program.

h. Copies of pertinent parts of a patient's records can be furnished to the SJA in connection with the Government's collection of a claim. If proper, the legal officer can release this information to the tortfeasor's insurer without the patient's consent.

Note. Information released to third parties under *e, f, and g* above must be accompanied by a statement of the conditions of release. The statement will specify that the information not be disclosed to other persons except as privileged communication between doctor and patient.

3-5. Withholding lists containing personally identifying information

In accordance with a presidential order to expand the provision of exemption (b)(6) of the FOIA so that it is applicable to all units and activities throughout the Department of Defense, personally identifying information of U.S. Army Medical Command personnel, contractors, and family members will be withheld. All directories (including telephone directories and lists if IMPAC cardholders), rosters, detailed organizational charts, etc., that identify individuals are considered lists of personally identifying information that should be withheld under the FOIA.

3-6. What to do if you receive a FOIA request

Any member of the staff who receives a FOIA request will notify the FOIA/PA Officer as soon as possible. If notifying telephonically, have the FOIA request hand-carried to the FOIA/PA Officer expeditiously. If the FOIA/PA Officer is not physically at his/her desk, it will be left with the secretary to the Deputy Commander for Administration, the secretary to the KACC Commander, or the secretary to the Deputy Commander for Clinical Services, in that order. (The term "FOIA request" is explained in the glossary.)

3-7. Initial actions taken by the FOIA/PA Officer regarding FOIA requests

Upon receiving a FOIA request, the FOIA/PA Officer will log it in, create a file folder for it, and initiate a search for the requested records. If it is apparent the search will take more than several days, the FOIA/PA Officer will prepare a letter of acknowledgement to the requester and mail it with the least possible delay.

3-8. Records searches

a. Activities that are required to conduct records search in response to FOIA requests will be tasked to do so by memorandum and will conduct the searches IAW AR 25-55, section 5, which is reproduced at appendix C. Of particular importance to members of the staff who are requested to perform records searches, and their supervisors, are the following paragraphs in appendix C:

- (1) 1-500. Compliance with the FOIA.
- (2) 1-501. Openness with the Public.
- (3) 1-502. Avoidance of Procedural Obstacles.
- (4) 1-506. Creating a Record.

b. Copies of all records respondent to a FOIA request must be furnished to the FOIA/PA Officer.

c. Personnel conducting records searches, and their supervisors, shall not make any markings, remove or obliterate any information on a record that is subject to a FOIA request. If such is required, it will be done by the FOIA/PA Officer and/or the IDA.

3-9. MEDDAC Form 608-R

a. At the time an activity is tasked to conduct a search for records in response to a FOIA request, the FOIA/PA Officer will provide a copy of MEDDAC Form 608-R (Freedom of Information Act (FOIA) Records Search Log) to the activity as an enclosure to the tasking memorandum, after completing item 1 (FOIA No.) and item 2 (Activity search conducted in). When this form is completed, the data entered on it will be used by the FOIA/PA Officer to compile the data to complete DD Form 2086-1 (Record of Freedom of Information (FOI) Processing Cost for Technical Data). A copy of MEDDAC Form 608-R is attached at the back of this regulation in the R-Forms section.

b. The activity should make several working copies of the form, assign one or more persons, as appropriate, in the lowest possible grade(s), to conduct the records search, and give a copy of the MEDDAC Form 608-R to that (those) person(s).

c. When a person is detailed to perform a records search, he will immediately complete items 3 through 5 on the MEDDAC Form 608-R, then, throughout the search, items 6*a* through *c* IAW the instructions on the form.

d. When the records search has been completed, the copies of the retrieved records will be assembled in a logical order; usually chronologically. A reply by memorandum to the tasking memorandum will be prepared to reply back to the FOIA/PA Officer.

Note. If the records search is being conducted by Social Work Section (SWS) and involves Army Family Advocacy Program (FAP) files, SWS will provide two complete (identical) records packets to the FOIA/PA Officer.

(1) The completed MEDDAC Form(s) 608-R will be attached as an “added” enclosure, ensuring that the number of MEDDAC Forms 608-R matches the number stated in the reply.

(2) If the activity supervisor believes there is a reason to withhold certain information from the requester, a statement to this effect, with justification, will be included in the reply. The supervisor will identify exactly what information he believes should be withheld and the reason(s) why. For specific instructions on withholding information for the mental or physical wellbeing of a patient, see paragraph 3-4e above.

(3) The activity supervisor will sign the reply and have it hand-carried to the FOIA/PA Officer with the least possible delay.

3-10. Completing the processing of FOIA requests

Upon receiving input from a records search, the FOIA/PA Officer will—

a. Count the number of printed pages and eye-scan each page, while counting, to detect any that are of so poor quality that they are illegible. If any illegible copies are discovered, the responsible activity will be contacted and asked to provide better copies.

b. If copies of records were submitted from more than one activity concerning the same FOIA, consolidate them into a single packet.

c. In pencil, number each page in the lower right-hand corner.

d. Make three copies of the entire packet.

e. Utilizing one of the copies just made, review each page for any information that appears to be a FOIA exemption IAW AR 25-55, paragraph 3-200 (information that may be withheld by the IDA). If no such information is found in the records, prepare a formal (letter) response to the

requester and forward him a copy of the records packet. If, however, information is discovered that should be exempted, or appears that it should be exempted, do the following:

(1) Excise all information that should be exempted IAW AR 25-55, paragraph 3-200, then make a copy of the copy of the records that were just excised, including all pages that were not excised so that there are two sets of excised records.

(2) Prepare a formal memorandum to the SJA, ATTN: ANME-JAP (Procurement and Administrative Law), requesting a legal review of the FOIA. An enclosure, listing each excised item by page and paragraph number (see paragraph 3-9c above), the applicable exemption (from AR 25-55, paragraph 3-200), and the specific reason for invoking the exemption, will be attached to the memorandum. An excised copy and a clean copy of the FOIA will also be included as enclosures. The FOIA/PA Officer will then hand-carry the action to SJA. (The SJA will review the FOIA, evaluate the excisions made by the FOIA/PA Officer, make additional recommendations for excisions that he deems appropriate, and reply by endorsement back to the FOIA/PA Officer.)

(3) Send a letter to the requester informing him that the records in response to his request have been forwarded to the SJA for a legal review and that that will be followed by a review by the IDA.

(4) After the response is received from SJA, prepare a referral memorandum to the IDA and a letter to the requester informing him that the SJA has completed the local legal review and that because certain information has been recommended to be denied, the action is being forwarded to the IDA for final determination of the denied information. The following documents will be included with the referral memorandum to the IDA, which will be sent to the IDA by Certified Mail:

(a) A copy of the original FOIA request.
(b) A copy of the memorandum sent to the SJA and the SJA's reply.
(c) A copy of the letter to the requester informing him that the action has been referred to the IDA.

(d) An excised copy of the records packet

(e) A clean (unexcised) copy.

f. The FOIA/PA Officer will maintain a file copy of all documents and correspondence pertaining to FOIA requests.

g. The IDA will review the FOIA packet, make a final determination as to what should and should not be denied the requester, and will make the final response to the requester.

Chapter 4

About PA Requests and Processing Them

4-1. What is a PA request?

A PA request is a request from an individual for information about the existence of, or for access to or amendment of, a record about him or her that is in a system of records. The request must cite or implicitly refer to the PA. Subpoenas and court orders received from attorneys for individuals' medical records, who are representing those individuals, are considered to be from the individuals and are therefore considered to be PA requests. (See paragraph 4-3a below for more information regarding who may submit a PA request.) (The term "system of records" is explained in the glossary.)

4-2. Army policy

Army policy concerning the privacy rights of individuals and the Army's responsibilities for compliance with operational requirements established by the PA are as follows:

- a. Protect, as required by the PA of 1974 (5 USC 552a), as amended, the privacy of individuals from unwarranted intrusion. Individuals covered by this protection are living citizens of the United States and aliens lawfully admitted for permanent residence.
- b. Collect only the personal information about an individual that is legally authorized and necessary to support Army operations. Disclose this information only as authorized by the PA and AR 340-21.
- c. Keep only personal information that is timely, accurate, complete, and relevant to the purpose for which it was collected.
- d. Safeguard personal information to prevent unauthorized use, access, disclosure, alteration, or destruction.
- e. Let individuals know what records the Army keeps on them and let them review or get copies of these records, subject to exemptions authorized by law and approved by the Secretary of the Army. (See AR 340-21, chapter 5.)
- f. Permit individuals to amend records about themselves contained in Army systems of records, which they can prove are factually in error, not up-to-date, not complete, or not relevant.
- g. Allow individuals to ask for an administrative review of decisions that deny them access to or the right to amend their records.
- h. Maintain only information about an individual that is relevant and necessary for Army purposes required to be accomplished by statute or Executive Order.
- i. Act on all requests promptly, accurately, and fairly.

4-3. Access under the PA

a. Upon a written or oral request, an individual, or his or her designated agent or legal guardian, will be granted access to a record pertaining to that individual, maintained in a system of records, unless—

(1) The record is subject to an exemption and the system manager has invoked the exemption (see AR 340-21, chapter 5), or

(2) The record is information compiled in reasonable anticipation of a civil action or proceeding.

b. The requester does not have to state a reason or justify the need to gain access. An individual cannot be denied access solely for refusal to provide his or her Social Security Number (SSN) unless the SSN was required for access by statute or regulation adopted prior to January 1, 1975. The request should be submitted to the custodian of the record.

4-4. Notifying the individual

The FOIA/PA Officer will acknowledge requests for access within 10 work days of receipt. In the case of requests for access to medical records, such as subpoenas, court orders, and requests from individuals for copies of their medical records, the action will be turned over to Patient Affairs in PAD. (However, requests concerning Family Advocacy Program records will be handled IAW para 4-11 below.) Patient Affairs will follow through to completion all such actions, seeking guidance and assistance from the FOIA/PA Officer when necessary. Normally, releasable records will be

provided within 30 days, excluding Saturdays, Sundays and legal public holidays; however, valid requests for medical records (see paragraph 2-2 above) to be used in court for court dates that are less than 30 work days out will be honored whenever possible.

4-5. Relationship between the PA and the FOIA

A PA request for access to records will be processed also as a FOIA request. If all or any portion of the requested material is to be denied, it must be considered under the substantive provisions of both the PA and the FOIA. Any withholding of information must be justified by asserting a legally applicable exemption in each Act.

4-6. Functional requests

If an individual asks for his or her record and does not cite or reasonably imply either the PA or the FOIA, and another prescribing directive authorizes release, the records should be released under that directive. Examples of functional requests are military members asking to see their Military Personnel Records Jacket, or civilian employees asking to see their Official Personnel Folder.

4-7. Medical records

If it is determined that releasing medical information to the data subject could have an adverse effect on the mental or physical health of that individual, the requester will be asked to name a physician to receive the record. The physician named must be one who is qualified to treat in the matter to which the records pertain. For example, naming a general practitioner to receive mental health records is not acceptable. The data subject's failure to designate a physician is not a denial under the PA and cannot be appealed.

4-8. What to do if you receive a PA request

Any member of the staff who receives a PA request will notify the FOIA/PA Officer as soon as possible. If the notification to the FOIA/PA Officer is telephonic, the FOIA request will be hand-carried to the FOIA/PA Officer expeditiously. If the FOIA/PA Officer is not physically at his desk, it will be left with the secretary to the Deputy Commander for Administration, the secretary to the KACC Commander, or the secretary to the Deputy Commander for Clinical Services, in that order.

4-9. Initial actions taken by the FOIA/PA Officer regarding PA requests

Upon receiving a PA request, the FOIA/PA Officer will log it in, create a file folder for it, and initiate a search for the requested records. If it is apparent the search will take more than several days, the FOIA/PA Officer will prepare a letter of acknowledgement to the requester and mail it with the least possible delay.

4-10. General guidance for records searches

The general rules that apply to the FOIA regarding records searching also apply to the PA.

- a. Searching activities must provide copies of all records to the FOIA/PA Officer that are respondent to the PA request and can withhold no information, regardless of reason, either in whole or in part.
- b. Physicians who believe that release of certain medical information will be harmful to the mental or physical health of the patient are referred to paragraph 4-7 above for guidance.
- c. Except for records searches in response to subpoenas and court orders, which is discussed

in paragraph 3-7 above, and records searches in involving FAP files, which is discussed in paragraph 4-11 below, the guidance in paragraph 3-7 above will be followed.

4-11. Specific guidance for records searches involving FAP files

All PA requests involving FAP files will be coordinated directly between the FOIA/PA Officer and the Chief, SWS (or the concerned SWS caseworker). SWS will provide the FOIA/PA Officer two clean (unexcised) copies of all FAP records that are subject to the PA request as quickly as possible. In the entire case file is required, SWS will submit both copies in folders with the documents filed inside exactly as in the original file. The records will be enclosed in an sealed envelope, which will be “addressed” to the FOIA/PA Officer, then expeditiously hand-carried to the FOIA/PA Officer or, if the FOIA/PA Officer is not in, to one of the secretaries in the command group. (The FOIA/PA Officer will forward both sets of records to the Surgeon General’s Access and Amendment Refusal Authority (AARA), who will take over the action to determine what records, if any, should be denied to the requester.)

4-12. Denial of access

a. The only officials authorized to deny a request (in whole or in part) from a data subject for records in a system of records pertaining to that individual are the appropriate AARAs, or the Secretary of the Army, acting through the General Counsel. The AARA for DA medical records is The Surgeon General’s IDA, who is also The Surgeon General’s/MEDCOM’s FOIA/PA Officer. Denial is appropriate only if the record—

(1) Was compiled in reasonable anticipation of a civil action or proceeding, or
(2) It properly exempted by the Secretary of the Army from the disclosure provisions of the PA (see AR 340-21, chapter 5), there is a legitimate governmental purpose for invoking the exemption, and it is not required to be disclosed under the FOIA.

b. Requests for records recommended to be denied will be forwarded to the appropriate AARA within 5 workdays of receipt, together with the request, an excised copy of the disputed records (excised by the FOIA/PA Officer), an unexcised copy of the disputed records, and justification for withholding. (For special provisions concerning FAP records, see paragraph 4-11 above.) The requester will be notified of the referral.

Appendix A References

Section I Required Publications

AR 25-55

The Department of the Army Freedom of Information Act Program. (Cited in paras 2-5 and 3-9.)

AR 340-21

The Army Privacy Program. (Cited in paras 2-2, 4-2, 4-3 and 4-12.)

AR 600-85

Army Substance Abuse Program (ASAP). (Cited in para 3-4.)

Section II Related publications

A related publication is merely a source of additional information. The user does not have to read it to understand this publication.

5 USC 552a

The Privacy Act of 1974

AR 310-50

Authorized Abbreviations, Brevity Codes, and Acronyms

DA Pam 25-51

The Army Privacy Program—System Notices and Exemption Rules

DoD Directive 5400.7

DOD Freedom of Information Act Program

Memorandum, The Attorney General, 12 October 2001, subject: The Freedom of Information Act

Memorandum, The Deputy Secretary of De-

fense, 18 October 2001, subject: Operations Security Throughout the Department of Defense

Memorandum, Office of the Secretary of Defense (Administration & Management), 9 November 2001, subject: Withholding of Personally Identifying Information under the Freedom of Information Act (FOIA)

Memorandum, Department of Defense Directorate for Freedom of Information and Security Review, 19 November 2001, subject: DoD Guidance on Attorney General Freedom of Information Act (FOIA) Memorandum

Memorandum, Assistant Secretary of Defense (Command, Control, Communications and Intelligence), 28 December 2001, subject: Removal of Personally Identifying Information of DoD Personnel from Unclassified Websites

Memorandum, Department of the Army Records Management & Declassifications Agency, 11 February 2002, subject: Release of Information Concerning Chemical, Biological, Radiological, and Nuclear Weapons of Mass Destruction

Memorandum, The White House (Assistant to the President and Chief of Staff), 19 March 2002, subject: Action to Safeguard Information Regarding Weapons of Mass Destruction and other Sensitive Documents Related to Homeland Security

Memorandum, Information Security Oversight Office (National Archives and Records Administration), 19 March 2002, subject: Safeguarding Information Regarding Weapons of Mass Destructions and other Sensitive Documents Related to Homeland Security

Memorandum, HQ MEDCOM, MCFP, 11 June 2002, subject: Freedom of Information Act Guidance

**Section III
Prescribed Forms**

MEDDAC Form 608
Freedom of Information Act (FOIA) Records Search Log. (Prescribed in para 3-8.)

**Section IV
Referenced Forms**

DA Form 4
Department of the Army Certificate for Authorization of Records

DD Form 2086-1
Record of Freedom of Information (FOI) Processing Cost for Technical Data

Glossary

Section I

Abbreviations

AARA

Access and Amendment Refusal Authority

DA

Department of the Army

DoD

Department of Defense

FAP

Family Advocacy Program

FGGM

Fort George G. Meade

FOIA/PA

Freedom of Information Act/Privacy Act

FOIA

Freedom of Information Act

HQDA

Headquarters, Department of the Army

IAW

in accordance with

IDA

Initial Denial Authority for The Surgeon General of the Army

KACC

Kimbrough Ambulatory Care Center

MEDCOM

U.S. Army Medical Command

MEDDAC

U.S. Army Medical Department Activity, FGGM

NCOIC

noncommissioned officer in charge

PA

public affairs

PAD

Patient Administration Division

SJA

Staff Judge Advocate, FGGM

SSN

social security number

SWS

Social Work Section

Section II Terms

FOIA request

A written request for DoD records, made by any person, including a member of the

public (U.S. or foreign citizen), an organization, or a business, but not including a Federal Agency or a fugitive from the law, that either explicitly or implicitly invokes the FOIA, DoD Directive 5400.7, DoD 5400.7-R, or AR 25-55. Written requests may be received by postal service or other commercial delivery means, by facsimile, or electronically.

System of records

A *group* of records under the control of DA from which information is retrieved by the individual's name or some identifying number, symbol, or other identifying particular assigned to the individual. System notices for all systems of records must be published in the *Federal Register*. (A grouping or files series of records arranged chronologically or subjectively that is not retrieved by individual identifier is not a system of records, even though individual information could be retrieved by such an identifier, such as through a paper-by-paper search.)

