

FREEDOM OF INFORMATION ACT/PRIVACY ACT

Release of Record of Trial Information Where Accused Is Acquitted

You have asked about the propriety of releasing under official use request procedures a transcript or other records associated with an Airman's courts-martial acquittal, as well as releasing the same documents to someone other than the accused Airmen under the Freedom of Information Act (FOIA).

An official use request release to a Special Victims' Counsel is appropriate if the three part test for releasing Privacy Act records is met under DoD 5400.11-R, *Department of Defense Privacy Program*, paragraph C.4.2.1. For instance, the SVC may need certain documents, such as a transcript of the proceedings or witness testimony, to explain to his client why he believes the case resulted in an acquittal. Any documents released to the SVC pursuant to an official use request must be properly protected by the SVC from inappropriate handling or release.

Third party requests under the FOIA, to include from the alleged victim, are handled differently. For such requests, the Airman/accused's acquittal court-martial records are considered the Privacy Act record of the accused. They are only released to a third party under the FOIA if the FOIA or other law requires release of the information. *See* 5 U.S.C. § 552a(b)(2); DoD 5400.11-R; DoD 5400.7-R_AFMAN 33-302, *Freedom of Information Act Program*; 10 U.S.C. § 854(e) (Uniform Code of Military Justice, Article 54(e) (release of record of proceedings to victims of certain offenses)).

For the majority of FOIA requests, we would expect that Exemption (b)(7)(C) of the FOIA would result in the denial to a third party (with exception to the alleged victim in certain cases, as required by the UCMJ) of records associated with an Airman's court-martial acquittal - unless it is determined that the appropriate public interest in the requested document(s) outweighs the Airman's privacy interest in the Air Force not releasing documents associated with his acquittal. *American Civil Liberties Union v. Dep't of Justice*, 750 F.3d 927 (D.C. Cir. 2014) (recognizing heightened privacy interest an individual has in protecting from public release records associated with an acquittal).