

## Unit Introduction



This unit covers some of the most important material you will receive in this course. Disseminating information is a big part of our job as public affairs officers. We do this in many different ways from dealing with the media, to publishing our base newspapers or hosting community tours.

This unit also highlights the reality that public affairs can be an ambiguous business at times.

There may not always be a black or a white answer on whether you can release certain information. Public affairs practitioners are going to be integral to your command's decision-making process for releasing information.

## Unit Introduction



You'll notice that the title of this unit is not "Rules for the Release of Information." It is called "Guidelines for the Release of Information." That's because we cannot tell you exactly what information can and cannot be released in any particular case. That will depend upon many factors, as you will soon see.

But our purpose is to help you learn the basic rules first, and then we'll discuss the exceptions later.

Pay close attention to those guidelines, because they will help you in your decision-making process. Decisions you make on the release of information have the potential to make or break you as a PAO.

Once you release information, you can't "un-release" it or hit the "recall" or "undo" button.

## Objectives

Given a selection of military information and imagery, and a public affairs scenario, correctly determine whether the information and/or imagery can be released to the public according to Department of Defense and service policy and regulations. Upon completion of this unit of instruction, the student will be able to:

- Determine whether release of given information/imagery is required by the Freedom of Information Act
- List the nine Freedom of Information Act release exemptions
- Determine whether release of given information/imagery is prohibited by the Privacy Act
- Determine whether release of given information/imagery violates security
- Determine whether given information/image is accurate
- Determine whether release of given information/imagery violates Department of Defense or service policy
- Determine whether release of given information/imagery violates propriety
- Determine whether a Public Affairs Officer has the authority to release given information/imagery
- Determine whether a Public Affairs Officer has the competency to release information regarding a given topic
- Determine whether a Public Affairs Officer has the ability to release given information/imagery

## Unit Overview

To meet these objectives, we will discuss several areas of concern pertaining to releasable information. In this unit we will cover:

- The public's right to know versus its need to know
- The DOD Principles of Information
- Security, Accuracy, Propriety, Policy (SAPP)
- Ability, Competence, Authority (ACA)
- Freedom of Information Act (FOIA)
- Privacy Act

You will be able to apply the knowledge learned in this unit directly to your role as a public affairs officer and counselor to your commander.

## The Public's Right to Know

A critical aspect of the military public affairs mission is to provide American citizens with information concerning military plans, policies and operations.

According to Joint Publication 3-61, "It is the responsibility of the DOD to make available timely and accurate information so that the public, Congress and the news media may assess and understand facts about national security and defense strategy."

The public's "right to know" is a legal concept supported by both the Constitution and an act of Congress. Laws like the Sunshine Act (5 U.S.C. 552b) allow the public to gain full disclosure on what the U.S. government is doing.

It is also a concept promoted by officials in all branches of our government as a correct and proper approach. The United States is a democratic government "of the people" and should be open and without secrecy except in special circumstances.

In fact, this concept is widely recognized as fundamental to democracy.



## The Public's Right to Know

The citizens of this nation, as taxpayers, willingly support their government with precious resources. In turn they expect -- and deserve -- to be told how their money is being spent. We are accountable to taxpayers and rely on their continued support. The public has a right to know if their elected officials and appointed (military) leaders are acting on behalf of their best interest and making the right legal, moral and ethical decisions.

The Constitution guarantees its citizens that our government is by, of and for the people; therefore, we are the American public's Air Force, Army, Marines, Navy, and Coast Guard.

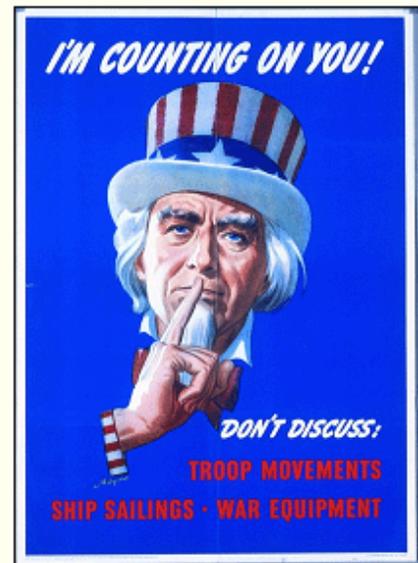


## The Public's Need to Know

The public's "need to know," conversely, is the concept often used to protect certain information from potential enemies of the United States. Our democracy has determined that it is necessary to keep some information from the general public. Some information is critically important to the operation and defense of government.

Potential enemies could benefit from disclosure of this kind of information. This "need to know" concept has risen out of the democratic process and has been around for a while. During World War II, the War Department launched information campaigns to let people know the dangers of speaking publicly about certain things. The poster above is an example of this type of information campaign.

Since the September 11 attacks and the War on Terror, we have seen similar "need to know" information campaigns.



## The Balancing Act



The need for some means of governmental classification in the interest of national defense and security has long been recognized.

We have already established the public indeed has a right to know some things. But making decisions on what and which, if any, information the public has a need to know can become a delicate balancing act.

This is where the "gray area" of our job comes into play as you decide which information to release.

## The Balancing Act



The "balancing act" refers to the decision-making process used by elected officials and appointed leaders to weigh the public's right to know against the need for security and individual privacy of service members. This "balancing act" can often come down to two simple questions:

1. Does the release of this information contribute to the principles of democracy, or could it harm the foundations of democracy?
2. Who really benefits from the release of this information?

## The Balancing Act



Public affairs practitioners are in the middle of this decision-making process. We are often tasked to advise our commands on maintaining this balance. Our commanders look to us as the experts for this advice, and they should. It is important that we study these guidelines, and why we must continually keep abreast of any changes.

Release authority always lies with your commander or a higher command. Your job is to advise, but they are the leaders who ultimately say whether or not something is released.

In the balancing act of the public's right versus the public's need to know, we must realize that increased public interest leads to a greater need to provide information.

## The Balancing Act



Public Affairs practitioners should consider interest in the topic itself as part of his/her counsel. You must also consider the advantages or disadvantages to us as a service, a military unit, or as an entity of the community in which we are located when deciding whether or not to release information.

In doing so, we also must abide by individual service policies, as well as other factors.

Although we have a number of policies regarding the release of information, we must learn to apply them properly to reach the correct decision in this balancing act.

## DOD Principles of Information



You've already been introduced to the DOD's Principles of Information in earlier units. In this unit, we'll examine how these principles apply to the release of information. We are going to talk about these principles and how they relate to guidelines for release.

## DOD Principles of Information

[DOD Directive 5230.9](#) is the policy set forth to govern the release of information. A portion of this directive has been pulled out and used as the DOD Principles of Information, which can be summarized and is perhaps best known as the “Maximum Disclosure, Minimum Delay” policy.

It is a policy of openness governing the release of military information. It states that the DOD is committed to providing the public with rapid access to any information that would not jeopardize security or a service member's right of privacy. It also specifically states that information may not be withheld from the public simply because its release would be embarrassing to the commander or service involved.

The maximum disclosure, minimum delay policy is the foundation for DOD's military-media relations program.

## Limitations on Release

The DOD has established standard limitations to its maximum disclosure, minimum delay policy to ensure consistency of information released by the many commands, activities and military bases that make up the DOD. The restrictions are security, accuracy, propriety and policy, also referred to as SAPP -- an internal acronym used by PAOs.

## Limitations on Release - Security

Security is the need to safeguard classified and operationally sensitive information. It is the first and most important limitation. It refers to information that is formally classified or information that falls under operational security (OPSEC) or Essential Elements of Friendly Information (EEFI).

Examples of secure information would be operational planning, troop movements, investigations, or unit strength in a theater of operation.

## Limitations on Release - Accuracy

Accuracy is the second most important limitation. This limitation demands that public affairs sources provide only factual information, not speculation. What does this mean? Do not answer a question or release information unless you are sure you have accurate information. Do not be pressured into providing an inaccurate release.

An example would be during the TWA Flight 800 crash over Long Island, N.Y., in 1996. Within the first few hours of the downed aircraft, New York media descended upon Coast Guard Station Moriches as they began search and rescue operations. The Coast Guard Group Moriches Commander was responding to media queries when reporters asked him what he needed the most. He responded, "Lots of body bags."

This was a violation of accuracy because search and rescue operations had just got under way. There had been no indication of whether or not there were survivors, nor had there been next of kin been notified. He violated accuracy.

## Limitations on Release - Propriety

Propriety, or appropriateness. Out of respect for service members and their families, public affairs personnel will not help gather or publish inappropriate descriptions or images. You must ensure all your releases are in good taste. For example, do not release grotesque accident photographs or make statements that may cause family members distress.

Propriety (and often policy) also pertains to the advertising of commercial products. It is inappropriate to release information that gives the perception of the DOD endorsing a product; release information that places organizations in an unnecessary negative light; release information that shows bias toward commercial products or agencies, etc.

## Limitations on Release - Policy

Policy dictates the procedure for release of topical information at various levels of authority. (And in a joint environment, this can often prove to be challenging.) Plus, your commander's policy matters greatly.

Other examples of specific policy include the Freedom of Information Act and Privacy Act, which also give release guidance for certain types of information - which we will also cover today.

PAOs should understand and be able to explain public affairs, as well as operational policies regarding the release or non-release of information.

## Other Considerations

In addition to S.A.P.P. limitations on the release of information, there are other limitations you must consider: ability, competency and authority or ACA guidelines. ACA guidelines refer to a particular person's or command's ability, competency and authority to release the information. These Three additional lesser-known considerations - but not of less importance - may limit public affairs officials from providing information on a given subject.



## Ability

Ability refers to actually having the information. For example, a public affairs officer or other individual dealing with the media simply may not possess any information on the issues and therefore, at that point at least, will not have the *ability* to comment on or release any information.



## Competency

Competency refers to having expertise on the subject. In a given situation, the PAO or other individual might, in fact, *have* the information, but not be qualified or have the competency to discuss it with news media.

In other words, the PAO may not be the subject matter expert (SME) on the topic. In these cases, a PAO can locate an SME who would have the competency to talk on the subject or refer the requester of the information to another agency's public affairs office.



Reporters don't necessarily want to talk with a public affairs specialist, they want to talk with the men and women who are doing the work. They want to talk with the pilot who flew the plane, the tank driver who advanced through a hostile zone, the Marine who was involved in the shoot out, the engineer who can speak specifically about a weapons system, etc. They are the individuals with first-hand knowledge and a human interest story to tell the public.

## Authority

Authority means that information is released at the appropriate level of command.

A good rule of thumb is that the release authority of a commander is the same level of authority in other military matters. For example, a base-level PAO is normally authorized to speak for anything involving his or her base, but usually will not have the authority to speak on behalf of a higher headquarters.

Your level of command will have authority to talk about what they are responsible for. You should never comment on another command's activities. In addition, policies or actions that happen at higher levels of command are never your responsibility unless you are given authorization to talk about them as they pertain to your command.

We use the terms "usually," and "normally," because that is where this gray area really shows its color – much of this ambiguity is based on what type of information is being considered for release.

## Setting Ground Rules

Members of the media may or may not be familiar with military release restrictions in regards to specific topics. To avoid problems and promote better understanding and relations with media and other community representatives, you should always advise the media "up front" concerning any restrictions that apply that limit the amount of information you can provide to them.

Part of your job is to avoid any chance of misunderstanding or perceptions that you are somehow 'covering up,' "stonewalling," or withholding legitimate information. Be up front and establish ground rules on what you can and are able to talk about.

These restrictions include those that fall under the Freedom of Information Act and the Privacy Act.

## Freedom of Information Act



"A popular government without popular information or the means of acquiring it, is but a Prologue to a Farce or a Tragedy or perhaps both. Knowledge will forever govern ignorance, and a people who mean to be their own Governors, must arm themselves with the power knowledge gives."

- James Madison

## Freedom of Information Act



The Freedom of Information Act (FOIA) is a law that provides public access to records, documents, or reports in the possession or control of the Executive Branch of the federal government. Passed in 1966, it was the first law to establish legal right of access by citizens to government information. In other words, it protects the public's right to know and prevents excessive government secrecy.

Under FOIA, the DOD and all service component commands must provide information requested by anyone citing FOIA in a written request, unless the information is exempted by one of nine categories of information protected from disclosure, which we'll examine shortly.

## FOIA Updates

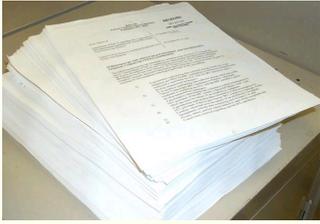
In 1996, the Act was updated to include information in any format - to bring it into the computer age of electronic technology - and other changes. All federal agencies, including military bases, have electronic reading rooms available for public access on the worldwide web for repeatedly requested documents and items of public interest.

In September 1998, the DOD updated its FOIA Program Regulation 5400.7-R to include all the electronic FOIA changes also. It is available on the Defense Link Publications Page at [www.defenselink.mil/pubs/foi/](http://www.defenselink.mil/pubs/foi/).

So, how does FOIA affect us as PAOs at the levels we will be working?



## FOIA and Public Affairs



PAOs should be familiar with the Freedom of Information Act and its exemptions. Another part of our job is to provide our publics, especially the media, with any query for unclassified information without them having to submit a FOIA request.

In other words, if you would be required to release the information by FOIA, you should provide it willingly and quickly in response to media query.

Of course, responding quickly is relative. Whether the request is a community member at large or a media representative who wants pages of documents, it is best to have them submit a formal request with the FOIA Office.

## FIOA Exemptions

Generally speaking, PAOs do not usually handle FOIA requests. They typically do not have the time or the personnel. FOIA requests are usually handled through a separate office, often in the legal or communication sections of the command.

As far as the exemptions to FOIA are concerned, PAOs do not decide whether exempted information will be released, but we should understand that the spirit of this guidance is to release, not to withhold.

PAOs must be familiar enough with FOIA to understand the basics of this law. Simply stated, the spirit of FOIA is to release not to withhold information. It is the FOIA equivalent of the PA rule "Maximum Disclosure/Minimum Delay."

Of course, as we already talked about, we as PAOs have little influence on some of those decisions. Ultimately the decision to release or not release information resides with your commander.

## FOIA Exemptions

We mentioned earlier that there were nine exemptions to the Freedom of Information Act. You must be aware of these exemptions, because they can affect how we offer counsel to leadership and in communications planning.

- National security: Documents classified top secret, secret or confidential are not releasable. "For Official Use Only" (FOUO) is not a national security classification.
- Internal agency rules: This exemption refers to reports related solely to the internal personnel rules and practices of an agency. This provision is designed to relieve the government of the burden of maintaining for public inspection routine material that is more or less trivial, such as employee parking rules or agency criteria regulations. The agency does not have to release this information, but it may.
- Exempt by other statute: Examples are the charter for the CIA or the Census Act, both of which protect information that are fundamental to the way these agencies conduct business.
- Trade secrets: This exemption is designed to protect private businesses' trade secrets, such as customer lists, proprietary formulas and sensitive internal financial information.
- Inter-agency or intra-agency memoranda or letters: Designed to protect working papers, studies, and reports within an agency or circulated among government personnel. These documents are not available by law or to a third party other than an agency involved in litigation.
- Personnel and medical files: This exemption overlaps with the Privacy Act. Information which clearly constitutes unwarranted invasion of personal privacy is protected.
- Law enforcement information: Protects information that would jeopardize ongoing investigations or other sources of information.
- Bank reports: Reports prepared by federal agencies about the condition of banks and other federally regulated institutions.
- Oil and gas well data: This exemption is designed to prohibit speculators from obtaining information about the location of oil and gas wells of private companies.

## Privacy Act

PAOs have access to a great deal of information, not only on their unit's mission and operations, but on individual service members. We are expected to protect the privacy rights of these service members while providing our publics with information. Sometimes this concept of "maximum disclosure" collides with the rights of individuals privacy.

That's where your knowledge and insight will provide most valuable, as you weigh competing factors and make tough calls. The Privacy Act was designed to:

- Prevent government agencies from excessive disclosure of personal information to agencies that do not have a need to know.
- Allow citizens to review records kept about them by the government. The purpose is to ensure citizens access, so that they can correct any errors or discrepancies.



## Privacy Act



Making decisions about releasing personal information on individuals is a difficult task. Such decisions are rarely "black and white" situations. In all cases, the public's right to know must be weighed against the individuals' right to privacy.

In deciding what information to release, you will want to work closely with your local legal advisor or Judge Advocate General (JAG) for assistance in these decisions. Service regulations vary in some instances on the release of information. Sometimes this is challenging, especially in joint or multi-service environments.

Some military information is routinely released in response to media queries are:

- A Service member's name
- Rank/pay grade
- Time in service
- Time on station
- Occupational specialty
- Military awards

## Privacy Act - Restrictions

Information normally protected by the Privacy Act includes:

- Medical Records
- Pay Records
- Age
- Race
- Sex and family background
- *Note: age, sex and race can be released depending on the situation.*

In some cases the media will persistently try to obtain personnel information protected by the Privacy Act. In such cases, public affairs officers should consult with a staff judge advocate and seek their commanders' guidance.

Now, let us get into specific information items and their releasable status under the DOD implementing instructions for the Privacy Act.

## Personal Information Releasable When Requested

Usually we as PAOs take a measured response to the release of personal information, in an attempt to provide the required information without sacrificing a service member's right to privacy.

We are primarily talking about accidents or incidents where we will not have access to the military member to find out what their preferences are in releasing the information.

The following information is NORMALLY releasable to help properly identify service members who are killed or injured in accidents or incidents.

- Name: Releasable 24-hours after next of kin have been notified, in case of an accident. Use full names and middle initials to clearly identify service members.
- Rank and unit: Releasable to help properly identify the individual service member.
- Home of Record: There is no general rule across the services. However, in most cases hometown and state are releasable. The Privacy Act protects street address and home telephone number.



THIS IS THE BASIC INFORMATION RELEASABLE. You must understand how to use information when you write your initial accident and accident follow-up releases. Now let us look at some other information that is often released.

## Personal Information Releasable When Requested

The following information may be released if specifically requested or if it would be beneficial to the service member and the service:

- **Pay Grade/Monthly Salary:** Releasable. However, other pay-related information such as allotments, court-ordered payments or letters of indebtedness are protected under the Privacy Act.
- **Military Background:** Releasable. Information on military training, occupational specialty, time-in-service, time-on-station, billet, duty status, and awards is releasable. Civilian education is normally releasable; however, the Air Force requires the member's consent to release civilian schools. When dealing with multi-service environments, check the services' regulations and guidelines on specific release of information.

When gathering information about people in your unit who were involved in accidents or incidents, it is good to rapidly gather this information - so as not to hold up media requests when they inevitably come in. It is also good to prepare (with media training) unit members and even family members for potential interviews about the people who were involved with accidents and/or incidents.

This type of information is usually looked at before the decision is made to release it, BUT there is some information that is scrutinized even closer before its release. And this is where you will have to weigh the public or media interest ... you will have to use some of the guidelines we talked about earlier including commander policy and such before you decide to release.

What are some of these pieces of information?

## Personal Information Releasable When Relevant to a Story

In some circumstances, normally because it is relevant to the story, it is permissible to release personal information. In such circumstances, PAOs should consult the staff judge advocate. In fact, it is a good idea to maintain a good relationship with your JAG. You may not always agree with them on what and when to release, but the relationship you maintain with JAG can keep you out of trouble.

- **Age/Date of Birth:** Normally not releasable, unless relevant to the story. An example of this is when a retired 70-year-old Reservist was called back to active duty during the Iraq War. He was a physician and his specialized skills were deemed needed. Age played a factor in reporters covering his story.
- **Gender:** Although we normally try to downplay the gender of service members, there are times when the information is relevant to the story. "The first female to ..." "The first male to ..." stories. Stories about men and women who break stereotypes are newsworthy. But gender usually comes out in stories by virtue of the use of personal pronouns anyway.
- **Race:** Race is not releasable unless it is relevant to providing essential facts to the story, i.e. "The first African American male to...", "The first Asian American female to...", "The first Arab American male to...", etc.
- **Marital Status:** The fact that a person is married or not is a matter of public record and is able to be disclosed under FOIA; however, the Privacy Act considers this information non-releasable unless the balancing test weighs in favor of public interest and relevance to the story. Of course, in many cases information may come out anyway, although it's best if the family is involved in the release decision.

In all such cases, PAOs and their commanders must apply the balancing test to determine whether the release of information constitutes an unwarranted invasion of a service member's privacy.

In addition to discussing unique issues of releasing certain types of information with the commander, the PAO is in close contact with the JAG, especially in legal and administrative matters. Let us talk about those now.

## Legal Matters



Release of information concerning legal proceedings against a service member should always be coordinated with the command's staff judge advocate. In general, PAOs should not provide any information on a criminal suspect until that person has been formally charged with violations of the Uniform Code of Military Justice.

In some cases, a military judge may ask the public affairs officer to limit media coverage of a case, to avoid prejudicing potential court martial members. Such a request should not limit a PAO from releasing information according to established

guidelines for release. Coordination is the key.

- Suspects: Once the suspect has been charged, the case becomes a matter of public record, and the normal guidelines for release and Privacy Act restrictions apply. Prior to the individual being formally charged, no information should be released, other than perhaps you have a suspect in custody.
- Article 32: Media coverage is allowed of both Article 32 hearings and court-martial proceedings, although a military judge may impose restrictions within the courtroom. A military judge may also allow cameras in the courtroom, but such cases are rare.
- Nonjudicial Punishment (NJP): (Article 15, UCMJ) proceedings are administrative hearings. Therefore, information about the specific punishment or disciplinary measures taken against a specifically named service member is not releasable. However, release of general information about an administrative case, provided the names of service members are not released. The release also gives the opportunity to highlight the fairness of our military justice system.
- Administrative Punishments and Letters of Reprimand: Same as NJP.

## Administrative Matters

Administrative hearings involve discharges, separations and selection boards:

Administrative Separations and Discharges are not releasable. All information concerning administrative separation proceedings and type of discharge (honorable, general or undesirable) is protected by the Privacy Act.

Punitive cases are releasable. Judgements resulting from courts-martial are a matter of public record. Therefore, information on charges, verdicts and sentences are releasable.



## Administrative Matters

When talking about releasing information on the decisions of Personnel Boards, the information varies depending on the type of Board. Here are a couple of rules to go by:

Results of personnel board actions that affect groups such as promotion boards and school selection lists are releasable after final decision by approval authority.

Results of personnel boards that affect individual service members such as administrative discharge boards and aviator flight boards are not generally releasable.

When dealing with Privacy Act information about service members in conjunction with legal matters, DO NOT hesitate to contact your JAG for advice.

We have discussed many aspects of releasing information concerning military personnel, but what happens when you are dealing with a service member's family?

## Information on Family Members

The Defense Department has no legal authority to release information on family members of service members, even though such information is a matter of military record. We do not release information on family members as a matter of long-standing tradition.

However, with family members' consent, you may assist with releasing their information to the media.

In times of accidents/incidents, release of information on surviving family members is allowed, but such release should be coordinated with the family via the casualty assistance officer. If the family does not want you to release the information about family members, you should not release it.



## DOD Policy on Nuclear Weapons

Beginning in the mid-1990s, the United States discontinued the routine deployment of nuclear weapons. As a result, this is our current policy concerning the deployment of such weapons.

In the event of accidents involving nuclear materials or weapons, the decision on what information to release will be a matter for detailed discussion and coordination. The issues of public safety and control or rumors or panic will certainly be key considerations. *Note: The Air Force has detailed guidance in its Public Affairs Instruction.*

As of November 21, 2003, DOD Instruction states the response to be given, even when such location is thought to be known or obvious, is.

"It is U.S. policy to neither confirm nor deny the presence or absence of nuclear weapons at any general or specific location."

## Unit Summary

So we arrive back where we started because the guidelines for release of information are sometimes a gray area. What one commander might decide is releasable information another might choose to withhold. Public affairs officers should be advocates for the release of information to which the public has a right to know, but be aware of the limitations and considerations.