



## **D.I.G.\* DIRECTORY**

\*Disclosure of Information by the Government



A GUIDE FOR OBTAINING RECORDS, EVIDENCE AND  
OTHER INFORMATION FROM THE U.S. GOVERNMENT

**The North Carolina State Bar  
Standing Committee on Legal Assistance for Military Personnel  
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## Disclosure of Information from the Government

### Basic Information

Attorneys handling military divorce cases often need to get information on the pay, housing allowance and other entitlements of the servicemember (SM), historical data on raises in pay and promotions, how retired pay is calculated and other financial information. How does one get these documents? Where can the information be found?

There is no Annual Benefit Statement for retirement from the uniformed services, and there's no Summary Plan Description either. In fact, the retirement system for those in the uniformed services (Army, Navy, Air Force, Marine Corps, Coast Guard and the commissioned corps of the Public Health Service, or PHS, and the National Oceanic and Atmospheric Administration, or NOAA) is not even a "retirement plan." These individuals retire under a *statutory program* set out in the U.S. Code. They get promoted regularly, depending on their personnel evaluations and the needs of the service; their promotions will be shown on past LES's (Leave and Earnings Statements) and in the Officer Record Brief (for officers) and Enlisted Record Brief (for enlisted personnel) for most components, although the names of these personnel records may vary. Pay raises accrue upon promotion and also take place every two years ("step increases"). There is an annual "pay raise" when Congress approves the pay tables for the next year.

### Understanding Alternatives

Those who need to obtain government records should consider several alternatives before demanding documents from the U.S. government. There are numerous roadblocks one may encounter regarding the release of personal information governed by the Privacy Act of 1974. 5 U.S.C. § 552a. This means that it may not be easy to obtain what you are seeking. The expected difficulties will likely translate into more time and more expense for the attorney for the spouse or former spouse.

The *last option* should be to request papers from "Uncle Sam." Perhaps there are easier alternatives. When trying to obtain government records, consider the following options.

First, see if you can obtain the documents from your client. If you represent Mary Doe, the estranged wife of Navy CPO (chief petty officer) John Doe, see if she can help you.:

- When you are seeking information on her husband's pay and allowances, first ask her if she has any information. She may just happen to have a copy of her husband's most recent Leave and Earnings Statement (LES). Perhaps he printed it from the Internet and left it lying on the dining room table. Her quick action in snapping a picture of it on her smart phone would save you a lot of work in regard to determining his pay and allowances.

- You could also work with her in reconstructing his “Entitlements” using on-line resources. By finding out when he entered military service, and then using the military pay tables at the website for the Defense Finance and Accounting Service (DFAS), <https://www.dfas.mil>. The charts there will show you the pay for any active-duty servicemember when you know the years of creditable service and the pay grade. In addition to John’s base pay, the DFAS website will provide the data for his basic allowance for subsistence,
- The DFAS website also shows rates of *special pay* (e.g., aviation or parachute pay). But there’s no way to tell from the charts whether a particular individual is entitled to such pay.
- More importantly, the DFAS pay tables don’t list rates for the BAH (Basic Allowance for Housing). BAH rates are found at the Department of Defense BAH calculator. Inserting John’s rank and his Zip Code will yield the amount of his housing allowance. While his BAH is not useful in calculating expected retired pay, it can be very helpful in determining John Doe’s total monthly income for other purposes, such as alimony or child support. The website for the Defense Travel Management Office, where the BAH Calculator is found (as well as the calculator for the Overseas Housing Allowance) is <https://www.defensetravel.dod.mil/site/bahCalc.cfm> or just type “Department of Defense BAH calculator” into any search engine.
- If you need to determine how many years of creditable service he has, sitting down with Mary Doe may help you to find out if she knows when John started serving in the Navy. If she has access to them, she may be able to put hands on the documents which would show that date. This is usually faster and cheaper than attempting to get records from the government.

Second, ask the other side. It’s often surprising what a well-written letter will produce, especially when it asks politely for documents and explains why they are needed. An offer to reciprocate is a good idea too. If the other side does not have the documents but could obtain them, provide the other party or attorney with a release and authorization form to transmit to the records custodian upon completion by the servicemember, veteran, or retiree; this may produce results. If there is no cooperation, bring this to the attention of the court. It is surprising how the court will assist when it is shown that opposing counsel (or the other party) refused to send a signed authorization requesting the records to the appropriate office! If you can get the other party into court, it may be relatively easy to get the judge to order CPO John Doe to sign the release/authorization, or else start spending time in jail for contempt.

### Using discovery to obtain information

The third alternative is discovery. When the documents are in the possession of the other side or are readily accessible, and when information can be retrieved by the

opposing party, counsel should consider serving a document request, propounding interrogatories, scheduling a deposition or serving requests for admissions to obtain the necessary information.

A document request might request an individual's LES (Leave and Earnings Statement), the pay statement for military members which is issued twice a month electronically. The equivalent for the Coast Guard is the "Payslip." These documents will show all pay and allowances for the individual, his or her state of residence for tax purposes, the allotments which have been started, and the accrued leave balance, among other things. It could ask for a copy of the member's most recent Thrift Savings Plan statement or the retiree's RAS (Retiree Account Statement), issued electronically at the end of each month. To determine the individual's National Guard or Reserve retirement points, the document to request is the "retirement points statement" (since this document has different titles depending on the branch of the Reserve Component (RC). The form used to designate one's state of legal residence for state income tax withholding purposes is DD Form 2058. To find out when an individual retired, one could ask for his or her retirement orders.

Some documents must be described since they have no form number. Thus the letter which DFAS (Defense Finance and Accounting Service) sends to a member at or before the start of retired pay is simply called "the letter from DFAS showing how your retired pay was calculated." The letters that are sent by the VA (Department of Veterans Affairs) describing one's disabilities and stating the combined VA rating for disability compensation purposes might be called, "All correspondence from the VA stating your VA ratings."

Interrogatories can be used to extract information that is within the knowledge of the other party or is readily available. In a child support case, the questions might request information on when an individual started military service, what his or rank and pay grade is, the amount of one's gross pay per month, the amount and nature of each deduction and allotment, the amount and nature of all allowances and special pays, the state of legal residence for the individual, where he or she has filed state income taxes for the last three years, the account balances and loans outstanding for any retirement account or Thrift Savings Plan held by the member, and so on. In a case where a hypothetical retired pay amount is involved (as in a "Frozen Benefit Rule" case, which is every divorce case after December 23, 2016, when the member is not receiving retired pay at the date of divorce), it is important to ask about the DIEMS (Date of Initial Entry into Military Service), the PEBD (Pay Entry Base Date) and the date of one's last promotion.

Requests for admissions can pin down important data without the necessity of scheduling a hearing or a deposition to obtain oral testimony. Failure to deny an item means that it is deemed to be admitted. The request for admissions could ask the defendant, "John Doe," to admit that:

1. He is currently a soldier in the U.S. Army;
2. He is stationed at Fort Drum, New York;

3. His rank and pay grade are staff sergeant/E-6;
4. His gross monthly pay is \$4,321;
5. He has served for 14 consecutive years in the Army, without a break in service;
6. He will be eligible to apply for retired pay at the time he attains 20 years of creditable service; and
7. He has a monthly allotment of \$600 to pay for the support of his daughter from a prior marriage.

### Demanding Documents from the Government

The last resort is to request that the government produce the papers, records and documents which you're seeking. As set out above, counsel should recognize that personnel records are governed by the Privacy Act. As a general rule, you'll find that the government jealously guards its personnel and financial records unless there is a valid release signed by the individual concerned, or else there is an order issued by a court of competent jurisdiction. The best resource for navigating through FOIA (the Freedom of Information Act, 5 U.S.C. 552) and the Privacy Act (PA) is the "Government Information Practices Deskbook" published by the Army Judge Advocate General's Legal Center and School. It is found at <https://tjaglcs.army.mil/> > Publications > Deskbooks and Handbooks > Administrative & Civil Law > 2021 GIP Deskbook.

The federal government has also published specific rules regarding the disclosure of information under FOIA and the Privacy Act. See 6 C.F.R. Part 5, "Disclosure of Records and Information."

Be prepared to jump over some hurdles to get what you want from the government, be sure to direct your request to the proper records custodian, and don't expect results overnight. The step-by-step request process can be found in Chapter 7 of Army Regulation (AR) 27-40, "Litigation," for Army information and records, and in Chapter 9 of Air Force Instruction (AFI) 51-301 "Civil Litigation," for Air Force records and information. The Secretary of the Navy's instructions for the release of information will be found at SecNavInst 5820.8A, "Release of Official Information for Litigation Purposes and Testimony by Department of the Navy (DON) Personnel." All Department of Navy issuances can be found on line at the following website: <https://www.secnav.navy.mil/doni/allinstructions.aspx>. When the website opens up, just scroll down to the proper number.

When requesting personnel records, you will usually need to obtain consent of the individual concerned or else an order from a court of competent jurisdiction. This is because the Privacy Act states that "No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be... pursuant to the order of a court of competent jurisdiction...." 10 U.S.C. § 552a(b)(11).

A sample release and authorization form can be found in the Silent Partner info-  
letter, “Docs for Division,” located at [www.nclamp.gov](http://www.nclamp.gov) > Publications. It can be  
edited to apply to a specific department or agency.

What will DFAS disclose when a proper FOIA request is submitted? An example  
of a September 2021 letter from DFAS, “Sample of Releasable Data under FOIA,” is  
found at the end of this paper. The items provided by DFAS in response to the ex-  
wife’s inquiry were: the Pay Entry Base Date of the SM (servicemember), his final  
duty status, his final rank/grade, his final salary (gross monthly base pay, and his  
years of service creditable for retirement. It appears that his “High-3” pay would  
also have been supplied if that had been used in calculating his retired pay. The  
means of contacting the FOIA office at DFAS is shown in the final paragraph of the  
letter.

Will DFAS comply with a subpoena signed by a state court judge for production  
of pay records and other information regarding a servicemember or a military  
retiree? The DFAS website states at “Frequently Asked Questions”  
(<https://www.dfas.mil/garnishment/civgarnishment/faqs/>) the following:

Q. Can a subpoena be served on DFAS to obtain pay or employment  
related information about an employee?

A. Yes, however, the Privacy Act of 1974 requires that the subpoena be  
signed by a judge.

This begs the question, however. Does the subpoena have to be signed by a *state*  
*court* judge, or is it a *federal court* judge who must sign the subpoena? While it’s  
clear that a subpoena signed by a lawyer or the clerk of court will not suffice, it  
remains unclear which kind of judge must execute the subpoena or court order.

Elsewhere on its website,<sup>1</sup> however, DFAS makes it clear that federal district court  
is involved:

## COURT ORDERS AND SUBPOENAS

The United States Department of Defense is not subject to the  
jurisdiction of a State Court. See *United States ex rel. Touhy v. Ragen*,  
340 U.S. 462 (1951), *Boron Oil Co. v. Downie*, 873 F.2d 67 (4th Cir.  
1989); *United States v. Bizzard*, 674 F.2d 1382 (11th Cir. 1982); *United*  
*States v. Marino*, 658 F.2d 1120 (6th Cir. 1981). Moreover, the  
requested information is protected by the Privacy Act, 5 U.S.C. §552a;  
32 C.F.R. § 97.6(b)(3).

Therefore, the Defense Finance and Accounting Service (DFAS) will  
only provide records in response to the following:

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<sup>1</sup><https://www.dfas.mil/Portals/98/Documents/FOIA/Court%20Orders%20and%20Subpoenas.pdf?ver=2020-04-29-144853-353>).

\* Court order or subpoena signed by a Federal/U.S. District Court judge; OR

\* Signed consent from the person to whom the information pertains.

Once you have obtained the appropriate order/subpoena or signed consent, please submit your request to the corresponding FOIA/PA office via one of the methods below.

DFAS - IN Corporate Communications FOIA/PA Adherence Division 8899 East 56 <sup>th</sup> Street Indianapolis, IN 46249- 0150 Fax: (317) 275-0391 <a href="mailto:dfas.foia@mail.mil">dfas.foia@mail.mil</a>	DFAS - CL Corporate Communications FOIA/PA Adherence Division 1240 East Ninth Street, Room 1429 Cleveland, OH 44199 Fax: (317) 275-0391 <a href="mailto:dfas.foia@mail.mil">dfas.foia@mail.mil</a>
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What about the Coast Guard Pay & Personnel Center, which administers pay for members of the Coast Guard and also handles the division of uniformed services retired pay under 10 U.S.C. § 1408 for the Coast Guard and the commissioned corps of the Public Health Service and the National Oceanic and Atmospheric Administration? The Coast Guard also takes a restricted view of “court of competent jurisdiction,” stating that it must be a federal district court which allows a party to obtain federal and military records upon proper application.

A federal district court case which explains the rules for obtaining records in the context of a product-liability lawsuit and records from the U.S. Department of Veterans Affairs is Brown v. U.S. VA, Case No. 2:17-cv-1181-TMP, 2017 U.S. Dist. LEXIS 134556, 2017 WL 3620253 (S.D. Ala., Aug. 23, 2017). The attorney requesting information, using the “housekeeping rules” for release of information and documents explained in the Brown case, should read the key case on document disclosure, *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951). This decision explains the rules as to restricting private parties from access to government records and government witnesses in litigation which does not concern the United States. In light of this case, requests and inquiries as to government witnesses and records kept by the federal government are usually called “Touhy requests.” An example of a *Touhy request* for information is found at the end of this paper.

Does this mean that every federal agency requires that court orders for disclosure of records or information must come from a federal district court judge? No - the above rules are about information from DFAS and the Coast Guard. The Air Reserve Personnel Center (ARPC), which handles records regarding those in the Air Force Reserve and the Air National Guard, appears to take the position that a state court judge can obtain compliance with an order for production of ARPC documents. It has

published an article which states how a state court judge can initiate a request for records (rather than a federal judge) at its website. The article is titled “Verification of Service and Retired Pay for Divorce Proceedings.” The relevant text reads:

*This guidance provides the process for obtaining verification of service and retired pay for divorce proceedings as well as basic information for Former Spouses and Qualified Domestic Relations Orders (QDRO).*

***Verification of Service for Divorce Proceedings***

*Airmen can request assistance regarding retired pay benefits for divorce proceedings.*

*Airmen in the process of a divorce may need information from HQ Air Reserve Personnel Center (ARPC) regarding military retirement. In order to receive this information, and in compliance with the confidentiality provisions under the Privacy Act of 1974, HQ ARPC must receive a written request from the member or a court order signed by the judge presiding over the case.*

*The written request must include the member's social security number, date of marriage, and the date of separation/divorce. Forward requests via mail to HQ ARPC/DPT, Retirements Branch, 18420 E. Silver Creek Ave, Bldg 390 MS 68, Buckley AFB, CO 80011, or fax to 1-478-327-2215 (DSN 497-2215).<sup>2</sup>*

## More Rules about Records

Make sure that the order or subpoena requires that the documents be given to the court under seal, that any production for parties be strictly in accord with court rules, and that attorneys and parties with access be directed not to distribute the documents to any person or agency outside of uses permitted by the court and its rules; this would be in the nature of a “protective order.” Making the records returnable to the court demonstrates that the order is not just a sham or a ruse to get government records in the hands of a private litigant.

Records that are unclassified and are otherwise privileged from release under 5 U.S.C. § 552a may be released to the court if there is an order signed by a judge or magistrate directing the person to whom the records pertain to release the specific records, or ordering copies of the records to be delivered to the clerk of court. The order should indicate that the court has determined that the records are relevant and/or material to the inquiry involved, and it should also note the absence of a claim of privilege. If there is a question of relevance or privilege, the order should state that the clerk will receive and retain the records under seal, subject to a request that they be withheld from the parties until the court determines whether they are material to the issues and until any question of privilege is resolved.

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<sup>2</sup> The website is <https://www.arpc.afrc.af.mil/News/Article-Display/Article/1321261/verification-of-service-and-retired-pay-for-divorce-proceedings/>.



Although records custodians are federal employees who are not subject to subpoenas issued by state courts, service regulations that implement the Justice Department's regulations that govern production of federal records and the appearance of government employees in private litigation still require the federal employee to explain his or her noncompliance with the order or judge-signed subpoena.

## Understanding Department of Defense Rules

In general, requests for information from the Defense Department are governed by the Privacy Act regulation, DoD 5400.11-R, "Department of Defense Privacy Program" (May 14, 2007) and the directive for the Freedom of Information Act, DoD Directive 5400.7, "Department of Defense Freedom of Information Act (FOIA) Program" (January 2, 2008). Nonconsensual disclosures of information to third parties are covered in DoD 5400.11-R at Chapter 4, Section C4.2.2.5.2.1. states:

While it is not possible to identify categorically information that must be released or withheld from military personnel records in every instance, the following items of personal information regarding individual military members normally may be disclosed without a clearly unwarranted invasion of their personal privacy [subsection numbers omitted]:

Full name, rank, date of rank, gross salary, past duty assignments, present duty assignment, future duty assignments that are officially established, office or duty telephone numbers, source of commission [for commissioned officers], promotion sequence number, awards and decorations, attendance at professional military schools, duty status at any given time, home of record (identification of the state only), length of military service, Basic Pay Entry Date and official photo.

All disclosures of personal information regarding military members shall be made in accordance with Reference (d) [i.e., the regulation which governs the Freedom of Information Act, DoD 5400.7-R, "Department of Defense Freedom of Information Act Program" (September 4, 1998, as amended)].

Disclosures to third parties under a court order are covered at Chapter 4, Section C4.2.11, of DoD 5400.11-R. You can find the directives, publications, administrative instructions, memoranda, and forms you need at the "DoD Issuances" website, located at <https://www.esd.whs.mil/dd/>.

## Understanding DFAS Disclosure Rules

Military pay (active duty and Guard/Reserve), retired pay, and Department of Defense (DoD) civilian pay are administered by an agency of DoD, the Defense Finance and Accounting Service (DFAS). DFAS is bound by the Department of Defense rules. The specific rules that DFAS has promulgated regarding release of information for retired personnel are found at DoD Financial Management Regulation (DoDFMR), Volume 7B, Chapter 18, "Release of Information," which

contains specific references to the regulations of each of the DoD branches of service. The DoD FMR can be found at <https://comptroller.defense.gov/fmr>. How to submit a request to DFAS for records under the Freedom of Information Act and the Privacy Act may be found at <https://www.dfas.mil/foia.html>.

Note that the DoD FMR, although binding on the government, is not published in accordance with the Administrative Procedures Act (APA), and thus one may argue that it is less authoritative and less binding on private parties than rules that have been subject to the usual APA process of advance notice of rulemaking and public comment before final rulemaking. Thus, for example, the garnishment regulations promulgated by the Office of Personnel Management (OPM), found at 5 C.F.R. Part 581, may be worth review by counsel especially if they are more useful than the DoD FMR and better applicable to the arguments counsel is making or the documents being sought. The OPM regulations provide counsel with information on whom to serve, where the appropriate office is located and other useful information, not only for DoD military documents but also for civilian personnel and employees of every federal agency.

### Disclosure Through Interrogatories

The regulations also provide for service of, and response to, interrogatories. Under state discovery procedures, such documents are usually submitted to a party. Thus counsel may be tempted to join DFAS or the Secretary of Defense as a party. This step is unnecessary. DFAS does not require such procedural niceties and such a step will certainly complicate the litigation. The attempt to join the federal government in the case will likely lead to a request from the U.S. Attorney to remove the case to U.S. district court.

First of all, counsel needs to consider the regulatory background regarding interrogatories to the federal government. When there is a court order in place for garnishment or income-withholding, the Code of Federal Regulations states the following as to responding to interrogatories:

#### **5 CFR § 581.303 Response to legal process or interrogatories.**

(a) Whenever the designated agent is validly served with **legal process** pursuant to **State** procedures in effect pursuant to subsection

(a)(1) or (b) of **section 666** of title 42, United States Code, within 30 calendar **days**, or within such longer period as may be prescribed by applicable **State** law, the agent shall comply with all applicable provisions of section 666, including as follows:

(1) If an agent is served with notice concerning amounts owed by an **obligor** to more than one person, the agent shall comply with section 666(b)(7);

(2) Allocation of moneys due and payable to an individual under section 666(b) shall be governed by section 666(b) and the regulations

prescribed under such section by the Secretary of Health and Human Services;

(3) Such moneys as remain after compliance with paragraphs (a)(1) and (a)(2) of this section shall be available to satisfy any other such **legal process** on a first-come, first-served basis, with any such **legal process** being satisfied out of such moneys as remain after the satisfaction of all such **legal process** which have been previously served.

(4) The agent or the agent's counsel or other designee shall respond within 30 calendar **days** to interrogatories which accompany **legal process** if the information sought in the interrogatory is not available to the entity to which it was sent, and the proper entity is known, the recipient shall forward the interrogatory to the appropriate entity in sufficient time to allow for a timely response.

When there is no income-withholding order or garnishment in place, but state law allows the propounding of interrogatories to the alleged support-payor, then section (b) of 5 CFR §581.303 applies:

(b) If state or local law authorizes the issuance of interrogatories prior to or after the issuance of legal process, the agent shall respond to the interrogatories within thirty (30) calendar **days** after receipt: *Provided*, That the document(s) required by § 581.202(c) have been presented.

What are the documents which are required in the last sentence of the above quotation? 5 CFR § 581.202(c) reads: “Where it does not appear from the face of the process that it has been brought to enforce the legal obligation(s) defined in § 581.102(d) [referring to child support] and/or (e)[referring to alimony], the process must be accompanied by a certified copy of the court order or other document establishing such legal obligations(s).” Thus it is essential that the documents submitted to the government clearly show that at least part of the case in court involves family support.

What is “legal process? 5 CFR 581.102 says that “legal process” is any court order or issuance regarding the withholding of income pursuant to subsection (a)(1) or (b) of section 666 of title 42, United States Code, which -

- Is issued by a
  - court of competent jurisdiction, or
  - state agency authorized to issue income-withholding notes, AND
- Is directed to (and the purpose of which is to compel) a governmental agency to make a payment - from moneys otherwise payable to an individual - to another party to satisfy a legal obligation of the individual to provide child support, alimony or both.]

To satisfy the above requirements, be sure that your interrogatories begin with the following text (or similar wording):

These interrogatories are submitted to the [NAME OF GOVT AGENCY] pursuant to 5 CFR § 581.303(b). They are propounded in regard to the underlying action, which involves family support claims pursuant to state procedures in effect as to subsection (a)(1) or (b) of Section 666 of Title 42, United States Code.

[NAME OF STATE] law authorizes the issuance of interrogatories prior to the issuance of “legal process” (e.g., a court order or other issuance regarding garnishment or income withholding).

This case involves the withholding of income pursuant to subsection (a)(1) or (b) of section 666 of title 42, United States Code.

This court is a court of competent jurisdiction.

The claim herein regards an order which is directed to (and the purpose of which is to compel) [NAME OF AGENCY] to pay (from moneys otherwise payable to an individual) to the payee/recipient [NAME OF PARTY AND TITLE, e.g., DEFENDANT, PETITIONER] to satisfy a legal obligation of the individual payor to provide family support (e.g., child support, alimony or both.)

After the above recitation, the applicant would state the interrogatories to be answered by the federal government. For pay information, that usually means -

- the Defense Finance and Accounting Service (DFAS) for Army, Navy, Air Force and Marine Corps personnel; and
- the Coast Guard Pay & Personnel Center, for Coast Guard personnel (active duty and Reserve) and members of the commissioned corps of the Public Health Service (PHS) and the National Oceanic and Atmospheric Administration (NOAA).

It could also involve the VA, also known as the Department of Veterans Affairs.

The interrogatories can be issued in regard to veterans, active-duty members of the military or those in the RC (Reserve Component), such as members of the National Guard or Reserves. This example is drafted to get information regarding a military retiree:

1. State the full name of the individual whose income is involved in these interrogatories.
2. What is the current amount of monthly payment to that individual (gross amount)?
3. What is the “disposable retired pay” for that individual? [NOTE: This is to determine the amount that is subject to distribution as property division under 10 U.S.C. § 1408 (a)(4).]

4. What is the “remuneration for employment” for the individual? [NOTE: This is to determine the amount that is subject to garnishment under 42 U.S.C. § 659.]
5. What are the deductions from the individual’s gross retired pay to arrive at “disposable retired pay”?
6. What are the deductions from the individual’s gross retired pay to arrive at “remuneration for employment”?

### Pay and Compensation Documents

Most pay information for the servicemember or retiree (Army, Navy, Air Force, or Marine Corps) is available from the Defense Finance and Accounting Service (DFAS). On the DFAS MyPay website, <https://mypay.dfas.mil>, members and retirees can obtain information about active-duty pay, Reserve/Guard pay, retired pay, Combat-Related Special Compensation (CRSC), and the W-2 form. The Coast Guard has its own secure website, managed by the Pay and Personnel Center, called Global Pay Self Service.<sup>3</sup>

The exception to the general rule on pay information is getting compensation information from the Department of Veterans Affairs (VA). Disability rating letters, rating appeals, and applications for VA compensation are found at the regional VA office. Veterans can obtain their personnel files, including their medical records and discharge forms (DD Form 214), from the National Personnel Records Center (NPRC).

Most of the necessary documents and statements are available online for servicemembers and retirees. The easiest method of obtaining military documents is directly from the client or the servicemember through consensual exchange or a formal discovery request. If the servicemember is unwilling to obtain the documents directly, the spouse or former spouse can obtain the documents directly from the government with a release signed by the servicemember or retiree.

If the servicemember refuses to turn over the documents or execute a release allowing the spouse to obtain the documents directly, the practitioner must obtain the documents directly from the federal government through formal discovery or compulsory process. When there is a garnishment or income withholding order in place, interrogatories may be served on the federal government. The rules are found at 5 C.F.R. § 581.303. For example, a practitioner may ask “What was the federal tax withholding from the base pay of Commander Roberta Roe, SSN 111-22-3333, during the period June 1–December 1, 2016?” When seeking to obtain documents rather than answers, the practitioner should obtain an order (or a subpoena signed by a judge) from a court of competent jurisdiction.

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<sup>3</sup> A retiree, for example, can access information about retired pay by going to <https://www.dcms.uscg.mil/Our-Organization/Assistant-Commandant-for-Human-Resources-CG-1/Pay-and-Personnel-Center-PPC/> and then to the tab on Retiree & Annuitant Services.

## Army Rules for Release of Information

An article in *The Army Lawyer*, “Requests for Official Information and Government Witnesses,” by Major Steve Watkins and Major Jennifer McKeel, is the best readily available source for information on disclosures by the government.<sup>4</sup> The article covers requests for government records and the appearance of government officials (including proposed expert witnesses) to provide testimony in trials or depositions, the use of subpoenas, and examples of government response letters to such requests. It also includes a flow chart regarding the release of information in judicial and quasi-judicial proceedings. The article points out that records which are covered by the Privacy Act, 5 U.S.C. § 552a, may only be disclosed with a written release or authorization signed by the individual to whom the information pertains, or through a court-ordered release signed by a judge of a court of competent jurisdiction; a subpoena signed by a lawyer or clerk of court for information, documents, or records protected by the Privacy Act will not be honored for the release of the protected information. *See, e.g., Doe v. DiGenova*, 779 F.2d 74 (D.C. Cir. 1985) and *Stiles v. Atlanta Gas and Light Co.*, 453 F. Supp. 798 (N.D. Ga. 1978); *also see* 5 U.S.C. § 552a(b)(11) and 32 C.F.R. § 516.46(b)(1). Although the article is focused on Army rules, it also provides excellent coverage of federal regulations and cases that have equal application to other branches of service and federal agencies, such as the Department of Veterans Affairs.

The Army’s litigation regulation, covering issues such as service of process, witnesses, and release of information, is AR [Army Regulation] 27-40, “Litigation” (19 Sept. 1994). Chapter 7 covers the release of witnesses and the appearance of witnesses in response to requests for interviews, notices of depositions, subpoenas, and other requests or orders related to judicial or quasi-judicial proceedings. It implements DoD Directive 5405.2 and 32 C.F.R. Part 97. It provides the rules and restrictions for the release of Army and other agency records and the authentication of copies (para. 7-4); information on what records can be released and what records are not releasable (paras. 7-6 and 7-7); response to subpoenas, orders, and requests for witnesses (para. 7-8); witnesses who testify as to official information (para. 7-9); and expert witnesses (paras. 7-10 and 7-13).

## Air Force Rules for Release of Information

The Air Force has specific rules about privacy, release of information, authentication of records, and so on. The starting point for the Air Force (as well as the other services) is Department of Defense Directive (DoDD) 5405.2, *Release of Official Information in Litigation and Testimony by DoD Personnel as Witnesses* (July 23, 1985). The attorney should also read *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951) (limiting the access of private litigants to government records and government witnesses in private litigation).

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<sup>4</sup> Major Steve Watkins and Major Jennifer McKeel, *Requests for Official Information and Government Witnesses*, ARMY LAW., May 2015, 12.

The primary rules to review are found in Air Force Manual (AFM) 33-302, *Freedom of Information Act Program* (21 Oct. 2010); Air Force Instruction (AFI) 33-332, *Air Force Privacy Act Program* (8 Nov. 2000); and AFI 51-301, *Civil Litigation*, (20 June 2002, updated 2 Jan. 2013). The latter contains references and rules for authenticating official Air Force records for admission into evidence (Chapter 8) and for releasing information in litigation and testifying (Chapter 9).

### Navy/Marine Corps Rules for Release of Information

The Navy rules regarding the Freedom of Information Act (FOIA) and the release of information will be found in Secretary of the Navy Instruction 5720.42F, *Department of the Navy Freedom of Information Act Program* (6 Jan. 1999). The rules for the Marine Corps are found at the FOIA website for the Marine Corps, <https://www.hqmc.marines.mil/Agencies/USMC-FOIA/>. The website has a link to FOIA resources and training information that in turn links the reader to such resources as the Department of Defense manual on FOIA (DoD Manual 5400.07, *DoD Freedom of Information Act (FOIA) Program*), the Department of Justice FOIA overview, the Department of Defense FOIA Handbook, Department of the Navy FOIA policy memoranda, and Department of Defense FOIA policy letters. A chart showing how to request Navy OMPF (official military personnel file) records may be found with a search for “HOW TO REQUEST NAVY OMPF RECORDS” on any Internet search engine. If you anticipate requesting Navy personnel or records for the purpose of litigation, review SECNAV Instruction 5820.8A early and carefully. Do not assume that since you have a subpoena, the person or records will or must be produced without compliance with this instruction.

### National Guard Rules for Release of Information

For FOIA and Privacy Act purposes, the National Guard should be considered to be a part of the armed forces rather than the state militia. Federal rules and policies state that the personnel and pay records of Guard members are subject to the Privacy Act. They are maintained by National Guard technicians, and these individuals are clearly federal employees (under 32 U.S.C. § 709) or by National Guard military personnel serving on Full-Time National Guard Duty (FTNGD) (32 U.S.C. § 2871).

The National Guard has a portal that explains where to direct an FOIA request for each state.<sup>5</sup> This resource can be helpful in requesting retirement points statements and obtaining other information that is releasable.

An inquiry made to the National Guard Bureau yielded the following suggestions from an attorney who works on PA/FOIA matters:

First of all, make sure that your request for records or information is narrow, precise and detailed. Government officials do not want to try to figure out what “all records” means, and there’s a good chance that too-broad requests will be denied. If you want an individual’s Retirement

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<sup>5</sup> <https://www.nationalguard.mil/Portals/31/Documents/ARNGpdfs/foia/State-FOIA-Contact-Numbers.pdf>.

Points Statement, then ask for that; don't phrase your inquiry in terms of "any and all documents which describe, detail, specify or reflect upon the performance of service by Major John Doe, whether said service is on active-duty, during drill weekends, by correspondence course, or any other form of duty performance."

Second, don't ask for documents which are likely to be protected, whether that might be due to their classified nature, or due to the sensitivity of the subject. That may include records of disciplinary proceedings (including reprimands or reduction in rank due to misconduct). There may be ways to obtain such documents, but the military may resist disclosing such sensitive records and might respond with an invitation to ask a federal district court judge to see if the records can be produced.

Third, write to the right people. A typical inquiry involving a state National Guard record would be directed to the Adjutant General (or "TAG") of the state, who is in charge of the National Guard for that jurisdiction. A copy should also be sent to the servicing legal office, which is ordinarily the staff judge advocate for the Army or Air National Guard. This is because the legal office will probably have to perform a legal review of the request anyway, and this might help to expedite the process. It also shows that you "know the ropes."

Fourth, set out the reasons for your request. For example, you may need to know whether an individual had ten qualifying years in the Guard while he was married, in order to verify that the spouse can get direct garnishment from the retired pay center. Your memo or letter should state the reason in a straightforward manner, to inform the government official as to why this record is important: *"We are applying to the court in this divorce case for an order requiring DFAS, the Defense Finance and Accounting Service, to garnish John Doe's retired pay upon attainment of age 60, and to pay the required amount to our client, Jane Doe. This is only possible if we can establish for the court that there were 10 "good years" (i.e., ten years which qualify for retirement eligibility) of National Guard service during the parties' marriage. This is why we are requesting a complete copy of John Doe's Guard retirement points statement."*

Finally, invite contact so that you can explain your needs, the unique facts of your case, and "what is really needed." The latter is what most officers look to discover; they are often told by their supervisors, "Call up the attorney that sent us this document request, and find out what they are really looking for." If you ask for the records office to contact you for clarification, it may make the job easier for some official, and that just might lead to the production of some or all of the information and records you are requesting.



With regard to Michigan National Guard members and whether a state judge's order would compel the disclosure of Guard records, Colonel John J. Wojcik, Chief Counsel, Michigan National Guard, states:

Any discoverable information that the MI Guard has for service members is covered by the Privacy Act. That Act requires a judicial subpoena for us to release those federal records, so a judicial order will suffice. In Michigan, all lawyers have subpoena powers to obtain records, but those authorities are not sufficient to obtain federal records. We get a couple requests each month from Michigan licensed attorneys who will just send a lawyer subpoena and we have to call them back and ask them to get a judge to sign-off on the request. Each state's military personnel office will have the Retirement Points Statement (RPAM) for their current and recently former service members. After a certain period of time though, those records are electronically disconnected from the state, and are accessible only from either DFAS or ARPERCEN for Army records. The same thing goes for Air National Guard records.

For pay records, they'll be better off chasing after DFAS to obtain a copy of their most recent Leave and Earning Statement (LES). The state doesn't possess LES statements, and those are easily accessed by the service member by using the DFAS web portal, MyPay. My recommendation would be to include an item in the Request for Production of Documents to force the service member to produce their last X-number of LES statements, their final DD-214 or NGB-21 [these are discharge forms], or their retirement paperwork if they've retired and are receiving pay or are a gray-area retiree. You can cover-down on that with the interrogatories as well by making them answer questions related to their years of service, retirement points, active duty points, and survivor benefit information.

What I've seen in my practice here as Chief Counsel is that attorneys wait until after the discovery process has closed and are running around at the last minute trying to figure out what the pension is worth, and that's a scary proposition. The best course of action is to put the onus on the service member and make them provide the information through discovery, or by providing a blanket release.<sup>6</sup>

ARPC, the Air Reserve Personnel Center, Buckley AFB, Colorado, takes a similar view regarding orders and subpoenas signed by state court judges. For information on what ARPC will disclose - based on state court orders - see the section on ARPC at "Demanding documents from the Government" above.

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<sup>6</sup> E-mail from John J. Wojcik, Chief Counsel, Michigan National Guard, to the author (July 16, 2020 at 11:01 a.m. E.D.T.), Subject: "Michigan Lexis Nexis Family Law Guide 2021-Military Law" (on file with the author). In a follow-up e-mail to the author, Colonel Wojcik stated that "In Michigan, we accept state judge court orders or subpoenas."

## Coast Guard Rules for Release of Information

The Coast Guard is an agency of the Department of Homeland Security. Extensive information about release of information from the Coast Guard may be found at the following USCG website.<sup>7</sup> The manual used by the Coast Guard for FOIA/PA matters and inquiries is the Coast Guard Freedom of Information and Privacy Acts Manual, COMDTINST M5260.3, which can be found through any Internet search engine. The Coast Guard Claims and Litigation Manual is COMDTINST 5890.9.

### Other Government Resources as to Release of Information

In addition to Retiree Account Statements and Leave and Earnings Statements, attorneys sometimes need to obtain the discharge form of servicemembers to determine years of creditable service or to ascertain the type of discharge (e.g., “dishonorable” or “general under honorable conditions”) and basis for the discharge (e.g., “physical disability—permanent”). The National Personnel Records Center (NPRC) has provided the following website for veterans to gain access to their DD-214s online: <https://www.archives.gov/veterans>. Military veterans and the next of kin of deceased former military members may now use an online military personnel records system to request documents. Other individuals with a need for documents must still complete the Standard Form 180, which can be downloaded from the online website. Because the requester will be asked to supply all information essential for NPRC to process the request, delays that normally occur when NPRC has to ask veterans for additional information will be minimized. The new web-based application was designed to provide better service on these requests by eliminating the records center’s mailroom processing time.

Requests for federal government records and information must be submitted in writing. 5 U.S.C. § 552a (b). The usual way to accomplish this is by using Standard Form (SF) 180, *Request Pertaining to Military Records*. Sometimes veterans and next-of-kin can complete records requests on-line, and a veteran with a compensation claim pending or adjudicated through the Department of Veterans Affairs (DVA) may not need to request records from the National Personnel Records Center (NPRC), since the DVA will request the record automatically as part of the disability claims process.

The NPRC, located in St. Louis, is a huge operation. About 30,000 requests are processed every week. Due to a fire at the records storage facility in 1973, there are some records that must be reconstructed and that takes time. While an accessible DD Form 214 (one’s “discharge form”) might take a week or two through online means, papers that are less common, more difficult to locate, or subject to reconstruction might take weeks or months to produce. The Instruction and Information Sheet for SF 180 states that it may take between three and seven months for the file to reach the NPRC after the individual has left military service. The address list for

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<sup>7</sup> <https://www.dcms.uscg.mil/Our-Organization/Assistant-Commandant-for-Engineering-Logistics-CG-4/FOIA/>.

custodians of military records is part of SF 180.

Additional information on release of records may be found in specific chapters of Sullivan, **The Military Divorce Handbook** (Am. Bar Assn., 3<sup>rd</sup> Ed. 2019). For further information on obtaining records, see Sections 3.11 (on health records) and 3.12 (on education records) in Chapter 3.

### Authentication of Records

Sometimes it is necessary to obtain certification or authentication of documents received from the federal government. While there are no universal rules for obtaining a declaration regarding business, government, or public records, here is some general guidance on how to obtain records and to introduce them into evidence.

If the other side is unwilling to stipulate to the authenticity and admissibility of the records which you have, then the first order of business is to check the Michigan Rules of Evidence to find out the requirements for admission of business records. The business records rule is contained at FRE 902 (11), “Certified Records of Regularly Conducted Activity.” When such a record is involved, read the rule closely to make sure you know what is needed as essential statements in the “written declaration under oath by its custodian.”

Don’t expect easy going. Many attorneys think that the agencies have a “go-by” or an example for such an affidavit. That’s not so. There is no general template which is commonly used across agency lines. Many attorneys complain that they are being told they have to submit to the agency a sample of what the wording should be. “One size fits all” is not the rule in this area. It is a common practice to require the applicant’s attorney to draft the declaration, which is then reviewed and revised by the legal office in the agency. You must submit the proposed wording to the federal office which has the records. It will then adopt or adapt the language as needed.

Once the documents have been produced, does the agency just say that they’ve provided the records and they’re accurate? If that were the response, it would be a major mistake in terms of trial practice. How will the court know what records were provided? How will the judge know that the documents which you have are the ones that the agency sent to you? The records must be attached to the affidavit, not merely referred to in the document.

Whether the agency sends the declaration to the attorney or to the court is also an issue. The answer belongs to the requesting attorney. Below are observations on the two options.

If the government sends the records and affidavit – the “packet” – to the court under seal, then there can be no legitimate question as to whether you have substituted documents or altered them. The judge is the one who will open the packet and determine what records have been provided. On the other hand, unless you get an extra copy of what’s in the packet, you won’t know what is in the records until the court opens them. This leads to three alternative solutions:

- a) Get a copy from the agency (by consent of the individual concerned or by court order or judge-signed subpoena). Then request the documents again, along with a business records affidavit that accompanies your request.
- b) Get the documents (as above) from the agency, and then send them back to the agency with your business records affidavit, so they can certify that these are indeed the records provided, and then can attach them to the affidavit.
- c) Have the agency send the packet to the court but also send copies to the attorney.

A sample declaration will demonstrate what is usually included. This example uses Michigan Rules of Evidence. Note that, while the Michigan Rule 902(11) speaks of a “written declaration under oath by its custodian,” 17 U.S.C. § 1746 talks about a declaration under penalty of perjury, not a sworn statement. See the example below:

***Certification of authenticity of records of regularly conducted activity  
(Michigan Rules of Evidence 902 (11) and 28 U.S.C. § 1746)***

*I, John G. Doe, state that:*

- 1) *I am employed by the United States Department of Veterans Affairs (DVA).*
- 2) *My official title is Paralegal.*
- 3) *I am a custodian of records for the DVA.*
- 4) *Each of the records attached hereto is the original record or a true and accurate duplicate of the original record in the custody of the DVA, and I am a custodian of the attached records.*
- 5) *The records attached to this certificate were made at or near the time of the occurrence of the matters set forth.*
- 6) *The records attached were made by (or from information transmitted by) a person with knowledge of those matters.*
- 7) *Such records were kept in the course of a regularly conducted business activity of the DVA.*
- 8) *Such records were made by the DVA as a regular business practice.*

*The enclosed records are:*

- *Letter to Jacob Harris Stein, XXX-XX-5566, dated April 12, 2019, titled “Your Original VA Disability Rating and Reasons for the Rating” and*
- *Letter to Jacob Harris Stein, XXX-XX-5566, dated June 15, 2018, titled “Your Revised VA Disability Rating and Reasons for the Rating.”*

*I declare under penalty of perjury that the foregoing is true and correct. Executed on [date]*

/s/  
*John G. Doe, Paralegal*

An example of the “Certification of Records” used by the Coast Guard is as follows

### ***Certification of Records***

*I, \_\_\_\_\_, of the United States Coast Guard (the “Coast Guard”) hereby state and depose as follows:*

*1. I am employed with the Coast Guard in the position of \_\_\_\_\_ and I have personal knowledge of the Coast Guard’s record-keeping system.*

*2. The attached two pages of documents regarding CPO (Chief Petty Officer) Melvin T. Murphy are records taken from the Coast Guard’s files. They are true copies of a one-page table of 36 months of gross pay completed on March 12, 2020 and a one-page Survivor Benefit Plan election form completed on January 29, 2018.*

*3. These records were created at or near the time of the occurrence of these matters set forth by, or from information transmitted by, a person with knowledge of these matters.*

*4. These documents are kept in the course of the Coast Guard’s regularly conducted business.*

*5. It is the Coast Guard’s regular practice to keep such records.*

*6. The foregoing facts are known by me to be true. I am competent to testify to such facts, and would so testify if I appeared in court as a witness at the trial of this matter.*

*7. I declare and certify under penalties of perjury, pursuant to 20 U.S.C. § 1746, that the foregoing declaration is true and correct.*

\_\_\_\_\_  
*(signature)*  
*Printed/Typed Name of Official: \_\_\_\_\_*  
*United States Coast Guard*

*Date: \_\_\_\_\_*

The Army has a specific form that may be used for records authentication. Pursuant to Para. 3–11, AR 27-40, “DA Form 4” (Department of the Army Certification for Authentication of Records) (See fig 3–2) is used to authenticate Army records or documents. Documents attached to a properly prepared and sealed DA Form 4 are self-authenticating. (See Fed. R. Evid. 902).” Figure 3–2 in the regulation is an example of a completed DA Form 4.

As to sworn statements from government witnesses, whether in regard to verification of records or otherwise, even in cases not involving the U.S. Army, one should also consult the section on documents in AR (Army Regulation) 27-40, “Litigation,” shown at “3–12. Unsworn declarations under penalty of perjury.”

#### **3–12. Unsworn declarations under penalty of perjury**

*a. General.* Under the provisions of 28 USC 1746, whenever any matter is required or permitted to be established or proven by a sworn

statement, oath, or affidavit, such matter may also be established or proven by an unsworn written declaration under penalty of perjury. Because such declaration does not require a notary or other official to administer oaths, individuals preparing statements for use in litigation should consider using this format. (See fig 3-3.)

*b.* When executed within the United States. Place the following at the end of the witness statement:

I declare under penalty of perjury that the foregoing is true and correct.  
(28 USC 1746.)

*c.* When executed outside the United States. Place the following at the end of the witness statement:

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. (28 USC 1746.)

Executed on (date)

(Signature)

Figure 3-3 in the Regulation is an example of such a declaration.

There is also an Air Force form for use in authenticating official records. It is AF Form 44, and an example may be found at Figure 8.1 in AFI 51-301.

The Coast Guard regularly receives subpoenas and court orders for pay information linked to divorce and family law cases. When the request for records does not meet the requirements of 5 C.F.R. Part 581, the requesting party is sent a response stating that, pursuant to 6 C.F.R. pt. 5, subpt. C, the Coast Guard is not subject to a state court's subpoena authority concerning the testimony of Coast Guard employees and the production of records in legal proceedings. That having been said, the Coast Guard then will usually provide such routine information as the gross pay of the individual concerned, as well as information on other benefits that would otherwise be releasable under FOIA or the Privacy Act.

\* \* \*

DEFENSE FINANCE AND ACCOUNTING SERVICE  
8899 E. 56<sup>th</sup> STREET  
INDIANAPOLIS, IN 46249-0501

[Date]

DFAS-XXX/XX  
XX-HQ-XXXX

Dear [Name of Requestor]:

This is in response to your Freedom of Information (FOIA) request for records related to the military personnel file of [name of servicemember].

Pursuant to the Privacy Act, Title 5 U.S. Code Section 5552a(b)(11), we cannot disclose personal records to third parties without approval from the individual to whom the records pertain. In lieu of a proper release authorization, you must obtain an order or subpoena signed by a Federal Judge, U.S. Attorney or Assistant U.S. Attorney before we may release actual documents/records.

The above notwithstanding, the following information is releasable under FOIA.

1. Pay Entry Base Date – XX/XX/XXXX
2. Final Duty Status – [e.g. Retired]
3. Final Rank/Grade – [Rank/Grade]
4. Final Salary -- \$X,XXX.XX (gross monthly base pay)
5. High 3 – N/A (see final salary)
6. Credible years of service [for retirement] – XX years, X months, X days

If you have questions regarding this response, please write to the Defense Finance and Accounting Service, Corporate Communications, FOIA/PA Adherence Division, 8899 East 56<sup>th</sup> Street, Indianapolis, IN 46249-0150. You may also email [dfas.foia@mail.mil](mailto:dfas.foia@mail.mil) or submit correspondence via fax to (317) 275-0391. Reference case XX-HQ-XXXX.

Sincerely,

[Signature block]

Government Information Specialist

Proudly Serving America's Heroes  
[www.dfas.mil](http://www.dfas.mil)

[Your Letterhead Here]

Date

VIA FEDERAL EXPRESS  
General Counsel of the Navy  
Navy Litigation Office  
720 Kennon Street SE, Bldg. 36, Room 233  
Washington Navy Yard, DC 20374-5013

RE: *Touhy* Request for Release of Official Information  
[Insert case citation]

Dear General Counsel:

I am writing pursuant to *United States ex. Rel Touhy v. Regan*, 340 U.S. 462 (1951); 32 C.F.R. Section 97, *et seq*; 32 C.F.R. Section 725 *et seq*; and SECNAVINST 5820.8A to obtain information, documents and/or testimony from the Department of the Navy (“DON”). These are to be used as evidence in a civil divorce proceeding pending in the [Court Name]. The case is captioned [insert case citation].

[Describe in detail the issue in the case for which requested documentation is needed. (e.g., Issues in the case involve domestic violence; Article 15; lost pay; investigations by military or investigative service.)]

**1. Statement that the United States is, or is not, reasonable anticipated to be a party.**

The United States [is/is not] reasonably anticipated to be a party.

**2. The name, address, telephone and fax numbers of counsel for each party. (Any approval for conducting a deposition will require the request to notify all parties)**

I represent [client name] and my contact information is on this letterhead. The name, address, telephone and fax numbers of counsel for [opposing counsel name] is:

[Insert opposing counsel address/phone/fax]

**3. If Privacy Act or Health Insurance Portability and Accessibility Act protected information is requested (i.e., medical, pay, or military service information), personal authorization for release from the subject of the documents or a judge-signed subpoena or judge-signed court order will be required to obtain records, conduct a deposition, or obtain testimony.**



Since Privacy Act or Health Insurance Portability and Accountability Act protected information is requested (i.e., medical, pay, or military service information), we are seeking a court order on [court date] to be provided upon issuance.

**4. Summary of the facts in the case and the present posture of the case, including the name of the court where the case is pending and its court-assigned case number and its present posture in the case.**

The facts of the case are as follows: [Insert brief recitation of the facts.]

**5. Statement of the relevance of the matters sought to the proceedings at issue.**

The information we are requesting is highly relevant to the divorce proceeding because it has a direct bearing on the issues central to the case: [Describe issues including relation and relevance to loss of income, fault, etc.]

**6. Detailed description of the documents, information, or the expected testimony sought.**

We ask that a witness to testify about the discipline imposed on [client name] and why it was imposed be identified and produced for deposition or trial.

We ask for documents or other evidentiary material, as well as testimony to authenticate this evidentiary material, regarding: [such as:

1. Facts surrounding discipline;
2. Fact surrounding security clearance;
3. Facts surrounding workplace performance;
4. Facts surrounding compensation and bonus pay;
5. The identity and contact information of persons investigating and involved in disciplining;
6. The prosecutorial merits recommendation in connections with [client name] as well as any non-privileged documents which support the recommendations therein;
7. Documentation on any investigation;
8. Documentation regarding the imposition of non-judicial punishment;
9. Any documentation on the suspension/loss of his security clearance at any time;
10. Any documentation on military protective orders entered against him;
11. The NCIS investigation files of his NCIS investigations 2017/2018 and in 2011 or any other year;
12. Any documents, recordings or other material submitted by [client] in his defense in connection with any NCIS investigation or investigation by his command;
13. The file related to his Article 15;
14. The letter of reprimand issue to client.]

**7. The date and time when the documents, information, or testimony sought must be produced; the requested location for production; and, if applicable, the estimated length of time that attendance of the witness will be required. Requestor understands that desired records are to be obtained in advance of any testimony, witnesses are not custodians of Navy records, and cannot be expected to bring requested records with them to depositions or trial appearances.**

We ask that any documentary information be produced at my office as soon as possible. We request that a representative involved in investigating and disciplining [client] testify at trial on [date].

**8. The location of the records, including name, address, and telephone number, if known, of the person from whom the document, information, or testimony is sought.**

[Insert specifics].

**9. A statement of requestor's willingness to pay in advance for all reasonable expenses and costs of searching for and producing documents.**

We [are/are not] willing to pay in advance all reasonable expenses and costs of searching for and producing documents.

**10. A statement of understanding that the production of the witness, if applicable, will be at no expense to the Government or the witness and that travel expenses, if any, are the responsibility of the requester. An agreement to provide, free of charge to the witness, a copy of the deposition transcript (if taken by a stenographer, or a video tape copy if taken solely by video) with an opportunity to read, sign, and correct the deposition at no cost to the witness or the Government.**

We understand that the production of the witness, if applicable, will be at no expense to the Government or the witness and that travel expenses, if any, are the requester responsibility.

Although we do not anticipate taking a deposition at this time, we agree to provide, free of charge to the witness, a copy of the deposition transcript (if taken by a stenographer, or a video tape copy if taken solely by video) with an opportunity to read, sign, and correct the deposition at no cost to the witness or the Government.

**11. An agreement to notify the determining authority sufficiently in advance of all testimony, normally a minimum of at least 10 days. Command operations, training schedules, and personal schedules may affect availability; the military mission of the command may necessitate the member's absence outside the jurisdiction of the court for indefinite periods of time.**

We so agree.

**12. A statement whether factual, opinion, or expert testimony is requested, if any**

**testimony is sought. Please review 32 C.F.R. 725.4(c) to assist you with making this determination, as DoN personnel cannot provide opinion or expert testimony concerning official DoD information except by written special authorization from the Office of the Judge Advocate General of the Navy (OJAG). If expert or opinion testimony is sought, you must provide a written explanation of why exceptional need or unique circumstances exist justifying such testimony, including why such testimony is not reasonably available from any other source.**

Only factual testimony is requested.

**13. A statement of understanding that the United States reserves the right to have a representative at the trial/deposition (in person or telephonically). This representative may instruct the witness not to answer any question that goes beyond the authorized scope or calls for expert testimony.**

We so understand.

Very truly yours,

[Signature block]