Requests for Official Information and Government Witnesses

*Major Steve Watkins and Major Jennifer McKeel**

I. Background

The Department of the Army (DA) receives a significant number of requests for official information[1] and the appearance of personnel as witnesses for use in litigation, commonly referred to as *Touhy* requests.[2] For the Army, *Touhy* requests are governed by 5 U.S.C. § 301, 32 Code of Federal Regulations (C.F.R.) § 97 (codifying Department of Defense Directive (DoDD) 5405.2), and 32 C.F.R. § 516 Subpart G (codifying Army Regulation (AR) 27-40 Chapter 7), as well as the Supreme Court's decision in *Touhy*.[3] This article is meant to provide judge advocates and Department of the Army (DA) civilian attorneys with an overview of the *Touhy* framework; it is not designed to be all-inclusive as to every possible legal issue that could arise when confronted with a *Touhy* request. Rather, this article describes the most common requests received and provides guidance on how best to respond. The first part focuses on requests for official information in the form of documentary or other tangible information. Part two addresses those requests for testimony from DA or military personnel as it relates to official information. Finally, this paper addresses subpoenas and how best to respond.

II. Requests for Information

Touhy requests can and should be acted upon by the servicing Staff Judge Advocate (SJA) or Command Counsel of the appropriate office, command, or activity with control over the official information being requested.[4] Requests for official information, whether in the form of documents or testimony, must be submitted in writing and must set forth, "the nature and relevance of the official information sought."[5] The request must also be submitted at least 14 days before the desired date of production.[6] An initial response should be provided to the requester acknowledging receipt by the correct office and giving an approximate date of completion, if additional time is required.

Not surprisingly, many *Touhy* requests are submitted to the incorrect office or command. When this happens, every effort should be made by the receiving office to determine the correct location for processing. The requester should be notified in writing of the correct point of contact, and a positive handoff with the proper office should be conducted. All too often, the Litigation Division of the United States Army Legal Services Agency (USALSA) becomes involved in *Touhy* matters because the requester was needlessly sent from one office to the next without receiving a response to the original request. In these situations, requesters become so frustrated that they will file an action with the court. This could take the form of requesting the judge in the case at bar issue a subpoena for the information, or a separate action against the government under the Administrative Procedures Act (APA). A discussion of this distinction occurs *infra*. In turn, the Army is forced to expend significant time and resources on a request that could have been easily answered in the first place.

The Army's position on *Touhy* requests when it does not have an interest in litigation is clear: "DA policy is to make official information reasonably available for use in Federal and state courts and by other governmental bodies unless the information is classified, privileged, or otherwise protected from public disclosure."[7] When the Army is not a party, but has an interest in litigation, it maintains a policy of strict impartiality and equal access to official information and fact witnesses, but not as to expert or opinion witnesses.[8]

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* Currently assigned as Senior Litigation Attorney and Litigation Attorney, respectively, Litigation Division, United States Army Legal Services Agency. The authors wish to acknowledge the indispensable assistance of Lieutenant Colonel Patrick Gary, Majors Sam Kim and Tom Hong, and Mr. (COL-Ret) Mackey Ives in the preparation of this paper.

[1] Official information is defined as, "All information of any kind, however stored, that is in the custody and control of the Department of Defense (DoD), relates to information in the custody and control of the Department, or was acquired by DoD personnel as part of their official duties or because of their official status within the Department while such personnel were employed by or on behalf of the Department or on active duty with the United States Armed Forces." 32 C.F.R. § 516, Appendix F.

[2] *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951) (limiting a private litigant's access to government information and witnesses for use in private litigation) [hereinafter *Touhy*]. Though somewhat similar, these requests are distinct from Freedom of Information Act requests, which are governed by a different statutory and regulatory scheme and not discussed within this paper.

[3] *Id.* The Supreme Court held that 5 U.S.C. § 22 (now 5 U.S.C. § 301) was constitutional and that Executive Agencies' regulations (to include DoD and subordinate military departments) controlling access to their information and personnel were therefore a proper exercise of executive authority.

[4] *See, e.g.*, 32 C.F.R. §§.516.41(b), 516.42(a), 516.47(c), and 516.48(a). Such individuals are referred to in the C.F.R. as the "deciding official," which is the term that will used in this article to refer to the local SJA, Command Counsel, or Senior Legal Advisor authorized to respond to the *Touhy* request. Two sample *Touhy* request approvals are attached: one for documents at Appendix B and one for witness testimony at Appendix C.

[5] 32 C.F.R. § 516.41(d).

[6] 32 C.F.R. § 516.41(d).

[7] 32 C.F.R. §516.44(a).

[8] 32 C.F.R. § 516, Appendix F. In addition to litigation in which the United States is a named party, litigation in which the United States has an interest includes: litigation in which the United States is likely to be named a party; a suit against DA personnel and arising out of the individual's performance of official duties; a suit concerning an Army contract, subcontract, or purchase order under the terms of which the United States may be required to reimburse the contractor for recoveries, fees, or costs of the litigation; a suit involving administrative proceedings before Federal, state, municipal, or foreign tribunals or regulatory bodies that may have a financial impact upon the Army; a suit affecting Army operations or which

Therefore, the Army should always take reasonable efforts to approve proper *Touhy* requests and to make official information available for use by parties to third-party litigation.[9]

When evaluating the merits of a *Touhy* request, keep in mind the releasability factors set forth in 32 C.F.R. § 516.44.[10] In general, if the requester has complied with the regulation, if the requested information is neither classified nor privileged, and if the release would not itself violate law or regulation (to include protections afforded under the Privacy Act[11]), then it should be released.[12] The statute which enables the promulgation of *Touhy* regulations specifically disclaims an independent basis for withholding information[13] Therefore, any decision to withhold official information must cite to specific statutory or authority *apart from* the *Touhy* framework. [14]

Frequently, overly broad requests are made by attorneys in order to capture any or every type of document that could possibly be relevant to their case. These requests are done without giving much thought as to the time and effort it will take the Army to search for and produce the requested information. Requests that ask for "all" documents or "all" emails without giving narrowly tailored specifics would create an unfathomable amount of effort to search and process the information for release. Before outright denying these requests, the Litigation Division recommends making contact with the requester in order to narrow the scope of the request. If that cannot be done, then it should be denied as being overly broad and unduly burdensome. Another strategy is to provide only those documents that are known to be responsive and deny any further processing of the request as being overly broad and unduly burdensome. This may result in the requester being satisfied with the response and forgoing a motion to compel any additional search efforts. If a requester is unwilling to narrow the scope of the request or files a motion to compel against the Army in State or Federal court, you should contact Litigation Division for further guidance.

Another common reason for denying a request is when a requester seeks to obtain official information from Criminal Investigation Division (CID), and fulfilling the request would interfere with or compromise an ongoing investigation. In these situations, a denial is appropriate, but it is not permanent. Once the investigation is complete, and barring any other reasons for denying release, the requested information should be provided. Finally, the fact that information is embarrassing to an agency or individual is not a proper basis for denying its release.

III. Request for Appearance of Witnesses

Requests for testimony from specifically identified present or former DA personnel in third-party litigation require a *Touhy* request when the testimony sought involves official information, the witness is to testify as an expert, or the absence of the witness from duty will seriously interfere with the accomplishment of the military mission.[15] Keep in mind, however, that the *Touhy* process merely authorizes testimony. The Army generally cannot compel a Soldier or DA personnel to testify in a third-party action. However, once the requester has a *Touhy* approval in hand, there is no longer a barrier to issuing a subpoena to the individual whose testimony is requested as it relates to the approved testimony. Any individual who does not wish to testify despite the presence of a valid subpoena should be advised to seek the advice of an attorney concerning the consequences, if any, of refusal. Any individual not

might require, limit, or interfere with official action; a suit in which the United States has a financial interest in the plaintiff's recovery; or foreign litigation in which the United States is bound by treaty or agreement to ensure attendance by military personnel or civilian employees. *Id.*

[9] It should be noted that this article, as well as the laws, regulations, and cases cited herein, are only applicable to requests related to third-party litigation. That is, cases between two or more private litigants where the government is not a party. If the government is a party to the case, the Federal Rules of Civil Procedure (F.R.C.P.) governing discovery generally apply.

[10] The failure to comply with such regulation(s) may form the basis of withholding information, but only until the requester complies with the regulation. There is no prescribed format for making a *Touhy* request. A typical request received by the Litigation Division and other agencies is attached at Appendix A.

[11] Information protected by the Privacy Act of 1974, 5 U.S.C. § 552a, cannot be provided unless the statutory restrictions imposed by the act are overcome. The simplest means by which a requester can overcome the statutory restrictions is to provide a written release authorization signed by the individual to whom the information pertains. If the requester is unable to obtain authorization, then a court ordered release signed by a judge of a court of competent jurisdiction must be provided. A state court generally lacks authority to order disclosure of a nonparty federal agency's records, including those subject to the Privacy Act. *See, e.g., Bosaw v. NTEU*, 887 F.Supp. 1081, 1210-17 (S.D. Ind. 1995). The order must direct the person to whom the records pertain to release the specific records or instruct that copies of the records be delivered to the clerk of court. The order must also indicate that the court has determined the materiality of the records and the non-availability of a claim of privilege. A Privacy Act-compliant protective order must also be in place prior to release of any protected records.

[12] 32 C.F.R. § 516.45. Note that there is a typographical error in this section. The reference to "§ 536.44" should read "§ 516.44." A helpful flow chart of the evaluation process covering the most common situations is included at Appendix D.

[13] 5 U.S.C. § 301. The head of an Executive department or military department may prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property. This section does not authorize withholding information from the public or limiting the availability of records to the public. *Id.*

[14] All references to DoD Directive (DoDD) 5405.2 or Army Regulation (AR) 27-40, will instead cite to the corresponding Code of Federal Regulations (C.F.R.) section. This the practice of the Litigation Division when corresponding with civilian attorneys, as they are far more likely to be familiar with, and have independent access to, the C.F.R. as opposed to the DoDD or AR 27-40.

[15] 32 C.F.R. § 516.47(a).

authorized to consult with Army counsel should consult with private counsel, at no expense to the government.[16]

When the information being requested involves official information, "the matter will be referred to the SJA or legal advisor serving the organization of the individual whose testimony is requested."[17] If, on the other hand, the *Touhy* request is for expert testimony, the deciding official is authorized to deny the request, which decision may be appealed to Litigation Division.[18] There is an exception which allows for Army Medical Department (AMEDD) personnel to testify in third-party litigation about official information without having to obtain approval from Litigation Division.[19] Department of the Army personnel can never furnish expert or opinion testimony for a party whose interests are adverse to the interests of the United States or in a case in which the United States has an interest.[20] However, if the deciding official believes the requester has shown "exceptional need or unique circumstances, and the anticipated testimony will not be adverse to the interests of the United States," the request for expert testimony may be forwarded to Litigation Division for approval.[21]

To protect the Army's interest, an Army judge advocate or DA civilian attorney should be present during all interviews, depositions, or trial testimony to serve as the Army's legal representative.[22] The approval letter signed by the deciding official should specifically explain the legal representative's role, the scope of the official information that may be provided by the witness and any caveats to the release of such information. See Appendix C for a sample witness approval letter.

If, during the interview or deposition, a question exceeds the request's authorization (e.g., calls for the disclosure of classified information) the Army's legal representative will advise the witness not to answer. If questioning continues to require answers beyond the scope of the approval, the legal representative will terminate the interview or deposition to avoid unauthorized disclosure of information.[23] In the case of in-court testimony, the Army's legal representative must advise the judge, in advance, of the applicable policy and regulations precluding witnesses from disclosing certain official information. Every effort should be made, however, to provide releasable information and continue the interview or testimony.

IV. Subpoenas

Attorneys unfamiliar with the *Touhy* process will typically subpoena the required information and/or witness(es) without first complying with the applicable regulations. Although the processing of a subpoena will depend on several factors, a few general guidelines apply to any subpoena received by your office. Most importantly, never ignore a subpoena.[24]

A subpoena for release of official information, or for the testimony of a government witness, in private litigation, should be promptly referred to the deciding official. Also, if a subpoena or request is received in a case in which the United States has an interest, the SJA should coordinate with the General Litigation Branch at Litigation Division prior to action, unless the case has previously been delegated.[25] Occasionally, the subpoena will contain a short suspense date that does not allow for studied evaluation or even consultation with Litigation Division or the local United States Attorney's Office. In those instances, the deciding official should follow the procedures as outlined in 32 C.F.R. § 516.41(f).[26]

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[16] 32 C.F.R. § 516.47(d).

[17] 32 C.F.R. § 516.48(a).

[18] 32 C.F.R. § 516.49(a). A sample denial letter for expert witness testimony can be found at Appendix E.

[19] 32 C.F.R. § 516.49(c).

> Members of the Army medical department or other qualified specialists may testify in private litigation with the following limitations:
>
> (1) The litigation involves patients they have treated, investigations they have made, laboratory tests they have conducted, or other actions taken in the regular course of their duties.
>
> (2) They limit their testimony to factual matters such as the following: their observations of the patient or other operative facts; the treatment prescribed or corrective action taken; course of recovery or steps required for repair of damage suffered; and, contemplated future treatment.
>
> (3) Their testimony may not extend to expert or opinion testimony, to hypothetical questions, or to a prognosis.

Id.

[20] 32 C.F.R. §§ 516.49(b) and 516.52.

[21] 32 C.F.R. § 516.49(b).

[22] 32 C.F.R. § 516.48(b).

[23] 32 C.F.R. § 516.48(b). A script should be read prior to the giving of any testimony, whether in deposition, interview, or trial, which sets forth the legal advisor's role and the scope of the witness' authorized testimony. A sample script can be found at Appendix F.

[24] *See* 32 C.F.R. § 516.41.

[25] 32 C.F.R. § 516.41(e).

[26] (1) Furnish the court or tribunal a copy of this regulation (32 C.F.R. part 516, subpart G) and applicable case law (*See United States ex. rel. Touhy v. Ragen*, 340 U.S. 462 (1951)); (2) Inform the court or tribunal that the requesting individual has not complied with this Chapter, as set out in 32 C.F.R. §§ 97 and 516, or that the subpoena or order is being reviewed; (3) Seek to stay the subpoena or order pending the requestor's compliance with this Chapter or a final determination by Litigation Division; and, (4) If the court or other tribunal declines to quash or stay the subpoena or order,

A. Subpoenas From a State Court

Absent unique or unusual circumstances, state courts lack jurisdiction to compel nonparty federal officials to testify or produce documents, or to enforce subpoenas seeking the same.[27] This is grounded not only in the fact that the presence of a subpoena indicates an inherent failure to comply with applicable regulations, but also a failure to take into consideration the concept of sovereign immunity.[28] These subpoenas arise most often from domestic relations or family court actions, although a significant minority derive from state criminal prosecutions.[29]

It is important to bifurcate your analysis when receiving a subpoena from a state court. Although the court does not have jurisdiction over the official information that the subpoenaed individual possesses, and thus cannot compel disclosure, the state court may have jurisdiction over the person and thus can compel their appearance. In such cases, if the subpoena is not quashed or withdrawn, the individual should appear as directed, but respectfully decline to answer any questions or produce any documents that relate to official information until the issue is resolved by either Litigation Division or the U.S. Attorney's Office.[30]

B. Subpoenas From a Federal Court

Though beyond the scope of this article, practitioners should be aware that there is a circuit split on whether Federal court subpoenas may issue at all against Federal entities in third-party litigation and, if so, how they are enforced. Some circuits hold that the sole method of obtaining Federal witnesses or information is via the *Touhy* process, and that the only recourse for an adverse response is the Administrative Procedures Act.[31] Other circuits are more accepting of enforcement via the Federal Rules of Civil Procedure (FRCP) 45.[32] The following information is general in nature and before responding to a subpoena, attorneys should educate themselves on the state of the law within their jurisdiction.

Federal court subpoenas require the consideration of *Touhy*-related issues in conjunction with FRCP 45. Under FRCP 45, if a subpoena is for documents, the subpoenaed party must submit any objections (usually by letter to the subpoenaing attorney, depending on local rules) within fourteen days of service or by the return date, if sooner. The burden is then on the subpoenaing party to decide whether to negotiate further or move to compel.[33] If a subpoena is for a deposition, the onus is on the subpoenaed party to file any motion to quash or for a protective order in a "timely" manner.[34] "Timely" is usually interpreted to mean fourteen days from service or before the return date, absent circumstances justifying a delay. Therefore, it is especially important that Federal court subpoenas be acted upon in a timely manner. Both the local U.S. Attorney's Office and Litigation Division should be notified immediately upon receipt of a Federal court subpoena. Unless specifically and unmistakably directed otherwise by the U.S. Attorney's Office or Litigation Division, the recipient should comply with such a subpoena.

C. General Guidance Regarding Subpoenas

Filing a motion to quash a subpoena or taking formal action of any type in response to a subpoena can sometimes be avoided by simply making contact with the requester. The most effective method of avoiding a protracted struggle over an improper subpoena is simply to pick up the phone, contact the issuing attorney, and explain the rules. If that is not possible, a letter, such as the one found at Appendix H, can be sent. Such informal resolution, if possible, is always the preferred method and will often result in the party complying with the *Touhy* regulations and withdrawing the subpoena. If such resolution is not possible, further strategy in any particular case should be discussed with Litigation Division or the United States Attorney's Office in advance. If the requester does move to compel the requested testimony, then the U.S. Attorney's Office will defend the Army consistent with *Touhy* doctrine and principles of sovereign immunity.

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inform Litigation Division immediately so a decision can be made whether to challenge the subpoena or order. If Litigation Division decides not to challenge the subpoena or order, the affected personnel will comply with the subpoena or order. If Litigation Division decides to challenge the subpoena or order, it will direct the affected personnel to respectfully decline to comply with the subpoena or order. (*See Touhy*).

[27] *See, e.g., Sharon Lease Oil Co. v. FERC*, 691 F. Supp. 381 (D.D.C. 1988); *Puerto Rico v. United States*, 490 F.3d 50, 61 (1st Cir. P.R. 2007), *cert. denied*, 552 U.S. 1295 (2008).

[28] *Comsat Corporation v. National Science Foundation*, 190 F.3d 269, 277 (4th Cir. 1999).

[29] A sample response to a subpoena or request for information in a state court family law matter is attached at Appendix G. The publication, *Working With the Military as an Employer*, referenced in this appendix can be found at http://www.acf.hhs.gov/sites/default/files/ocse/military_quick_guide.pdf

[30] 32 C.F.R. § 516.41(f).

[31] "We disagree with the Ninth Circuit's approach and think that the only identifiable waiver of sovereign immunity that would permit a court to require a response to a subpoena in an action in which the government is not a party is found in the APA." *United States EPA v. GE*, 197 F.3d 592, 598 (2d Cir. N.Y. 1999).

[32] "The limitations on a state court's subpoena and contempt powers stem from the sovereign immunity of the United States and from the Supremacy Clause. Such limitations do not apply when a federal court exercises its subpoena power against federal officials…For the foregoing reasons, we believe that federal district courts, in reviewing subpoena requests under the federal rules of discovery, can adequately protect both an individual's right to 'every man's evidence' as well as the government's interest in not being used as a 'speakers bureau' for private litigants." *Exxon Shipping Co. v. United States Dep't of Interior*, 34 F.3d 774, 778 (9th Cir. Alaska 1994).

[33] *See* FED. R. CIV. P. 45(c)(1)(B).

[34] *See* FED. R. CIV. P. 45(c)(3), 26(c).

V. Privilege Review

Prior to the release of any official information, the deciding official must review the documents for privileged information. Most commonly the Privacy Act, the Procurement Integrity Act, the Health Insurance Portability and Accountability Act, Army Safety Investigations, and Inspector General records are subject to laws and regulations that preclude their release. In such cases, the deciding official's release determination must be in compliance with the applicable law and/or regulation.

VI. Conclusion

While DA policy is to make official information reasonably available for use in third-party litigation, the disclosure of such must be made in accordance with the applicable *Touhy* regulations. Further, present or former DA personnel may disclose official information only if they obtain written approval from the appropriate deciding official. Subpoenas can present certain unique and time-sensitive issues that must be addressed immediately upon receipt. When in receipt of a request for official information, ensure that it complies with 32 C.F.R. § 516 Subpart G and AR 27-40, chapter 7, and respond accordingly. While most requests can be resolved at the local level, deciding officials should never hesitate to contact the Litigation Division for assistance with those requests that cannot be resolved at their level.

Appendix A

[redacted]

Sample Touhy Request

[redacted]
Tel 650.[redacted]
Fax 650.[redacted]
[redacted]

October 30, 2013

VIA EMAIL AND U.S. MAIL

[redacted]
Acting Assistant Chief Counsel/Division Counsel
Department of the Army
South Pacific Division, U.S. Army Corps of Engineers
1455 Market Street
San Francisco, CA 94103-1399
Email: [redacted]@usace.army.mil

Re: [redacted]
v. [redacted]
Superior Court of Muscogee County, Georgia, No. [redacted]:
[redacted]

Dear [redacted]:

Thank you for your letter of October 18, 2013 outlining the requirements for requesting the deposition of [redacted] in the above-referenced litigation.

Pursuant to 32 C.F.R. § 97.6(c) and § 516(d), we request that [redacted] appear for a deposition on Wednesday, November 27, 2013 at 10:00 a.m. at Walnut Creek Marriott, 2355 N. Main St., Walnut Creek, California, 94596, [redacted].

The nature of the proceeding is a Fifth Amended Complaint filed by Plaintiffs [redacted] against [redacted] In 2003, [redacted], [redacted] and the Army entered into operating agreements to create privatized Army residential communities at Fort Belvoir, Virginia. In 2005, the same parties entered into operating agreements to create privatized Army residential communities at Fort Benning, Georgia (collectively, the "Projects"). The Fifth Amended Complaint alleges that [redacted] engaged in fraud and other misconduct resulting in the termination of [redacted]'s 50-year property management agreements at both Projects.

[redacted] served as the senior career person within the Army Secretariat responsible for the Army's worldwide installations and housing structure. Prior to his appointment

ALBANY
AMSTERDAM
ATLANTA
AUSTIN
BOSTON
CHICAGO
DALLAS
DELAWARE
DENVER
FORT LAUDERDALE
HOUSTON
LAS VEGAS
LONDON*
LOS ANGELES
MIAMI
MILAN**
NEW JERSEY
NEW YORK
ORANGE COUNTY
ORLANDO
PALM BEACH COUNTY
PHILADELPHIA
PHOENIX
ROME**
SACRAMENTO
SAN FRANCISCO
SHANGHAI
SILICON VALLEY
TALLAHASSEE
TAMPA
TYSONS CORNER
WASHINGTON, D.C.
[redacted]

as the DASA(I&H), [redacted] was a member of the USACE team and concurrently served as the [redacted] of the South Pacific Division Regional Integration Team at Headquarters. [redacted]'s testimony is relevant to the lawsuit because he worked with the RCI partners in overseeing operations at the military housing communities and he has personal knowledge related to the operations and management of the Projects. Additionally, [redacted] communicated directly with upper management at both [redacted] and [redacted] regarding issues at the Projects. We want to inquire of [redacted] about the issues in the Fifth Amended Complaint and the performance and management of both Projects.

We understand that, as a government employee, testimony from [redacted] is subject to the limitations of 32 CFR § 97.6(e). We wish to assure you that we seek only factual testimony from him.

Thank you for your communications and assistance to date. Please let me know if you need any additional information.

Very truly yours,

[redacted]

[redacted]

DEPARTMENT OF THE ARMY
UNITED STATES ARMY LEGAL SERVICES AGENCY
LITIGATION DIVISION
9275 GUNSTON ROAD
FORT BELVOIR, VA 22060

March 28, 2015

SUBJECT: *Plaintiff(s) v. Defendant(s)*, Civil Action File No.: 14CV1234, Superior Court of Muscogee County, State of Georgia

O. Wendell Holmes, Jr.
Hughes, Van Devanter, & Assoc.
1 First St. NE
Washington, DC 20543

Dear Mr. Holmes:

This letter responds to your letter of March 28, 2015, a request for official information made pursuant to Army Regulation (AR) 27-40, Chapter 7 (as codified 32 C.F.R. §516 et seq.). This letter specifically relates to your request for copies of the Aviation Unit Maintenance (AVUM) and Aviation Intermediate Maintenance (AVIM) estimated Repair Appraisal for the accident helicopter, and the flight plan for the accident helicopter for August 18, 2014, DD Form 175, for use in the above-referenced case. Subject to the following conditions, your request for these documents is approved.

Pursuant to 32 C.F.R. §§516.43-45, the documents you requested have been determined to be releasable, subject to certain caveats. Information falling into the following general areas has therefore been redacted:

- Any information that is classified, privileged, or otherwise protected from public disclosure. U.S. DEP'T OF ARMY, REG. 27-40, LITIGATION Chapter 7 (19 September 1994) (hereinafter "AR 27-40"); 32 C.F.R. §516.41, 44.

- Any information the disclosure of which would violate the Privacy Act, absent a written release authorization signed by the individual to whom the information pertains or a court ordered release signed by a judge of a court of competent jurisdiction. 5 USC §552a.

- Any information the disclosure of which would interfere with ongoing enforcement proceedings, compromise constitutional rights, reveal the identity of an intelligence source or confidential informant, disclose trade secrets or similarly

confidential commercial or financial information, or otherwise be inappropriate under the circumstances. U.S. DEP'T OF DEF., DIR. 5405.2, RELEASE OF OFFICIAL INFORMATION IN LITIGATION AND TESTIMONY BY DOD PERSONNEL AS WITNESSES para. 6.2.6 (23 July 1985); AR 27-40, Appendix C. *See, e.g.*, *Am. Mgmt. Servs., LLC v. Dep't of the Army*, 703 F.3d 724, 729 (4th Cir. 2013) *cert. denied*, 12-1233, 2013 WL 1499158 (U.S. Oct. 7, 2013).

- Information which is protected by the deliberative process privilege; which relates to the process by which policies are formulated; and/or is or was at the time predecisional in nature. *See NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 150 (1975) (stating that "[t]he cases uniformly rest the [deliberative process] privilege on the policy of protecting the 'decision making processes of government agencies'" (quoting *Tennessean Newspapers, Inc. v. FHA*, 464 F.2d 657, 660 (6th Cir. 1972))); *Dudman Communications Corp. v. Department of the Air Force*, 815 F.2d 1565, 1568 (D.C. Cir. 1987); *Coastal States Gas Corp. v. Department of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980).

Our sole concern in this matter is to protect the interests of the United States Army; the Army will not block access to witnesses or documents to which you are lawfully entitled. The requested documents are enclosed, with Bates Stamp Army_20150220_0001 thru Army_20150220_0047. According to our records, this release comprises the totality of responsive documents in the possession of the Army, and your *Touhy* request is now closed. If you should have any questions, please feel free to contact me at (703) 693-xxxx or xxx.xxx.mil@mail.mil.

Sincerely,

William J. Brennan, Jr.
Major, U.S. Army
Litigation Attorney

Enclosure

DEPARTMENT OF THE ARMY
UNITED STATES ARMY LEGAL SERVICES AGENCY
LITIGATION DIVISION
9275 GUNSTON ROAD
FORT BELVOIR, VA 22060

March 28, 2015

SUBJECT: Plaintiff(s) v. Defendant(s), Civil Action File No.: 14CV1234, Superior Court of Muscogee County, State of Georgia

O. Wendell Holmes, Jr.
Hughes, Van Devanter, & Assoc.
1 First St. NE
Washington, DC 20543

Dear Mr. Holmes:

This letter responds to your letter of March 28, 2015, a request for official information made pursuant to Army Regulation (AR) 27-40, Chapter 7 (as codified 32 C.F.R. §516 et seq.). This letter specifically relates to your request for the depositions of Mr. John Smith and Mr. Bill Jones for use in the above-referenced case. Subject to the following conditions, your request is approved.

Pursuant to 32 C.F.R. §516.48, these individuals may provide official information during a deposition. Based on your request, they may release official information regarding their personal knowledge in the following general areas, subject to the caveats which follow:

> Mr. Smith: The operation and management of the Projects and his communications with upper management of both Plaintiff and Defendant regarding construction problems and delays at the Projects.
>
> Mr. Jones: The Community Development Management Plans at the Projects, the performance of the property and asset manager at the Projects, and residential and operational issues at the Projects.

Caveats and Reservations: Deponents are prohibited from offering testimony which falls into the following general, non-exhaustive, areas:

- Any information that is classified, privileged, or otherwise protected from public disclosure. U.S. DEP'T OF ARMY, REG. 27-40, LITIGATION Chapter 7 (19 September 1994) (hereinafter "AR 27-40"); 32 C.F.R. § 516.41, 44.

- Any information the disclosure of which would violate the Privacy Act, absent a written release authorization signed by the individual to whom the information pertains or a court ordered release signed by a judge of a court of competent jurisdiction. 5 USC §552a.

- Any information the disclosure of which would interfere with ongoing enforcement proceedings, compromise constitutional rights, reveal the identity of an intelligence source or confidential informant, disclose trade secrets or similarly confidential commercial or financial information, or otherwise be inappropriate under the circumstances. U.S. DEP'T OF DEF., DIR. 5405.2, RELEASE OF OFFICIAL INFORMATION IN LITIGATION AND TESTIMONY BY DOD PERSONNEL AS WITNESSES para. 6.2.6 (23 July 1985); AR 27-40, Appendix C. See, e.g., Am. Mgmt. Servs., LLC v. Dep't of the Army, 703 F.3d 724, 729 (4th Cir. 2013) cert. denied, 12-1233, 2013 WL 1499158 (U.S. Oct. 7, 2013).

- Information which is protected by the deliberative process privilege; which relates to the process by which policies are formulated; and/or is or was at the time predecisional in nature. See NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 150 (1975) (stating that "[t]he cases uniformly rest the [deliberative process] privilege on the policy of protecting the 'decision making processes of government agencies'" (quoting Tennessean Newspapers, Inc. v. FHA, 464 F.2d 657, 660 (6th Cir. 1972))); Dudman Communications Corp. v. Department of the Air Force, 815 F.2d 1565, 1568 (D.C. Cir. 1987); Coastal States Gas Corp. v. Department of Energy, 617 F.2d 854, 866 (D.C. Cir. 1980).

The deponents may only provide factual information related to their involvement in the events that gave rise to the present litigation. They may not be qualified as expert witnesses or be asked for personal opinions relating to official information. See AR 27-40, para. 7-10; 32 C.F.R. §516.49(a).

The following conditions apply to this authorization. First, an Army-designated attorney must be present during the deposition. AR 27-40, para. 7-9; 32 C.F.R. §516.48. Second, the witnesses' participation must be at no expense to the United States. AR 27-40, para. 7-16; 32 C.F.R. §516.55; the Army must be provided a copy of the deposition transcript, also at no expense to the United States (electronic copies are acceptable). Finally, this approval is limited to the requested deposition and subject areas and does not extend to any other forum or format. If the testimony of any of the individuals is later requested for trial, a new Touhy request must be submitted.

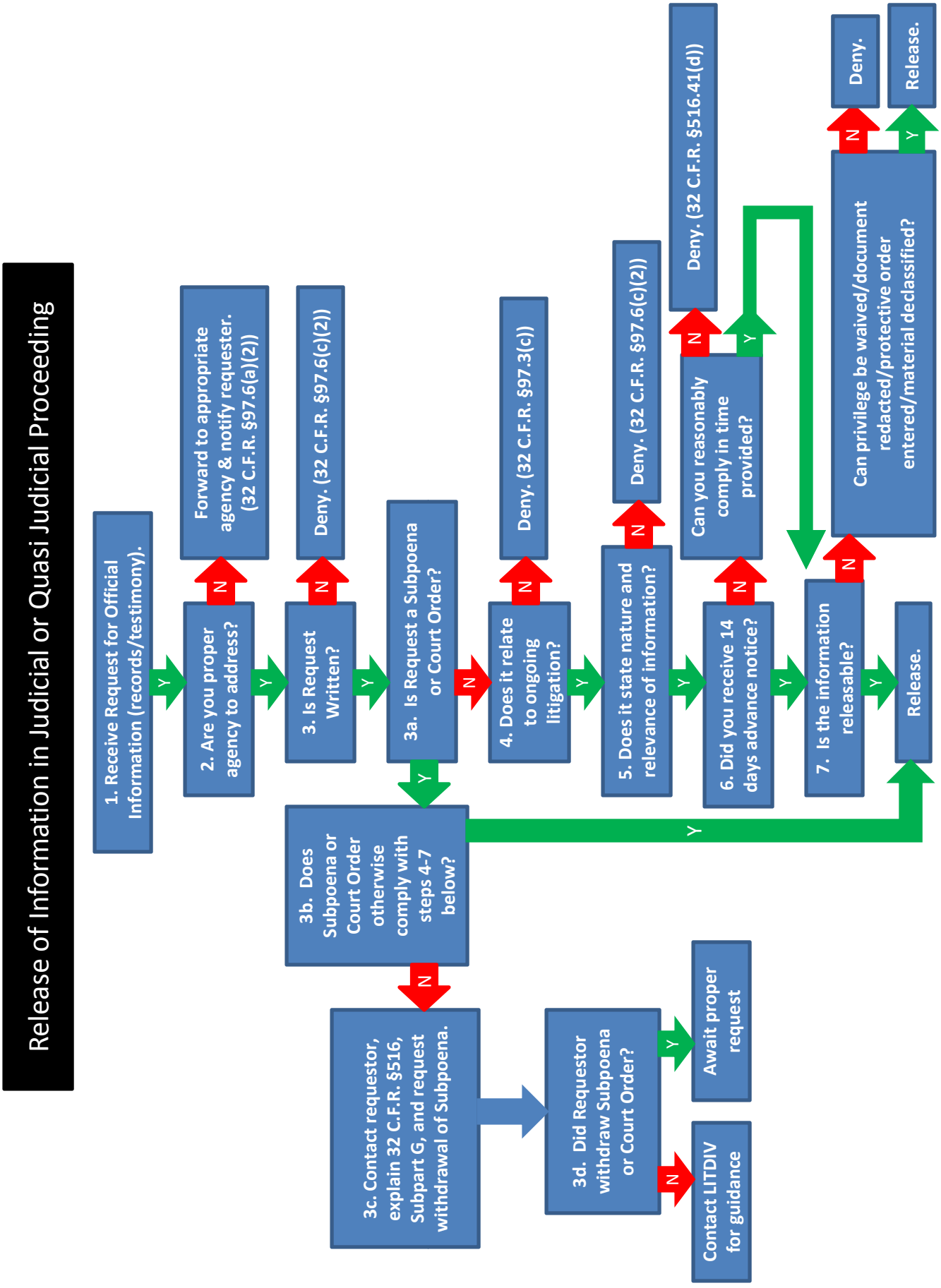
The decision whether to testify in private litigation is within the discretion of the prospective witnesses. The United States cannot compel an official to participate in private litigation. 32 CFR §516.47(d). This authorization is also subject to the approval of the witness' supervisor to be absent during the period involved. If the witness' absence on the requested time

and/or date would seriously interfere with the accomplishment of a military mission, the deposition would need to be rescheduled. 32 CFR §516.47(a)(3). Advance scheduling is therefore important for all parties concerned.

We look forward to working with you to find mutually acceptable dates for the testimony of these individuals. Our sole concern in this matter is to protect the interests of the United States Army; the Army will not block access to witnesses or documents to which you are lawfully entitled. Our office will continue to keep your Touhy request open until the completion of the requested depositions. In the interim, if you should have any questions, please feel free to contact me at (703) 693-xxxx or xxxx.mil@mail.mil.

Sincerely,

William J. Brennan, Jr.
Major, U.S. Army
Litigation Attorney


Release of Information in Judicial or Quasi Judicial Proceeding
1. Receive Request for Official Information (records/testimony).
2. Are you proper agency to address?
Forward to appropriate agency & notify requester. (32 C.F.R. §97.6(a)(2))
3. Is Request Written?
Deny. (32 C.F.R. §97.6(c)(2))
3a. Is Request a Subpoena or Court Order?
3b. Does Subpoena or Court Order otherwise comply with steps 4-7 below?
3c. Contact requestor, explain 32 C.F.R. §516, Subpart G, and request withdrawal of Subpoena.
3d. Did Requestor withdraw Subpoena or Court Order?
Await proper request
Contact LITDIV for guidance
4. Does it relate to ongoing litigation?
Deny. (32 C.F.R. §97.3(c))
5. Does it state nature and relevance of information?
Deny. (32 C.F.R. §97.6(c)(2))
6. Did you receive 14 days advance notice?
Can you reasonably comply in time provided?
Deny. (32 C.F.R. §516.41(d))
7. Is the information releasable?
Can privilege be waived/document redacted/protective order entered/material declassified?
Deny.
Release.
Release.
Y
N

DEPARTMENT OF THE ARMY
UNITED STATES ARMY LEGAL SERVICES AGENCY
LITIGATION DIVISION
9275 GUSTON ROAD
FORT BELVOIR, VIRGINIA 22060

REPLY TO ATTENTION OF:

April 28, 2015

General Litigation Branch

John Q. Attorney
100 Anywhere
Suite 701
New York City, NY 20001

Dear Mr. Chapman:

This responds to your request for _____ to appear as an expert witness in private litigation:_____. For the following reasons, the request is denied.

Army Regulation 27-40 forbids Army personnel from providing expert testimony in private litigation, with our without compensation, except under the most extraordinary circumstances. See 32 C.F.R. § 97.6(e), 516.49. Several reasons support the exercise of strict control over such witness appearances.

The Army policy is one of strict impartiality in litigation in which the Army is not a named party, a real party in interest, or in which the Army does not have a significant interest. When a witness with an official connection with the Army testifies, a natural tendency exists to assume that the testimony represents the official view of the Army, despite express disclaimers to the contrary.

The Army is also interested in preventing the unnecessary loss of the services of its personnel in connection with matters unrelated to their official responsibilities. If Army personnel testify as expert witnesses in private litigation, their official duties are invariably disrupted, often at the expense of the Army's mission and the Federal taxpayer.

Finally, the Army is concerned about the potential for conflict of interest inherent in the unrestricted appearance of its personnel as expert witnesses on behalf of parties other than the United States. Even the appearance of such conflicts of interest seriously undermines the public trust and confidence in the integrity of our Government.

This case does not present the extraordinary circumstances necessary to justify the requested witness' expert testimony. You have demonstrated no exceptional need or unique circumstances that would warrant (his or her) appearance. The expert testimony desired can be secured from non-Army sources. Consequently, we are unable to grant you an exception to the Army's policy. In accordance with 32 CFR §516.49, you may appeal this determination to the

United States Army Litigation Division. The appeal authority is:

Chief, Army Litigation
U.S. Army Legal Services Agency
Litigation Division
9275 Gunston Rd., Suite 3000
Fort Belvoir, VA 22060

If you have any questions, please call _____ at XXX-XXX-XXXX.

Sincerely,

Signature Block

Touhy Script (Deposition, Interview, Trial)

Good morning, I'm [your name], with the [organization]. I am present here today representing the United States Army as required by 32 C.F.R. § 516.48. My representation of [deponent name] is limited to matters related to the release of official Army information and to [his/her] role as [officer/employee] of the United States Army. In accordance with Army Regulation 27-40, Chapter 7 and 32 C.F.R. § 516.48, [deponent name] is authorized to disclose official information related to [insert scope of authorization as contained in approval letter]. [Insert approving official / Office] has authorized [deponent name] to provide this information in the matter of [Insert Case Caption]. The letter authorizing this disclosure is dated [date] and signed by [authorizing official]. I request that this document be admitted as an exhibit to this deposition.

[Deponent name] is specifically prohibited from disclosing certain information. [He/She] may not provide classified or privileged information or provide information that is otherwise protected from public disclosure, such as Privacy Act protected information, without appropriate additional authorization. [He/She] may not provide opinion testimony (such as hypothetical questions) or expert testimony without additional justification and approval required by 32 C.F.R. §516.49. In accordance with 32 C.F.R. § 516.48, I am required to instruct the deponent not to answer questions which call for official information outside the scope of this authorization or seek information which is otherwise prohibited from disclosure.

{Use this paragraph when the expected testimony covers both official and non-official information.

Official information is defined by 32 C.F.R. Part 516, Appendix F as "All information of any kind, however stored, that is in the custody and control of the Department of Defense, relates to information in the custody and control of the Department, or was acquired by DoD personnel as part of their official duties or because of their official status within the Department while such personnel were employed by or on behalf of the Department or on active duty with the United States Armed Forces."}

{Use this paragraph when the deponent has been authorized to provide expert testimony.

In accordance with Army Regulation 27-40, Chapter 7 and 32 C.F.R. § 516.49, [deponent name] is authorized to provide expert testimony related to [insert scope of approved expert testimony contained in approval letter]. While both parties may question the deponent on this field of expertise, the deponent is not authorized to provide expert testimony on other subjects.}

{Use this paragraph when the deponent is an AMEDD member and has been authorized to provide expert testimony.

In accordance with Army Regulation 27-40, Chapter 7 and 32 C.F.R. § 516.49 (c), [deponent name] is authorized to provide testimony related to the treatment of [insert patient name]. Both parties may question the deponent on this patient, limited to the scope of the [patient

confidentiality waiver / court order] and the previously mentioned approval letter from [authorizing official]. [Deponent's] testimony must be limited to [his / her] treatment of the patient, investigations [he / she] has made, laboratory tests [he/she] has conducted, or other actions taken in the regular course of their duties. Deponent must limit [his / her] testimony to factual matters such as the following: observations of the patient or other operative facts; the treatment prescribed or corrective action taken; course of recovery or steps required for repair of damage suffered; and, contemplated future treatment. [His / her] testimony may not extend to expert or opinion testimony, to hypothetical questions, or to a prognosis.}

Read this paragraph in cases in which the Army is NOT a party and DOES NOT have an interest in the case:

It is DoD policy that official information should generally be made reasonably available for use in Federal and State courts and by other governmental bodies unless the information is classified, privileged, or otherwise protected from public disclosure. Army policy is one of strict impartiality in private litigation in which the Army is not a named party or does not have a significant interest as that term is defined in 32 C.F.R. § 516, Appendix F. Therefore, my role during this deposition is solely to protect the Army's interest and, as such, my intervention will be limited to that end. The parties are responsible for advancing their respective positions and objections as it relates to matters outside the Army's interest.

Read this paragraph in cases in which the Army is NOT a party but DOES have an interest in the case:

It is DoD policy that official information should generally be made reasonably available for use in Federal and State courts and by other governmental bodies unless the information is classified, privileged, or otherwise protected from public disclosure. In private litigation in which the United States is not a party, but does have a significant interest as that term is defined in 32 C.F.R. § 516, Appendix F, Army policy is one of strict impartiality in regards to access to information and fact witnesses; that is, all parties shall have equal access to official information and fact witnesses. Therefore, my role during this deposition is solely to protect the Army's interest and, as such, my intervention will be limited to that end. The parties are responsible for advancing their respective positions and objections as it relates to matters outside the Army's interest.

Thank you.

Appendix G

DEPARTMENT OF THE ARMY
UNITED STATES ARMY LEGAL SERVICES AGENCY
LITIGATION DIVISION
9275 GUNSTON ROAD
FORT BELVOIR, VA 22060

April 28, 2015

SUBJECT: [Request / Subpoena] for Finance, Medical, and Personnel Records of Specialist (SPC) Walter X. Snuffy pursuant to *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951), in the family law matter of Ms. Betty Snuffy, State of California

Dolores M. Jones, Esq.
Dewey, Cheatem, & Howe, PLLC
610 South Main Street
San Jose, CA 95113

Dear Ms. Jones:

This letter responds to your [Subpoena / request] of March 30, 2015 for the personnel, medical, and finance records of SPC Walter Snuffy. As outlined in detail below, your request is denied because [the subpoena does not comply with federal laws or regulations regarding the release of the information sought and] this office is not the custodian of any of the records you seek .

Finance records for Army personnel are maintained by the Defense Finance and Accounting Service (DFAS) and requests must be sent directly to that office. I have enclosed a publication entitled, "Working With The Military As An Employer" which contains contact information for DFAS, as well as other information you might find helpful.

Personnel records are generally maintained at the unit level. You should direct your request for those records to:

[Change the below information to the servicing OSJA of the Soldier's command. For National Guard Soldiers, this should be the office of the State Adjutant General. Determining the correct POC for Reserve Soldiers may be more challenging.]
Office of the Staff Judge Advocate
10th Mountain Division (Light Infantry)
Att'n.: Administrative Law Division
141 Lewis Avenue
Fort Drum NY 13602-5100

Delete the above paragraph and use this one for individuals who are retired or otherwise no longer serving. Personnel records for retired /discharged individuals should be requested from:

National Personnel Records Center
Military Personnel Records
1 Archives Drive
St. Louis, MO 63138
Phone: 314-801-0800
Fax: 314-801-9195

We recommend contacting the NPRC to determine requirements prior to submitting a request.

As for medical records, we recommend you contact the Department of Veterans Affairs (VA), Records Management Center, in St. Louis, MO, or call their toll free number at 1-800-827-1000 to identify the current location of specific health records and to find out how to obtain releasable documents or information.

[Remove this paragraph if the original request was not in the form of a subpoena.]The presence of a subpoena in this case does not affect the requirements contained in 32 C.F.R.§97.6(c) and Part 516, Subpart G. In accordance with *Touhy*, the Secretary of the Army may withhold release authority for official Army information from his subordinates—as he has done in the above-referenced regulations. Based upon these regulations, an Army employee, if ordered by the court to testify or produce documents not properly requested and approved for release, must respectfully decline. It is well settled that courts cannot compel a federal agency employee to testify or produce documents in violation of agency regulations. *See*, *Touhy*, 340 U.S. at 467-70; *Boron Oil Co.*, 873 F.2d at 69-70; and *United States Steel Corp. v. Mattingly*, 663 F.2d 68 (10th Cir. 1980).

[Remove this paragraph if the original request was not in the form of a subpoena.]Furthermore, in this instance, refusal to comply with the specified subpoena for the production of records is also grounded on "sovereign immunity," [and not merely housekeeping regulations], *Comsat Corporation v. National Science Foundation*, 190 F.3d 269, 277 (4th Cir. 1999). The Administrative Procedures Act (APA) provides the "sole avenue for review." *Id.*, at 274, citing *Smith v. Cromer*, 159 F.3d 875, 881 (4th Cir. 1998).

You should be aware that much of the information you seek may be protected by the Privacy Act and/or the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Any records so protected may only be disclosed with a written release authorization signed by the individual to whom the information pertains, or a court ordered release signed by a judge of a court of competent jurisdiction. 5 USC §552a; 45 C.F.R. § 164.512(e). A subpoena or other legal process signed by an attorney or clerk of court for records or information protected by the Privacy Act does not authorize the release of the protected information. *See*, *e.g.*, *Doe v. DiGenova*, 779 F.2d 74 (D.C. Cir. 1985); 5 U.S.C. §552a(b)(11) and 32 C.F.R. §516.46(b)(1).

The order must direct release of the specific record(s) or instruct that copies of the record(s) be delivered to the clerk of court. The order must also indicate that the court has

determined the materiality of the records and the non-availability of a claim of privilege. Typically, a Privacy Act-compliant protective order must also be in place prior to release of any protected records. Note that a state court generally lacks authority to order disclosure of a nonparty federal agency's records. *See, e.g., Bosaw v. NTEU*, 887 F.Supp. 1199, 1217 (S.D. Ind. 1995).

Our sole concern in this matter is to protect the interests of the United States Army; the Army will not block access to witnesses or documents to which you are lawfully entitled. If you should have any questions, please feel free to contact me at (703) 693-xxxx or xxxxxxxxx@mail.mil.

Sincerely,

William J. Brennan, Jr.
Major, U.S. Army
Litigation Attorney

Enclosure

DEPARTMENT OF THE ARMY
UNITED STATES ARMY LEGAL SERVICES AGENCY
LITIGATION DIVISION
9275 GUNSTON ROAD
FORT BELVOIR, VA 22060

February 18, 2015

SUBJECT: *Plaintiff(s) v. Defendant(s)*, Civil Action File No.: 14CV1234, Superior Court of Muscogee County, State of Georgia

O. Wendell Holmes, Jr.
Hughes, Van Devanter, & Assoc.
1 First St. NE
Washington, DC 20543

Dear Mr. Holmes:

*****If the subpoena seeks information/documents rather than the testimony of an individual(s), adjust the language accordingly. The citations to cases and regs are the same regardless.***** I coordinate general litigation issues for the U.S. Army. I am writing because we have learned that you have issued a subpoena to John Smith, an Army employee, in reference to the above captioned litigation, for a deposition to take place on November 25, 2014. As outlined in detail below, your request is denied because the subpoena does not comply with federal laws or regulations regarding the release of the information sought.

Under 32 C.F.R. §§ 97 and 516, the Army must authorize the production of official documents or testimony in private litigation. In this case, the Army cannot authorize Mr. Smith to appear unless his appearance is requested in writing and in accordance with Department of Defense Directive 5405.2; 32 C.F.R. § 97.6; Army Regulation 27-40, Chapter 7; and 32 C.F.R. § 516, Subpart G. The request must include, *inter alia*, the nature and relevance of the official information sought. 32 C.F.R. § 516.41(d). It is important for this request to be as specific as possible. We cannot act on your request until we receive the required information, and, absent a proper request and approval of that request by the designated Army official, no official information may be released. 32 C.F.R. 516.41(d); s*ee, e.g., United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951); *In re Elko County Grand Jury*, 109 F.3d 554 (9th Cir. 1997); *Boron Oil Co. v. Downie*, 873 F.2d 67 (4th Cir. 1989); *United States v. Marino*, 658 F.2d 1120 (6th Cir. 1981); *United States v. Allen*, 554 F.2d 398 (l0th Cir. 1977) cert. denied, 434 U.S. 836, 98 S.Ct. 124, 54 L.Ed.2d 97 (1977).

The presence of a subpoena in this case does not affect the requirements contained in 32 C.F.R.§ 97.6(c) and Part 516, Subpart G. In accordance with *Touhy*, the Secretary of the

Army may withhold release authority for official Army information from his subordinates—as he has done in the above-referenced regulations. Based upon these regulations, an Army employee, if ordered by the court to testify or produce documents not properly requested and approved for release, must respectfully decline. It is well settled that courts cannot compel a federal agency employee to testify or produce documents in violation of agency regulations. *See, Touhy,* 340 U.S. at 467-70; *Boron Oil Co.*, 873 F.2d at 69-70; and *United States Steel Corp. v. Mattingly*, 663 F.2d 68 (10th Cir. 1980).

*****REMOVE IF NOT APPLICABLE.*****You should be aware that much of the information you seek may be protected by the Privacy Act. Any records so protected may only be disclosed with a written release authorization signed by the individual to whom the information pertains, or a court ordered release signed by a judge of a court of competent jurisdiction. 5 USC §552a. A subpoena or other legal process signed by an attorney or clerk of court for records or information protected by the Privacy Act does not authorize the release of the protected information. See, e.g., Doe v. DiGenova, 779 F.2d 74 (D.C. Cir. 1985); 5 U.S.C. § 552a(b)(11) and 32 C.F.R. §516.46(b)(1).

The order must direct release of the specific record(s) or instruct that copies of the record(s) be delivered to the clerk of court. The order must also indicate that the court has determined the materiality of the records and the non-availability of a claim of privilege. Typically, a Privacy Act-compliant protective order must also be in place prior to release of any protected records.******* *****REMOVE IF THE UNDERLYING CASE IS FEDERAL RATHER THAN STATE.*****Note that a state court generally lacks authority to order disclosure of a nonparty federal agency's records. See, e.g., Bosaw v. NTEU, 887 F.Supp. 1199, 1217 (S.D. Ind. 1995).*******

*****REMOVE THIS PARAGRAPH IF THE UNDERLYING CASE IS FEDERAL RATHER THAN STATE.*****Furthermore, in this instance, refusal to comply with the specified subpoena for the production of records is also grounded on "sovereign immunity," [and not merely housekeeping regulations], *Comsat Corporation v. National Science Foundation*, 190 F.3d 269, 277 (4th Cir. 1999). The Administrative Procedures Act (APA) provides the "sole avenue for review." *Id.*, at 274, citing *Smith v. Cromer*, 159 F.3d 875, 881 (4th Cir. 1998).*******

***** In the case of documents, remove this paragraph concerning "opinion/expert testimony" entirely.***** Finally, if Mr. Smith appears as a witness, he may only give factual testimony. He may not testify as an opinion or expert witness. This limitation is based on Department of Defense and Army policy that generally prohibits Government employees from appearing as expert witnesses in private litigation. *See* 32 CFR §§ 97.6(e). ***

Our sole concern in this matter is to protect the interests of the United States Army; the Army will not block access to witnesses or documents to which you are lawfully entitled. We look forward to hearing from you so that we may timely process your request. I can be reached at (703) 693-xxxx or xxxx.mil@mail.mil if you have any questions.

Sincerely,

William J. Brennan, Jr.
Major, U.S. Army
Litigation Attorney

cc:
United States Attorney for _____ District of _____