



DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
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JAGINST 5813.2A
CODE 20
9 Aug 23

JAG INSTRUCTION 5813.2A

Subj: PUBLIC ACCESS TO COURT-MARTIAL DOCKETS, FILINGS, AND RECORDS
PURSUANT TO ARTICLE 140a, UCMJ

Ref: (a) Article 140a, Uniform Code of Military Justice (UCMJ)
(b) Sec. 534, National Defense Authorization Act for Fiscal Year 2020
(c) 5 U.S.C. § 552a – Privacy Act
(d) DoD 5400.11-R
(e) SECNAVINST 5211.5F
(f) 5 U.S.C. § 552 – Freedom of Information Act
(g) Navy and Marine Corps Trial Judiciary Uniform Rules of Practice
(h) Navy-Marine Corps Court of Criminal Appeals Rules of Appellate Procedure

Encl: (1) General Counsel, Department of Defense memorandum dtd 17 Jan 23, “Revised
Uniform Standards and Criteria Required by Article 140a, Uniform Code of Military
Justice”
(2) Items to be Redacted
(3) Court Martial Documents to be Made Publicly Accessible
(4) Sample Article 140a Request

1. Purpose. To establish Department of the Navy policies and procedures for providing public access to court dockets, court filings, court records, and appellate documents pursuant to references (a) and (b). This instruction is revised and should be read in its entirety.

2. Cancellation. JAGINST 5813.2.

3. Applicability. This instruction applies to all military and civilian personnel involved in the military justice processes within the Department of the Navy. This instruction applies to all records of trial certified or authenticated on or after 14 September 2023. The Staff Judge Advocate to the Commandant of the Marine Corps, Commander, Naval Legal Service Command, Lead Special Trial Counsel, USN and Lead Special Trial Counsel, USMC may issue additional guidance consistent with this instruction.

4. Discussion

a. Reference (a) and the Secretary of Defense Revised Uniform Standards and Criteria Required by Article 140a, Uniform Code of Military Justice (enclosure (1)) provide that to the

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greatest extent practicable, the public shall have access to military justice docket information, filings, trial-level court documents, and appellate documents. Docket information will be provided and updated on an ongoing basis, but is subject to change without notice. Court filings and records will be made available in accordance with the instructions below.

b. The processes and procedures directed by this instruction will ensure release of court-martial information is conducted in accordance with appropriate statutory and regulatory provisions. Enclosure (2) provides a complete list of information that must be redacted from all documents prior to posting on a public website. A list of court filings or records that must be made available to the public is contained in enclosure (3).

c. Pursuant to reference (a), records of trial, docket information, filings, appellate documents, and other records made publicly accessible in accordance with enclosure (1) shall restrict access to the Personally Identifiable Information (PII) of minors and victims of crime as practicable to the extent such information is restricted in electronic filing systems of federal and state courts. Federal courts require the following to be redacted from all filings: (1) social security numbers; (2) dates of birth; (3) names of minor children; (4) financial account numbers; and (5) home addresses.

d. The release of court-martial records is also governed by the Privacy Act, reference (c). References (d) and (e) provide implementing guidance that further restricts the release of certain additional categories of PII. The disclosure or dissemination of covered records, at any stage of the proceedings, must comply with reference (c) and other applicable laws and regulations concerning the protection of classified information or otherwise sealed materials.

e. Documents made public in accordance with reference (a) shall comply with the Military Justice Case Management, Data Collection, and Accessibility Standards established in enclosure (1).

f. The Department of the Navy shall use redaction guidelines applicable under reference (f), the Freedom of Information Act (FOIA). The FOIA requires the Department of the Navy to disclose information unless there is an exemption. The Department of the Navy will apply FOIA redaction guidelines to prevent the release of certain sensitive information and protect personal privacy.

5. Action

a. The following applies to the dockets, filings, and trial-level court documents in the Navy-Marine Corps Trial Judiciary.

(1) Pursuant to reference (g), counsel (trial counsel, defense counsel, victims' legal counsel) shall:

(a) Minimize the use of PII and information exempt from release, as provided in this instruction, to the maximum extent possible in all filings and court records.

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(b) Omit enclosures or attachments in filings. Any documentary evidence offered by the parties for consideration on a filing, will be submitted as a separate appellate exhibit, as directed by the military judge, and referenced as such in the filing, notice, request, or motion.

(2) Upon certification of the record of trial, personnel responsible for post-trial processing shall, within 5 days, upload an unredacted digital copy of all certified records of trial to the Office of the Judge Advocate General, Military Justice Administration Division, (Code 40) SharePoint Drop Box at: <https://portal.secnav.navy.mil/orgs/JAG/40/SitePages/Home.aspx> or the Naval Court-Martial Reporting System (NCORS) at: <https://ncors.navy.mil/suite/sites/ncors-legal-case-management/page/post-trial-home>, as applicable.

(3) Code 40 shall:

(a) Provide links to all Navy-Marine Corps Trial Judiciary court dockets. All trial court dockets (within and outside the continental United States) must include the following information concerning each case docketed within the circuit: (a) name of the case; (b) location of the hearing; (c) forum (e.g., General Court-Martial or Special Court-Martial); (d) type of hearing (e.g., arraignment, Article 39(a), or trial); (e) the charges referred to the court-martial; (f) the military judge presiding over the hearing, and (g) the lead trial counsel and defense counsel assigned to the case. Information identifying the military judge and counsel may be made publicly accessible at a reasonable time after the conclusion of proceedings. No docket will include any pre-referral hearings, such as Article 30a or Article 32 hearings.

(b) Review each digital record of trial to compile all filings and court records that will be made available to the public in accordance with enclosure (3).

(c) Redact all filings and court records to ensure each document is redacted in accordance with enclosure (2).

(d) In accordance with references (c) and (f) and enclosure (2), if a military judge concludes evidence of prior criminal activity is inadmissible at trial, unless otherwise ordered by the military judge, redact information that discusses the inadmissible evidence.

(e) After review by the Director, Code 40, make the approved filings and court records from certified records of trial publicly accessible. The files will be uploaded onto the public facing website in the following categories as defined in enclosure (3): formal notices submitted to the court; formal requests submitted to the court; motions and responses submitted to the court with the corresponding ruling from the military judge; and court records.

(f) Absent extraordinary circumstances, filings and trial-level court documents will be publicly accessible no later than 45 calendar days after the certification of the record of trial. Nothing in this instruction shall preclude the publication of filings or trial-level court documents prior to the established deadline.

(g) Upon approval of release of items under paragraph 5c of this instruction, make them publicly accessible after complying with the redaction procedures in this instruction.

(4) Director, Code 40, is the release authority for all trial-level filings and court records subject to the procedures outlined below regarding additional public access in specific cases. The release authority is responsible for ensuring trial-level filings and court records have been properly redacted and may approve publication of the trial-level filings and court records pursuant to this instruction. This authority may be delegated. Delegation of these responsibilities must be in writing. The authority should only be delegated to a Department of the Navy employee of a paygrade commensurate to at least an O-4 or GS-12.

b. The following applies to the docket and appellate documents at the Navy-Marine Corps Court of Criminal Appeals (NMCCA).

(1) All appellate counsel (appellate government counsel, appellate defense counsel, and victims' legal counsel) shall:

(a) As required by reference (h), minimize the use of PII and information exempt from release to the maximum extent possible from all pleadings submitted to the court.

(b) Omit enclosures or attachments from all motions—other than motions to attach—and pleadings, including briefs, answers, replies, and petitions. Any document from outside the record, including affidavits and declarations, that counsel desires to reference in any pleading, may be submitted to the court only pursuant to a motion to attach.

(2) The Clerk of Court, NMCCA, is the release authority for all NMCCA pleadings, orders, and opinions. The Clerk shall notify Code 40 when pleadings, orders, and opinions are ready for redaction and public release.

(3) Code 40 shall:

(a) Provide a link to the NMCCA docket, which includes the name of the case, date and location of any scheduled oral argument, and panel assignment.

(b) Upon receipt from the Clerk of Court, redact all pleadings, notices, petitions, orders, submitted requests to the NMCCA, and opinions in accordance with enclosure (2), and make the redacted materials publicly accessible. Filings, trial-level court documents, and appellate documents will be co-located to facilitate public access.

(c) Absent extraordinary circumstances, appellate documents will be publicly accessible no later than 45 calendar days after the Court of Criminal Appeals decision. Nothing in this instruction shall preclude the publication of appellate documents prior to the established deadline.

(d) Upon approval of release of items under paragraph 5c of this instruction, make

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them publicly accessible after complying with the redaction procedures in this instruction.

c. Additional public access in specific cases.

(1) The following may be made publicly accessible upon receipt of a request made using the procedures in paragraph 5c(2) below:

(a) Filings, trial-level court documents, or appellate documents prior to the required date of public accessibility;

(b) Filings and trial-level court documents from courts-martial in which there were no findings of guilty; and

(c) Items not required to be made publicly accessible by this instruction and not covered under another statute such as FOIA.

(2) Procedures for public access in specific cases.

(a) Requests for public access to the items identified in paragraph 5c(1) shall be made by completing Enclosure (4) and emailing it to 140aSpecialRequest@us.navy.mil. The request must adequately demonstrate the public interest in disclosure of the requested items.

(b) The Office of the Judge Advocate General, Criminal Law Division (Code 20) is responsible for reviewing all requests under this paragraph as the Initial Review Authority (IRA). Director, Code 20 or the IRA may direct that items in paragraph 5c(1) be made publicly accessible.

(c) Director, Code 20, shall personally serve as the IRA or may delegate the responsibility to serve as the IRA as a standing duty. Delegation of IRA responsibilities must be in writing. The IRA should be a Department of the Navy employee of a paygrade commensurate to at least an O-4 or GS-12.

(d) If the request involves a court-martial convened by a Marine Corps convening authority, or involves a Marine accused, Director, Code 20 and/or the IRA, shall coordinate with Headquarters Marine Corps, Judge Advocate Division. The IRA has the authority to authorize release of the information through this process, but release will not occur prior to redaction procedures performed by Code 40.

(e) Upon receipt of a request for public accessibility the IRA shall evaluate whether the requested items should be made publicly accessible. This evaluation requires balancing the public interest in the furtherance of the fair administration of justice with the privacy interests of the accused, minors, and victims of crimes. When evaluating the public interest in disclosure, the IRA shall consider whether the case involves any of the following non-exhaustive list of circumstances:

1. Offenses involving property damage or loss greater than \$2 million;
2. Offenses punishable by death with at least one aggravating factor as defined in R.C.M. 1004;
3. Offenses resulting in death;
4. Grave breaches or serious crimes under the Law of Armed Conflict;
5. A proceeding where the accused is:
 - a. A general or flag officer; or
 - b. Serving in a command billet in the grade of E-9 or O-5; or
6. Other cases of potential high public interest.

(f) If the IRA determines that public access to requested items is warranted, the IRA shall notify Code 40 and provide specific instructions to Code 40 on which requested items will be made publicly accessible. The IRA may determine to make publicly accessible other items not specifically requested, if appropriate, after following the procedures above. Code 40 shall redact and release the requested items utilizing the procedures identified in paragraph 5a or 5b, as applicable.

(g) The IRA shall make a determination within 15 business days of a complete request. Upon the IRA's determination, Code 40 shall redact and release the approved court documents in an expeditious manner. If the IRA determines that the requested items should not be made publicly accessible, the IRA shall notify the requestor and Director, Code 20 of the determination.

(h) If an IRA denies a request for an item to be made publicly accessible, the requestor may submit an appeal to Director, Code 20, who shall forward the appeal to Director, Office of the Judge Advocate General, Code 14, General Litigation Division (Code 14).

d. Director, Code 14 shall have the authority to adjudicate all appeals regarding Article 140a release and this instruction and shall have cognizance over all cases that involve litigation over such a request.

e. The Assistant Judge Advocate General (Military Law) shall ensure identification of appropriate metrics and associated data collection to enable assessment of performance and resourcing.

6. Enforceability. Inability or failure to comply with this instruction shall not constitute grounds for assignment of error on appellate review and shall not create any cause for relief against an otherwise valid judicial hearing.

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7. Review and Effective Date. This instruction is effective September 14, 2023. Per OPNAVINST 5215.17A, Code 20 will review this instruction annually on the anniversary of its effective date to ensure applicability, currency, and consistency with Federal, Department of Defense, and Navy policy and statutory authority using OPNAV 5215/40 Review of Instruction. As the instruction nears its five-year anniversary and if still required, it will be reissued. Otherwise, if the instruction is no longer required, it will be processed for cancellation as soon as the cancellation is known following the guidance in Executive Order 13,526.


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