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§ 635.7 Collection of deoxyribonucleic acid.

(a) Army Law Enforcement (LE) personnel will collect deoxyribonucleic acid (DNA) pursuant to DoDI 5505.14 (available at *http://www.dtic.mil/whs/directives/corres/pdf/550514p.pdf*), DNA Collection Requirements for Criminal Investigations. Per this subpart, a sample of an individual's DNA is to allow for positive identification and to provide or generate evidence to solve crimes through database searches of potentially matching samples. DNA samples will not be collected from juveniles.

(b) Army LE personnel will obtain a DNA sample from a civilian in their control at the point it is determined there is probable cause to believe the detained person violated a Federal statute equivalent to the offenses identified in DoDI 5505.11 (available at *http://www.dtic.mil/whs/directives/corres/pdf/550511p.pdf*), Fingerprint Card and Final Disposition Report Submission Requirements, and 32 CFR part 310, Department of Defense Privacy Program, except for the listed violations that are exclusively military offenses. For the purposes of this rule, DNA shall be taken from all civilian drug offenders, except those who are arrested or detained for the offenses of simple possession and personal use.

(1) When Army LE personnel make a probable cause determination concerning a civilian not in their control, Army LE personnel are not required to collect DNA samples. Likewise, Army LE personnel are not required to obtain DNA samples when another LE agency has, or will, obtain the DNA.

(2) Army LE personnel will use the U.S. Army Criminal Investigation Laboratory (USACIL) DNA kit which includes a DNA sample card and the USACIL DNA database collection eform. Army LE personnel will forward civilian DNA samples to the USACIL. Army LE personnel will document, in the appropriate case file, when civilian LE agencies handle any aspect of the DNA processing and whether the civilian LE agency forwarded the DNA sample to the FBI laboratory.

(c) DoD Instruction 5505.14 (available at *http://www.dtic.mil/whs/directives/corres/pdf/550514p.pdf*) details the procedures former Soldiers and civilians must follow to request expungement of their DNA records. Former Soldiers and civilians from whom DNA samples have been taken, but who were not convicted of any offense giving rise to the collection of DNA, do not submit requests to have their DNA record expunged through installation PMO/DES channels. To request expungement of DNA records for civilians pursuant to Sections 14132 of title 42, United States Code, the requestor or legal representative must submit a written request to: FBI, Laboratory Division, 2501 Investigation Parkway, Quantico, VA 22135, Attention: Federal Convicted Offender Program Manager.

Subpart B—Release of Information

§ 635.8 General.

(a) The policy of HQDA is to conduct activities in an open manner and provide the public accurate and timely information. Accordingly, law enforcement information will be released to the degree permitted by law and Army regulations.

(b) Any release of military police records or information compiled for law enforcement purposes, whether to persons within or outside the Army, must be in accordance with the FOIA and the Privacy Act.

(c) Requests by individuals for access to military police records about themselves will be processed in compliance with FOIA and the Privacy Act.

(d) Military police records in the temporary possession of another organization remain the property of the originating law enforcement agency. The following procedures apply to any organization authorized temporary use of military police records:

(1) Any request from an individual seeking access to military police records will be immediately referred to the originating law enforcement agency for processing. The temporary custodian of military police records does not have the authority to release those records.

(2) When the temporary purpose of the using organization has been satisfied, the military police records will be

returned to the originating law enforcement agency or the copies will be destroyed.

(3) A using organization may maintain information from military police records in their system of records, if approval is obtained from the originating law enforcement agency. This information may include reference to a military police record (for example, Law Enforcement Report number or date of offense), a summary of information contained in the record, or the entire military police record. When a user includes a military police record in its system of records, the originating law enforcement agency will delete portions from that record to protect special investigative techniques, maintain confidentiality, preclude compromise of an investigation, and protect other law enforcement interests.

[80 FR 28549, May 19, 2015, as amended at 81 FR 17386, Mar. 29, 2016]

§ 635.9 Release of information.

(a) Release of information from Army records to agencies outside DoD will be governed by 32 CFR part 518, 32 CFR part 505, AR 600–37, Unfavorable Information (Available at *http://www.apd.army.mil/pdffiles/r600_37.pdf*), and this part. Procedures for release of certain other records and information is contained in AR 20–1, Inspector General Activities and Procedures (available at *http://www.apd.army.mil/pdffiles/r20_1.pdf*), AR 27–20, Claims (available at *http://www.apd.army.mil/pdffiles/r27_20.pdf*), AR 27–40, Litigation (available at *http://www.apd.army.mil/pdffiles/r27_40.pdf*), AR 40–66, Medical Record Administration and Healthcare Documentation (available at *http://www.apd.army.mil/pdffiles/r40_66.pdf*), AR 195–2, Criminal Investigation Activities (available at *http://www.apd.army.mil/pdffiles/r195_2.pdf*), AR 360–1, The Army Public Affairs Program (available at *http://www.apd.army.mil/pdffiles/r360_1.pdf*), and AR 600–85, The Army Substance Abuse Program (available at *http://www.apd.army.mil/pdffiles/r600_85.pdf*). Installation drug and alcohol offices may be provided an extract of DA Form 3997 (Military Police Desk Blotter) for offenses involving the use of alcohol or drugs (for example, drunk driving, drunk and disorderly conduct, or positive urinalysis).

(b) Installation PM/DES are the release authorities for military police records under their control. They may release criminal record information to other activities as prescribed in 32 CFR part 518 and 32 CFR part 505, and this part.

(c) Authority to deny access to criminal records information rests with the initial denial authority (IDA) for the FOIA and the denial authority for Privacy Acts cases, as addressed in 32 CFR part 518 and 32 CFR part 505.

§ 635.10 Release of information under the Freedom of Information Act (FOIA).

(a) The release and denial authorities for all FOIA requests concerning military police records include PM/DES and the Commander, USACIDC. Authority to act on behalf of the Commander, USACIDC is delegated to the Director, USACRC.

(b) FOIA requests from members of the press will be coordinated with the installation public affairs officer prior to release of records under the control of the installation PM/DES. When the record is on file at the USACRC the request must be forwarded to the Director, USACRC.

(c) Requests will be processed as prescribed in 32 CFR part 518 and as follows:

(1) The installation FOIA Office will review requested reports to determine if any portion is exempt from release.

(2) Statutory and policy questions will be coordinated with the local staff judge advocate (SJA).

(3) Coordination will be completed with the local USACIDC activity to ensure that the release will not interfere with a criminal investigation in progress or affect final disposition of an investigation.

(4) If it is determined that a portion of the report, or the report in its entirety will not be released, the request to include a copy of the Military Police Report or other military police records will be forwarded to the Director, USACRC, ATTN: CICR–FP, 27130 Telegraph Road, Quantico, VA 22134. The requestor will be informed that their

request has been sent to the Director, USACRC, and provided the mailing address for the USACRC. When forwarding FOIA requests, the outside of the envelope will be clearly marked ''FOIA REQUEST.''

(5) A partial release of information by an installation FOIA Office is permissible when it is acceptable to the requester. (An example would be the redaction of a third party's social security number, home address, and telephone number, as permitted by law). If the requester agrees to the redaction of exempt information, such cases do not constitute a denial. If the requester insists on the entire report, a copy of the report and the request for release will be forwarded to the Director, USACRC. There is no requirement to coordinate such referrals at the installation level. The request will simply be forwarded to the Director, United States Army Crime Records Center (USACRC) for action.

(6) Requests for military police records that have been forwarded to USACRC and are no longer on file at the installation PMO/DES will be forwarded to the Director, USACRC for processing.

(7) Requests concerning USACIDC reports of investigation or USACIDC files will be referred to the Director, USACRC. In each instance, the requestor will be informed of the referral and provided the Director, USACRC address.

(8) Requests concerning records that are under the supervision of an Army activity, or other DoD agency, will be referred to the appropriate agency for response.

§ 635.11 Release of information under the Privacy Act of 1974.

(a) Military police records may be released according to provisions of the Privacy Act of 1974, 5 U.S.C. 552a, as implemented by 32 CFR part 310, DoD Privacy Program, 32 CFR part 505, The Army Privacy Program, and this part.

(b) The release and denial authorities for all Privacy Act cases concerning military police records are provided in § 635.9.

(c) Privacy Act requests for access to a record, when the requester is the subject of that record, will be processed as prescribed in 32 CFR part 505.

§ 635.12 Amendment of records.

(a) *Policy*. An amendment of records is appropriate when such records are established as being inaccurate, irrelevant, untimely, or incomplete. Amendment procedures are not intended to permit challenging an event that actually occurred. Requests to amend reports will be granted only if the individual submits new, relevant and material facts that are determined to warrant their inclusion in or revision of the police report. The burden of proof is on the individual to substantiate the request. Requests to delete a person's name from the title block will be granted only if it is determined that there is not probable cause to believe that the individual committed the offense for which he or she is listed as a subject. It is emphasized that the decision to list a person's name in the title block of a police report is an investigative determination that is independent of whether or not subsequent judicial, non-judicial or administrative action is taken against the individual.

(b) In compliance with DoD policy, an individual will still remain entered in the Defense Clearance Investigations Index (DCII) to track all reports of investigation.

§ 635.13 Accounting for military police record disclosure.

(a) 32 CFR part 505 prescribes accounting policies and procedures concerning the disclosure of military police records.

(b) PM/DES will develop local procedures to ensure that disclosure of military police records as described in 32 CFR part 505 are available on request.

(c) In every instance where records are disclosed; individuals, agencies or components are reminded that use or further disclosure of any military police reports, Military Police Investigator (MPI) reports, or other information received must be in compliance with DoDI 5505.7 (available at *http://www.dtic.mil/whs/directives/corres/pdf/550507p.pdf*), paragraph 6.5.2. which states that ''judicial or adverse administrative actions shall not be taken against individuals or entities based

solely on the fact that they have been titled or indexed due to a criminal investigation.''

§ 635.14 Release of law enforcement information furnished by foreign governments or international organizations.

(a) Information furnished by foreign governments or international organizations is subject to disclosure, unless exempted by 32 CFR part 518 and 32 CFR part 505, federal statutes or executive orders.

(b) Release of U.S. information (classified military information or controlled unclassified information) to foreign governments is accomplished per AR 380–10 (available at *http://www.apd.army.mil/pdffiles/r380_10.pdf*).

Subpart C—Offense Reporting

§ 635.15 DA Form 4833 (Commander's Report of Disciplinary or Administrative Action) for Civilian Subjects.

Civilian Subjects titled by Army Law Enforcement. PM/DES and USACIDC will complete and submit disposition reports to USACRC for civilian subjects, not subject to the UCMJ, who are titled by Army law enforcement. PM/DES and USACIDC will complete the DA Form 4833 and submit the form to USACRC for these subjects. PM/DES and USACIDC will not include these completed DA Form 4833 for civilian personnel in reporting compliance statistics for commanders. This ensures records of dispositions of civilian subjects titled by military LE are available in CJIS to support NCIC background checks for firearms purchases, employment, security clearances etc.

§ 635.16 Fingerprint Card and Final Disposition Report Submission Requirements.

(a) *General.* This paragraph implements DoDI 5505.11, Fingerprint Card and Final Disposition Report Submission Requirements, which prescribes procedures for Army LE to report offender criminal history data, by submitting FBI Form FD 249 (Suspect Fingerprint Card) to USACRC. USACRC forwards this data to the Criminal Justice Information Services (CJIS) division of the FBI for inclusion in the Next Generation Identification Database. This paragraph does not eliminate other requirements to provide criminal history data, including those concerning the DIBRS.

(b) Installation PM/DES will submit offender criminal history data to USACRC, based on a probable cause standard determined in conjunction with the servicing SJA or legal advisor for all civilians investigated for offenses equivalent to those listed in DoDI 5505.11. This includes foreign nationals, persons serving with or accompanying an armed force in the field in time of declared war or contingency operations, and persons subject to Public Law 106–523 in accordance with DoDI 5525.11 (Available at *http://www.dtic.mil/whs/directives/corres/pdf/552511p.pdf*), Criminal Jurisdiction Over Civilians Employed By or Accompanying the Armed Forces Outside the United States, Certain Service Members, and Former Service Members.

(c) For purposes of this paragraph commanders will notify their installation PMO/DES when they become aware that a non-DoD and/or foreign LE organization has initiated an investigation against a Soldier, military dependent, or DoD civilian employee or contractor, for the equivalent of an offense listed in DoDI 5525.11 (available at *http://www.dtic.mil/whs/directives/corres/pdf/552511p.pdf*), Enclosure 2, or punishable pursuant to the U.S.C.

§ 635.17 Release of domestic incidents reports to the Army Family Advocacy Program (FAP).

(a) Installation PM/DES will comply with the reporting requirements set forth in AR 608–18 (available at *http://www.apd.army.mil/pdffiles/r608_18.pdf*).

(b) In addition to substantiated incidents of domestic violence, installation PM/DES will notify the Family Advocacy Program Manager (FAPM) and Social Work Services (SWS) of all incidents in which a preponderance of indicators reveal a potential risk of reoccurrence and increasing severity of maltreatment which could lead to domestic violence or child abuse. Installation PM/DES will ensure these notifications are recorded in the official military police journal in ALERTS. This is to: