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Description of document: **Correspondence between the Defense Privacy and Civil Liberties Office (DPCLC) and the National Personnel Records Center (NPRC) regarding the propriety of NPRC's procedures responding to requests for copies of official military personnel files, 2007-2010**

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Office of Freedom of Information  
1155 Defense Pentagon  
Washington, DC 20301-1155

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**DEPARTMENT OF DEFENSE  
OFFICE OF FREEDOM OF INFORMATION  
1155 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1155**

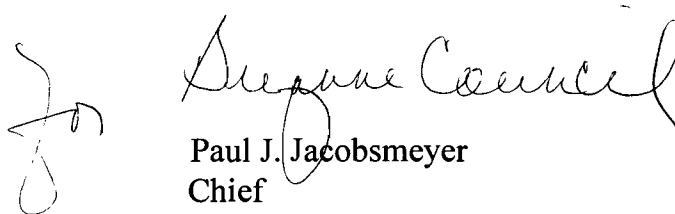
AUG 31 2010

Ref: 10-F-1368

This is in response to your July 26, 2010, Freedom of Information Act (FOIA) request for "...a copy of the letter in January or February or March of 2010, addressed from the DPCLO to the National Personnel Record Center about the propriety of NPRC's procedures responding to requests for copies of official military personnel files." We received your August 5, 2010. The enclosed seven pages are appropriate for release without excision.

Inasmuch as this action constitutes a full grant of your request, I am closing this file in this Office. There are no fees associated with this response.

Sincerely,

A handwritten signature in cursive script, appearing to read "Paul J. Jacobsmeyer".

Paul J. Jacobsmeyer  
Chief

Enclosures



**DEPARTMENT OF DEFENSE  
DEFENSE PRIVACY OFFICE**  
1901 SOUTH BELL STREET, SUITE 920  
ARLINGTON, VA 22202-4512

NOV 30 2007

Ronald L. Hindman, Director  
National Personnel Records Center  
Military Personnel Records  
9700 Page Avenue  
St. Louis, MO 63132-5100

Subject: Individual/Next of Kin (NOK) Access to Personal Information

Dear Mr. Hindman:

This letter discusses a report of practices currently employed by the National Personnel Records Center (NPRC) regarding the processing of copy requests for Military Personnel Records by individuals; and the practice of providing copies of deceased member records to the next of kin without verification of the death of the former member.

It has been brought to the attention of this office that NPRC is not currently providing a complete copy of the Official Military Personnel File (OMPF) to first party requesters when a written request for a copy of their record is made. NPRC is essentially making "judgments" as to what the requester "really needs" and is selectively providing portions of the record to first party requesters.

The Privacy Act as implemented by DoD 5400.11-R addresses access to records and establishes access provisions that are intended for use by individuals who seek access to records about themselves that are maintained in a system of records. Individuals are required to address requests for access to personal information in a system of records to the system manager or to the office designated in the DoD Component procedural rules or the system notice.

Based on their request for a complete copy of the responsive OMPF as opposed to a request for release of specified documents, NPRC must make available to the individual to whom the record pertains all of the personal information contained in the system of records unless an exemption has been claimed for the system. However, when an exemption limits access to an individual's records, the request shall be processed to provide information that is not restricted by the exemption.

The individual must be granted access to the original record or an exact copy of the original record without any changes or deletions, except when deletions have been made in accordance with paragraph C3.1.5 (Illegible, Incomplete, or Partially Exempt Records) of this Chapter. For the purpose of granting access, a record that has been amended under paragraph C3.3.2 (Amending Records) of this Chapter is considered to be the original.

The second matter addresses the practice by NPRC regarding the release of records to NOK when the NOK reports that a former member is deceased. NPRC is not requiring the NOK to provide proof of death of the former service member, including situations where no proof of death is contained in the service record. NPRC is allegedly "taking the word" of the NOK that a former member is deceased and providing them with a complete copy of the service record.

It is essential that both the relationship to the individual and proof of death be established before providing access and/or releasing the record to the NOK. If the OMPF does not reflect the requester as a NOK, then the individual requesting such access should be required to provide reasonable proof of his or her identity and relationship to the individual whose records have been requested. Identity verification procedures shall not be so complicated as to unnecessarily discourage individuals from seeking access to information about them; or be required of an individual seeking access to records that normally would be available under the Freedom of Information Act. Similarly, if the OMPF does not reflect that the member is deceased, the individual requesting such access should be required to provide reasonable proof that the member is deceased.

If you have questions or require additional information on this matter, do not hesitate to contact me at (703) 607-2943, DSN 225-2943 or by email at [sam.jenkins@osd.mil](mailto:sam.jenkins@osd.mil).



Samuel P. Jenkins  
Director

Copy to:  
Military Service Component Privacy Officials



# National Personnel Records Center

9700 Page Avenue, St. Louis, Missouri 63132-5100

FEB 06 2008

Mr. Samuel P. Jenkins, Director  
Defense Privacy Office  
1901 South Bell Street, Suite 920  
Arlington, VA 22202-4512

Dear Mr. Jenkins:

This is in reply to your letter of November 30, 2007, regarding processing copy requests for Military Personnel Records from former service members, and the practice of providing copies of deceased member records to the next of kin (NOK) without verification of the death of the former member.

The current processes in place at NPRC were developed many years ago to meet the needs of the veterans and their families while maintaining the efficiency of the government within the appropriated resources. Now, as a reimbursable operation, we have established appropriate measures to protect the privacy of the veteran taking into account the desires and budgets of the service departments who must pay for our services. Our current complaint and follow-up rate is less than 1%, indicating the vast majority of our customers are satisfied with our service. However, we understand and appreciate the concerns raised in your letter.

We conducted an analysis to determine the impact of implementing the changes you described. Our analysis shows we will not be able to maintain an acceptable level of service to veterans and their families without substantially increasing our staff and, in turn, substantially increasing the billing rate for the Services. We would need to make the following adjustments to produce the additional 7,900,000 documents for complete copy cases and to institute the verification process for NOK cases:

- Reorganize the center to absorb 62 more staff members, who would be required to produce and review the additional documents generated for complete copy cases. We also would need to acquire additional equipment (copiers, computers, etc.) and would incur increased postage costs.
- Add 15 more people to review NOK requests and obtain required documents to verify the veteran is deceased and to establish the relationship of the requester to the veteran. This is a significant change to our current process, and we expect a large return rate of requests until we were able to publicize our requirements and educate the veterans' families and the veteran service officers around the country.

The cost of this additional work would be approximately \$8.5M annually or an increase of \$9.11 per correspondence case.

In light of the magnitude of the costs of implementing these changes, but in keeping with the need to improve our current processes, I presented another alternative to the Services' Records Managers for their consideration. The key details are summarized below:

- Continue to provide "selected copies" when we receive a request for a copy of the personnel or medical record from the veteran. However, our return correspondence would clearly state that we are providing selected "critical documents" from the veteran's record, would give examples of documents that were omitted, and would inform them that a full copy will be provided, if a follow-up request is submitted.
- Require verification of the veteran's death, but continue to use the perjury statement and technician review to establish NOK relationship. While we agree it is important to establish the veteran is deceased, we do not believe an effective screening process can be established without placing undue burden on the NOK and delaying potentially time-sensitive responses.

The cost of implementing this alternative would be approximately \$1.8M annually or \$1.93 per case.

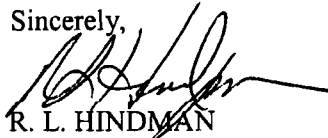
The Records Managers thoughtfully considered our alternative. They believe it addresses the major concerns you raised in your letter while resulting in a more modest increase in the per case correspondence rate. Additionally, the Privacy Officer for NARA has reviewed our proposal and concurs with this approach as well.

The analysis described above is predicated on our interpretation of DoD Regulations 5400.7-R and 5400.11-R, which imply all third-party personal information should be redacted from a record before a copy is provided to the veteran or the next of kin. We understand the Services may interpret these regulations differently and may not be redacting third-party personal information before providing a copy of the record to the veteran or next of kin. In conjunction with your review of this proposal, we would appreciate a definitive opinion on this issue so we can refine our screening process.

With your concurrence, we will be able to implement the new processes within approximately 45 days. Of course, we also stand ready to execute the more extensive process outlined in your letter. However, it would be approximately six months before we could be able to fully implement the new procedures as we will need to hire supervisors, technicians and support staff and fully equip the new work areas.

Please contact me if you have questions.

Sincerely,



R. L. HINDMAN  
Director



**DEPARTMENT OF DEFENSE**  
**DEFENSE PRIVACY OFFICE**  
1901 SOUTH BELL STREET, SUITE 920  
ARLINGTON, VA 22202-4512

NOV 13 2009

Ronald L. Hindman, Director  
National Personnel Records Center  
Military Personnel Records  
9700 Page Avenue  
St. Louis, MO 63132-5100

Subject: Requests for Records/Next of Kin (NOK) Access to Personal Information

Dear Mr. Hindman:

This letter is regarding our ongoing discussion of the National Personnel Records Center's (NPRC) current practice when processing Official Military Personnel File (OMPF) copy requests, and the practice of providing copies of deceased service member records to the next of kin (NOK) without verification of the former member's death.

OMPF Copy Requests

As it has been nearly two years since we began our dialogue on this subject, I remain significantly concerned over NPRC's continued noncompliance with key sections of the Privacy Act of 1974. As you will recall, I originally registered these concerns with you by my November 2007 letter. I understand several of those concerns have not yet been adequately addressed, including NPRC's failure to grant individuals access to the complete set of records contained in an individual's OMPF when such a request has been made (with the exception of the United States Marine Corps records). I understand the National Archives and Records Administration (NARA) Inspector General recently issued a Management Letter to the Archivist identifying this same deficiency with NPRC's practices.

Retta Graham-Hall, Chair of the Military Personnel Records Management Working Group (MPRMWG) for the Office of the Undersecretary of Defense, Personnel & Readiness, has communicated to me your proposed actions for addressing my concerns and those of the Inspector General. Regrettably, I believe your proposed steps would fail to bring the NPRC program into compliance for the following reasons.

1. The Privacy Act provides that "[e]ach agency that maintains a system of records shall upon request by any individual...permit him...to review the record and have a copy made of all or any portion thereof in a form comprehensible to him." I cannot overstate the importance of this mandate. As written, the Privacy Act does not provide agencies with the discretion to determine which records should be provided absent a specific exemption. There is no exemption for your

claim of exorbitant costs. To the extent that an agency desires to limit a response without claiming an exemption, it may only do so in collaboration with – and with the expressed consent of – the requestor.

NPRC's current practice is especially troubling because the agency asserts that its rationale for limiting responses (and any associated costs) is to minimize costs to the taxpayer and to the Military Services. It is thus ironic that the process NPRC has instituted often results in a greater cost burden on the taxpayer and the Services, with the individual having to make a second request for the records and the NPRC potentially submitting a claim for payment of a second administrative fee after NPRC fails to provide the required records in the first place. These practices violate both the letter and spirit of the Privacy Act, suggest double billing, and should be terminated immediately.

2. To begin addressing my concerns and those of the Inspector General, I understand you have proposed providing select records along with a summary extract, which would detail what records have been provided and what other records might exist but which have not been provided. Although this constructive step would allow NPRC to notify requestors that the records they have received do not represent the entire universe of responsive records, providing such an extract would still amount to a denial of access and thus would fall short of the Privacy Act's requirement that an agency provide all records pertaining to an individual absent a non-disclosure exemption.

I appreciate your position that NPRC could incur a significant cost in time and money to search through all of its records whenever responding to a request for a complete OMPF. Accordingly, I would like to recommend three options which would allow NPRC to limit the time and cost associated with providing a fully responsive set of records, while complying with the Privacy Act.

Option 1. Upon receiving a request for an individual's complete OMPF, NPRC may contact a requestor to ascertain the specific purpose for which the requested documents are required and to determine if there is a manner in which the requestor's scope could be limited while not compromising the requestor's objective.

Option 2. NPRC may develop information and guidance to assist individuals in making record requests. This could include the creation of a publicly available guide alerting the requestor to the types of specific records that exist and are typically required for various requestor purposes, including to certify education eligibility, obtain a security clearance, etc. Such a system would then permit the requestor to self-limit his or her request, and in the process, narrow the NPRC's search parameters and associated costs. Both options 1 and 2 are permissible under the Privacy Act.




Option 3. In addition, NPRC could establish and announce an agency policy limiting the frequency with which an individual may request a complete, complimentary copy of his or her records. In the event that NPRC elects to limit a requestor's frequency in this way, the agency could then provide an individual who makes multiple requests within the designated timeframe with the option of paying for a second complete set of records him or herself, or receiving any records which may have been added to his or her file since NPRC's provision of the individual's initial complete record. In the case of the latter, it would be important that NPRC develop a system and process for tracking newly added record items and the date(s) that such items are placed in the official record.

#### Verification of NOK

With regard to NPRC's verification of NOK requests, I am pleased to learn of your implementation of the requirement to verify the veteran's death as of October 30, 2009. I believe this is a key safeguard against the fraudulent acquisition of another individual's files for various inappropriate purposes. Although I understand requiring NOK to verify their relationship could present a challenge for some individuals, I believe the advantage to doing so outweighs any burdens imposed. Accordingly, I stand by my original recommendation that where an OMPF does not reflect the requestor as a NOK, the individual requesting such access should be required to provide reasonable proof of his or her identity and relationship to the individual whose records have been requested.

If you have any questions or require additional information, please do not hesitate to contact me at (703) 607-2943 or by email at sam.jenkins@osd.mil.

Sincerely,



Samuel P. Jenkins  
Director, Defense Privacy Office

cc:

Chair of MPRMWG, Office of the Undersecretary of Defense, Personnel & Readiness  
Chief, Master Personnel Records, Department of the Air Force  
Chief, Army Records Management Division, Department of the Army  
Chief, Army Soldier Records Branch, Department of the Army  
Director of Records, Department of the Navy  
Director, Military Personnel Records Management Division, Department of the Navy  
Head, ARDB, CMC, U.S. Marine Corps  
Head, Manpower Management Support Branch, U.S. Marine Corps  
Records Officer, Department of the Air Force



# *National Archives and Records Administration*

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8601 Adelphi Road  
College Park, Maryland 20740-6001

September 10, 2010

Re: Freedom of Information Act Request NGC10-229

This is in response to your Freedom of Information Act (FOIA) request of September 3, 2010, for a copy of the January 14, 2010, letter signed by Thomas Mills, Assistant Archivist for Regional Records Services that was sent to Samuel P. Jenkins, Director of the Defense Privacy Office. Your request was received in this office on September 7, 2010, and assigned tracking number NGC10-229.

We have located the letter you have requested. A scanned copy is being provided to you at this time. The letter is released in full. We feel that this response fully satisfies your request.

If you consider this a denial under the FOIA, you have the right to file an administrative appeal. Address your appeal to the Deputy Archivist (ND), National Archives and Records Administration, College Park, Maryland 20740. Your appeal should be received within 35 calendar days of the date of this letter and it should explain why you think this response does not meet the requirements of the FOIA. Both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." All correspondence should reference the tracking number NGC10-229.

Please let us know if we may be of further assistance.

Sincerely,

/S/

JAY OLIN  
NARA Deputy FOIA Officer



# *National Archives and Records Administration*

8601 Adelphi Road  
College Park, Maryland 20740-6001

January 14, 2010

Samuel P. Jenkins  
Director  
Defense Privacy Office  
1901 South Bell Street, Suite 920  
Arlington, VA 22202-4512

Dear Mr. Jenkins:

Thank you for your November 13, 2009 letter to Ronald Hindman, Director of the National Personnel Records Center. Previously, Mr. Hindman had written to you about these matters in February 2008, and since then he had received no further formal communication about the matter from your office or any other DOD office.

As your most recent letter notes, in October 2009 in response to a NARA OIG management letter, NARA took steps to clarify and widely publicize our policy to provide only copies of key documents and extracts of vital information rather than a copy of every document in a military personnel and/or medical file. We now clearly and prominently describe our policy both on our web site and as part of written responses to individual requestors. In November 2009, Mr. Hindman wrote to major veterans Service Organizations, the Military Services Records Officers, the Department of Defense Office of Personnel and Readiness, and the Department of Veterans Affairs to inform and/or remind them about our policy, which has been in place since the 1970s.

NARA believes that our approach is consistent with the Privacy Act and is substantially equivalent to your proposed option 1, in that we contact a requestor, in our case by mail, to ascertain if the requestor's objective has been met. If after receiving our response, the requestor asks for the additional pages, we send them. Our approach avoids costly delays in reviewing and copying some documents that are not normally needed for benefit claim purposes. As a result, we are able to respond to more requestors, faster, and at less cost to the taxpayers. Exceptions to this procedure are files more than 62 years old, US Marine Corps files, all certified legal cases, and all requests from the Department of Veterans Affairs; copies of every document are sent in response to these requests. This approach has been the subject of several discussions with the Service Records Officers, who are the legal custodians of OMPFs less than 62 years old, and has continued with their full understanding. The exception is the U.S. Marine Corps which specifically required that a total copy be provided upon first request.

With regard to requests for files of deceased veterans, if evidence does not exist in the file we require proof of death, such as a copy of death certificate, letter from funeral home, or published obituary. In addition, we require next-of kin to sign an authorization attesting to the relationship to a deceased veteran. Next-of-kin is defined as the unremarried widow or widower, son or daughter, father or mother, brother or sister of the deceased veteran.

From NARA's perspective, the decision on how we respond to these access matters rests with the Department of Defense Office of Personnel and Readiness and/or the Military Services Records Officers, because they own the records and pay NARA's Federal Records Center Program for storage and servicing. We follow DOD/Military Services Records Officers' instructions as incorporated in an Interagency Agreement and/or in formal instructions on how to manage files owned by the Services.

In summary, we believe that our policy is consistent with the law and reflects the best use of government resources in effectively meeting the needs of more than 1.2 million requestors annually. We will continue to follow the policy instructions of the DOD Office of Personnel and Readiness and/or the Military Services Records Officers in managing access to their records. Please involve them if you have further questions or concerns about this issue.

Sincerely,



THOMAS E. MILLS  
Assistant Archivist for  
Regional Records Services

cc: Gary M. Stern, NARA Office of General Counsel  
Ronald L. Hindman, Director NPRC  
Rhetta Graham-Hall, Analyst, DOD Office of Personnel and Readiness