Right to Know vs. Need to Know

One of your primary job responsibilities as a PA Specialist is to communicate with the media. Journalists will contact you as primary source of information for any newsworthy event related to your post. You must provide as much information as possible, as quickly as possible. However, there are guidelines you must consider before you release any information.

These guidelines will help you decide on a case-by-case what information should be released to the media and the public, and what information should be withheld for legal, ethical and security reasons.

You'll have the challenging job of maintaining a balance between your mission of releasing timely, accurate information while guarding operational security (OPSEC) and service members' privacy. You may need to make decisions about what information to release to the media quickly, under crisis conditions. This unit will give you a basic understanding of Federal laws and DoD regulations governing release of information.

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Operational Security

A. DoD Directive 5230.9 is the policy set forth to govern the release of information. A portion of this directive has been pulled out and used as the DoD Principles of Information, which can be summarized and is perhaps best known as the “Maximum Disclosure, Minimum delay” policy.

It is a policy of openness governing the release of military information. It states that DoD is committed to providing the public with rapid access to any information that would not jeopardize security or a service member’s right to privacy. It also specifically states that information may not be withheld from the public simply because its release would be embarrassing to the commander or service involved.

The maximum disclosure, minimum delay policy is the foundation for DoD's military-media relations program.

B. Balancing Act: PA specialists will come into contact with classified materials. SAPP rules must be applied to any imagery or information before release to balance public’s right to know versus the responsibility to safeguard sensitive or classified material.

OPSEC requires that you safeguard potentially damaging information but you must balance that requirement against the necessity to release timely, accurate information. Let’s look at some of the DoD guidelines governing release of imagery and information.
Reasons for Classifying Information

A. SAPP -- security, accuracy, propriety, policy

1. DoD has established standard limitations to its maximum disclosure, minimum delay policy to ensure consistency of information released by the many commands, activities and military bases that make up DoD. The restrictions are security, accuracy, propriety, and policy, also referred to as SAPP…an internal acronym used by PAOs.

   a) Security
      1) The first and most important limitation
      2) Refers to information that is formally classified or information that falls under operational security (OPSEC) or Essential Elements of Friendly Information (EEFI).
      3) Examples of secure information would be operational planning, troop movements, investigations, or unit strength in a theater of operation.

   b) Accuracy
      1) The second most important limitation
      2) Demands that public affairs sources provide only factual information, not speculation.
      3) An example would be during the TWA Flight 800 crash over Long Island, N.Y., in 1996. Within the first few hours of the downed aircraft, New York media descended upon Coast Guard Station Moriches as they began search and rescue operation. The Coast Guard Group Moriches Commander was responding to media queries when reporters asked him what he needed the most. He responded, "Lots of body bags." This was a violation of accuracy because search and rescue operations had just got under way. There had been no indication of whether or not there were any survivors, nor had next of kin been notified.

   c) Propriety
      1) Out of respect for service members and their families, public affairs personnel will not help gather or publish inappropriate descriptions or images. You must ensure all your releases are in good taste.
      2) For example, do not release grotesque accident photographs or make statements that may cause family members distress.

   d) Policy
      1) Policy dictates the procedure for release of topical information at various levels of authority.
      2) Other examples of specific policy include the Freedom of Information Act and Privacy Act, which also give release guidance of certain types of information.

      SAPP is a guideline used by DoD to decide whether imagery or information should be released, but there are Federal laws that require which also govern release. The Freedom of Information Act (FOIA) is one such law that requires the government to release as much information as possible.
Freedom of Information Act

A. The Freedom of Information Act (FOIA) is a law that provides public access to records, documents, or reports in the possession or control of the Executive Branch of the federal government. Passed in 1966, it was the first law to establish legal right of access by citizens to government information. In other words, it protects the public’s right to know and prevents excessive government secrecy.

B. Under FOIA, DoD and all service component commands must provide information requested by anyone citing FOIA in a written request, unless the information is exempted by one of nine categories of information protected from disclosure. Let’s take a look at the exemptions that you would most likely encounter:

1. Protects Classified Matters of National Defense or Foreign Policy -- This exemption protects from disclosure, national security information concerning the national defense or foreign policy, provided that it has been properly classified in accordance with the substantive and procedural requirements of an executive order.

2. Personal Information Affecting an Individual’s Privacy -- This exemption permits the government to withhold all information about individuals in "personnel and medical files and similar files" when the disclosure of such information would constitute a clearly unwarranted invasion of personal privacy." This exemption cannot be invoked to withhold from requester information pertaining to the requester.

3. Investigatory Records Compiled for Law Enforcement Purposes -- As amended, this exemption protects from disclosure "records of information compiled for law enforcement purposes.

For example, if you are tasked with documenting a crime scene, the media collected may be protected from a FOIA request.

FOIA is a law that encourages openness in government, but the Privacy Act restricts the amount of personal information that you can release about service members.
Privacy Act

A. PAOs have access to a great deal of information, not only on their unit’s mission and operations, but on individual service members. We are expected to protect the privacy rights of these service members while providing our publics with information. Sometimes this concept of “maximum disclosure” collides with the rights of individuals’ privacy. That’s where your knowledge and insight will prove most valuable as you weigh competing factors and make tough calls.

B. The Privacy Acts was designed to:
1. Prevent government agencies from excessive disclosure of personal information to agencies that do not have a need to know.
2. Allow citizens to review records kept about them by the government. The purpose is to ensure citizens access, so that they can correct any errors or discrepancies.

C. Making decisions about releasing personal information on individuals is a difficult task. Such decisions are rarely “black and white” situations. In all cases, the public’s right to know must be weighed against the individual’s right to privacy. In deciding what information to release, you will want to work closely with your local legal advisor or Judge Advocate General (JA) for assistance in these decisions. Service regulations vary in some instances on the release of information. Sometimes this is challenging, especially in joint or multiservice environments.

D. Some military information is routinely released in response to media queries.
1. Name: Releasable after next of kin have been notified, in the case of an accident, or after an individual has been charged with a specific violation of the Uniform Code of Military Justice. (24 hours after the next of kin have been notified when of a service member’s death.)

2. Military Information: Generally, military information about a service member is releasable. For example, a service member’s name, rank, pay grade, time in service, time on station, occupational specialty, and military awards can and should be routinely released by public affairs personnel

3. Awards and decorations or citations: This information is a matter of public record, and so its release does not constitute an invasion of privacy.

4. Punitive discharge: Discharges that result from court martial are considered to be convictions on criminal charges. Because all court records are public. The verdict, sentence, and subsequent clemency actions, if any, are releasable.

5. Home of record: In general, you may provide an individual’s current residence (city and state) or permanent home of record. However, do not disclose the street address or phone number.

6. Duty status: If an individual is hospitalized or wanted for unauthorized absence or desertion, that information is releasable.

7. If an individual has been charged by civilian or military authorities and is confined while awaiting trial, that information is releasable.

Now that you’re aware of the laws and regulations governing the release of imagery and information, let’s take a moment to be reminded of the overall goal.
Constitution of the United States

A. The “public's right to know” is a legal concept supported by both the Constitution and an act of Congress. Laws like the Sunshine Act (5 U.S.C. 552b) allow the public to gain full disclosure on what the U.S. government is doing. It is also a concept promoted by officials in all branches of our government as a correct and proper approach. The United States is a democratic government "of the people" and should be open and without secrecy except in special circumstances. In fact, this concept is widely recognized as fundamental to democracy.

B. The First Amendment to the U.S. Constitution states that no law shall be mad “abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

C. "I believe there are more instances of abridgment of freedom of the people by gradual and silent encroachments of those in power than by violent and sudden usurpations."
-- James Madison

The words of James Madison reflect the thoughts of the men who authored the Constitution and thus limited the power of the government and to guarantee certain rights of the governed. As noted earlier, the first amendment prohibits Congress from making any laws that would limit the freedom of speech, or of the press.
Conclusion

A constant challenge throughout your career as a PA practitioner will be balancing the need to release timely, accurate information against the need to protect private and potentially damaging information. See guidance from your leadership and the Judge Advocate General (JAG) to ensure you never negatively impact national security or a service member's right to privacy.
References and Additional Resources

Joint Publication 3-61, Public Affairs, 25 August 2010
Army Regulation 360-1, Army Public Affairs, 15 September 2000
Public Affairs Tactics, Techniques and Procedures, FM 3-61.1, October 2000