Guidelines for release of information

Who has the right to know what the military does and why?

Understanding basic policy on the release of information within the Department of Defense is the cornerstone of everything we do in public affairs. It affects what information we release to the public, how we handle the media, what we publish in our installation publications and how we respond to the public in general.
Military guidelines for releasing information

Not all information should be released, and not everyone should have authority to release it. Therefore, the military established some guidelines and you must become familiar with them. First, let’s look at who has the authority to release information. In general, this authority rests with commanders, but a commander doesn’t have the authority to release all information. Often a commander delegates his authority to release information to the public affairs officer.

The commander’s release authority is usually equal to his or her authority in other matters. Just because a commander has command and control of his installation in such matters as personnel, housing and operations, it doesn’t always mean he is authorized to release information about events that happen on or near his installation.

A person should ask himself three questions before releasing information:

**Ability** -- Does a person physically have the information to release?

**Competence** -- Is the person the appropriate or best subject-matter expert on the subject?

**Authority** -- Does the person’s echelon of command have the authority to release the information? A good rule of thumb is that the release authority of a commander is at the same level of authority in other military matters.

Public affairs regulations will help you decide on what issues your commander has release authority. The Assistant Secretary of Defense for Public Affairs is the sole authority for releasing DOD information at the seat of government. For example, information about troop readiness, casualty lists and deployments may first need to be released by the Assistant Secretary of Defense for Public Affairs.

The guidelines also help us know what information we can release. DOD policy and service regulations outline specific information that can be released about military matters and information about individual people. For example, if you wanted to release information about a specific person, you are not allowed to disclose the person’s medical history or even his race.

Photo courtesy of Defense Imagery
DOD policy on releasing information

Just because you have the authority and the information, should you release it to the public? Why do we even care if we release the information to the public? Does the public have a right to know everything we are doing? Let’s look at DOD’s policy on releasing information.

The DOD policy on the release of information to the public is DOD Directive 5230.09. It has two major provisions:

1. Accurate and timely information is made available to the public, Congress and news media to help the analysis and understanding of defense strategy and national security issues.
2. The public release of official DOD information is limited only as necessary to safeguard national security.

This policy has been translated into the DOD Principles of Information, which can be summarized as a policy of “maximum disclosure, minimum delay.”
Principles of information

Now that we know what our motto is for releasing information, let’s take a look at DOD’s principles of information.

DOD’s policy on principles of information is signed by the Secretary of Defense, and the Assistant Secretary of Defense for Public Affairs has the primary responsibility for carrying out this commitment.

The opening or preamble to this policy states: It is the policy of the Department of Defense to make available timely and accurate information so that the public, Congress and the news media may assess and understand the facts about national security and defense strategy. Requests for information from organizations and private citizens will be answered in a timely manner. In carrying out the policy, the following principles of information will apply:

1. Information shall be made fully and readily available, consistent with statutory requirements, unless its release is precluded by national security constraints or valid statutory mandates or exceptions. The Freedom of Information Act will be supported in both letter and spirit.

2. A free flow of general and military information shall be made available, without censorship or propaganda, to the men and women of the armed forces and their dependents.

3. Information will not be classified or otherwise withheld to protect the government from criticism or embarrassment.

4. Information shall be withheld when disclosure would adversely affect national security, threaten the safety or privacy of U.S. government personnel or their families, violate the privacy of the citizens of the United States, or be contrary to law.

5. The Department of Defense’s obligation to provide the public with information on DOD major programs may require detailed public affairs planning and coordination in the Department of Defense and with other government agencies. Such activity is to expedite the flow of information to the public; propaganda has no place in DOD public affairs programs.
Public’s right to know versus its need to know

As you’ve already learned, the saying that summarizes DOD’s policy on releasing information is “maximum disclosure, minimum delay.” Maximum disclosure, however, does not mean “all” disclosure. Public affairs practitioners must always weigh the public’s right to know versus the public’s need to know.

The public’s right to know is not strictly a legal concept supported by the constitution or an act of congress. Instead, it is a concept promoted by officials in all branches of our government as the correct and proper approach. Many people believe that a democratic government “of the people” should be open and without secrecy except in special circumstances. This belief in the public’s right to know is a concept widely recognized as fundamental to democracy. Also, citizens of the United States, as taxpayers, support their government with precious resources and expect to be told how their money has been spent and what it has purchased.

The public’s need to know, conversely, is the concept often used to protect certain information from potential enemies of the United States. Our democracy has determined that it is necessary to keep some information from the general public because the information is of paramount importance to the defense and operation of a government. Those people who could benefit from this kind of information would be potential enemies of our nation. This concept has been reached through the democratic process. For this reason, some information is released only when there is a “need to know.”

The balance between the public’s right to know and its need to know is maintained by the judgment of elected officials of the democratic government. This balancing act comes down to this question: Does the release of this information contribute to the principles of democracy, or could it harm the foundations of democracy? There are some general limitations to the maximum disclosure policy.
Limitations of the principles of information

These limitations are easily remembered by the acronym SAPP.

**S**ecurity is the first and most important limitation. It refers to information that is formally classified or falls under operational security (OPSEC) or essential elements of friendly information (EEFI). Release of this type of information could cause harm to national security.

**A**ccuracy -- The second most important limitation, and perhaps the hardest, is accuracy. Don’t answer questions or release information unless you are sure you have accurate information. Don’t be pressured into an inaccurate release. Sometimes the best answer is “I don’t know, but I’ll find out for you.” Sometimes you are not the subject-matter expert. In such cases, the best answer is, “That is outside of my scope of responsibility or knowledge.”

**P**ropriety -- Ensure all your releases are in good taste. For example, if you write a news or a feature story, it would be inappropriate to include off color humor, embarrassing comments, etc. Propriety also applies to photographs. Don’t release photographs that may cause distress to family members. An obvious example is a photograph of a dead or injured service member.

**P**olicy -- Policies often specify release guidance. For example, DOD policy calls for releasing at the highest level of government the names of personnel killed in action. Here are some examples of DOD policies that must be followed:

1. According to DOD Directive 5230.16, Nuclear Accident and Incident Public Affairs Guidance, it is DOD policy to respond to all public queries about the locations of nuclear weapons with one of the following statements, as appropriate:
   - It is U.S. policy to neither confirm nor deny the presence or absence of nuclear weapons at any general or specific locations.
   - It is U.S. policy to not to deploy nuclear weapons aboard surface ships, tactical submarines, and naval aircraft. However, we do not discuss the presence or absence of nuclear weapons aboard specific platforms.

2. The Freedom of Information Act and Privacy Act are other policies that give release guidance. You should understand these and be able to explain operational policies as well as public affairs policies.

3. Policy guidance might not always be as much of a step-by-step process as a nuclear accident; it also might include innocent slips of the pen. For example, according to DOD Instruction 5120.4, Department of Defense Newspapers, Magazines and Civilian Enterprise Publications, publications shall not contain any material that implies that the DOD components or their subordinate levels endorse or favor a specific commercial product, commodity or service. This means that the unintentional use of a trademark name within a story could be in violation of SAPP.

In the end it is your responsibility to guard against any SAPP violations when releasing information. This applies when you are writing stories for your installation publication or when releasing information to the media. As apprentice public affairs practitioners, you will not know every policy, security regulation or propriety rule. As you learn your craft, you should always seek guidance from a more experienced member of your office.
Freedom of Information Act

Now let’s look at two of the main documents that will help you understand what information can be released and information that may not be released. These two documents are the Freedom of Information Act and the Privacy Act of 1974. First let’s look at the Freedom of Information Act.

The Freedom of Information Act, or FOIA, is a disclosure law that says all information in the possession of the executive branch of the government is releasable except for nine specific categories of information. The act does not require that exempted information be withheld, but permits it to be withheld. Public affairs officers do not decide whether exempted information will be released, but they should understand that the spirit of this primary guidance is to release, not to withhold.

If you or your office receives a FOIA request, you must pass it immediately to the FOIA action officer for your command, who is normally located in the legal or administration sections of the command. Generally speaking, FOIA requests will not be handled by public affairs. It’s important to note that FOIA requests must be processed in a timely manner.

NOTE: The FOIA is NOT military specific - it was enacted for all U.S. citizens and agencies.

NINE EXEMPTIONS FOR WITHHOLDING INFORMATION UNDER FOIA

1. National security – Documents classified top secret, secret or confidential are not releasable. Information for official use only is not a national security classification.

2. Internal agency rules – This exemption refers to those reports related solely to the internal personnel rules and practices of an agency. This provision is designed to relieve the government of the burden of maintaining for public inspection routine material that is more or less trivial, such as employee parking rules or agency criteria regulations. The agency doesn’t have to release this information, but it may.

3. Exempt by other statute – Examples of this are the charter for the CIA or the Census Act, both of which protect information that is fundamental to the way they conduct business.

4. Trade secrets – This exemption is designed to protect trade secrets, such as customer lists, secret formulas and sensitive internal financial information provided to the government by individuals or private business firms.

5. Interagency or intra-agency memoranda or letters – This exemption to the FOIA is designed to protect working papers, studies and reports within an agency or circulated among government personnel as the basis for final decision by the agency. The agency doesn’t have to release this information, but it may.

6. Personnel and medical files – This exemption essentially covers the same material as the Privacy Act.

7. Law enforcement information – Protects information that would jeopardize on-going investigations. Law enforcement information may be withheld for the following reasons:
   a. If it could interfere with law enforcement proceedings.
   b. If it could deprive a person of a fair trial.
   c. If it constitutes an unwarranted invasion of privacy.
   d. If it discloses the identity of a confidential source.
   e. If it discloses investigative techniques
   f. If it endangers the life or safety of a law enforcement official.

8. Bank reports – Reports prepared by federal agencies about the condition of banks and other federally regulated institutions may be withheld to preserve economic stability and commercial propriety information.

9. Oil and gas well data – This exemption is designed to prohibit speculators from obtaining information about the location of oil and gas wells of private companies.
Privacy Act

The Privacy Act of 1974 was designed to allow citizens to review records kept about them by the government and to prevent government agencies from excessive disclosure of personal information to agencies that do not have a need to know.

*The Privacy Act and FOIA are complementary, but in cases where they conflict FOIA takes precedence.*

### PRIVACY ACT GUIDELINES

1. Decedents – Privacy limitations generally do not apply to people who have died. However, the privacy of the next of kin must be considered. When possible, seek next-of-kin permission.

2. Age or date of birth – This information is not normally releasable unless it is in favor of public interest.

3. Home of record – Generally, home of record, city and state are releasable.

4. Home address and home telephone number – This information is not releasable.

5. Social Security Number – This information is not releasable.

6. Marital status and family members – This information is not normally releasable unless the balancing test weighs in favor of the public interest.

7. Awards, decorations and citations – This information is releasable.

8. Education, schooling and specialty – Information as to the major area of study, school, year of graduation, degree and specialty designator are generally releasable under FOIA.

9. Race – In most cases a person’s race is not releasable.

10. Gender – A person’s gender is not usually releasable. Where the fact of an individual’s gender is relevant in providing essential facts to the press, it may be released.

11. Character of discharge – Information about a service member being administratively discharged is not releasable. The character of discharge resulting from administrative processing is not a matter of public record. Do not release any indication of whether a discharge is honorable, general under honorable conditions, other than honorable or entry level separation. The Department of Defense has gone to great lengths to preserve the confidentiality of the character of the discharge.

   a. In the case of discharges resulting from court-martial, the proceedings and record are public, as they reflect conviction on criminal charges. Therefore, the approved sentence and subsequent clemency action, if any, are releasable.

12. Duty Status – Information about duty status is releasable.

13. Decisions of Personnel Boards – This information is releasable after decision by final approving authority if the board action applies to a category of persons, as opposed to an individual. Otherwise, this information is not releasable. Results of personnel board actions that affect groups such as promotion boards and augmentation boards are releasable. The results of personnel board actions that affect individuals, such as administrative discharge boards and aviation flight boards, are not generally releasable. The results of the latter category of boards have not been traditionally released.

14. Photographs -- Official photographs are generally releasable unless the photograph depicts matters that would constitute a clearly unwarranted invasion of personal privacy. Generally, award ceremony photographs and similar photographs are releasable.
Policy on release of information regarding accidents or incidents

Releasing information about an accident or incident begins long before anything actually happens. When disaster strikes, your success will depend on the competence of the public affairs staff, as well as the rest of the commander’s staff, the command’s past success or failure with the media or community, and current internal relationships within your unit. As humans, we judge people by what they have done, not what they may do. However, through proper planning we can be successful during a crisis.

1. First and foremost, we must be proactive and prepare for accidents or incidents before they happen.
   - The public affairs office must develop a recall roster and distribute it to the operations center so it can be used when needed.
   - Public affairs staff members must earn the command staff’s trust by getting to know them and letting them get to know us.
   - PAs must practice their public affairs plans even if they think they don’t have the time.

2. The Defense Department’s activities generate public interest, so we must anticipate it. We must beat the media by getting information out before they ask for it. We must expect the media to be at an accident/incident site and be ready for them. We must treat reporters fairly. Remember that the media will probably beat you to the scene.

3. Respect appropriate jurisdictions and do not step on people’s toes. On the installation, the installation authorities have control over the situation and the military/security police have arrest authority. Off the installation, local law enforcement and the FBI have authority.

4. Public affairs personnel must be prepared to help the next of kin deal with the media because the public affairs office must release the names of casualties 24 hours after the next of kin have been notified.

5. Once the accident or incident happens:
   - Public affairs responsibilities are to safeguard classified information, release unclassified information, and provide news media access to the scene.
   - During an accident or incident the public affairs staff must work to retain public confidence. We do this by preserving good media and community relations.
   - We also must work to protect and promote the welfare of military people and their families. This is true even if it is a military member suspected of committing a crime or causing an accident.

6. The goal of the public affairs office staff, from the time of notification, is to prepare an initial release and start releasing it within one hour.
• Do not hold this first release for response to query or pending further information. News media can be updated throughout the day(s).
• The initial release should provide as much information as available on the key points or elements of the incident or accident and should include persons involved, initial number of injured or killed, number of military personnel and civilians involved in the accident.

7. Releasable information for the dead after notification of next of kin: service, rank, full name, ages, titles, units, hometowns, names of next of kin and hometowns, died of information.

8. Releasable information for injured: After notification of next of kin, you may release service, rank, full name, title, unit and condition. Names and specific injuries will not be released unless the injured person has given the OK, or next of kin has given the OK. Ensure no information is released that invades the privacy rights of surviving service members, their family members or next of kin. You can only release specific details about the injured person’s wounds and injuries with written permission from the injured.

9. Writing the initial release - The lead is very structured. It is basically a summary lead, emphasizing the most important facts. Yet, it is more controlled on the order of information.

• Deaths - If anyone was killed, this is your lead emphasis. Use an impersonal who lead for all people or groups of people.
• Injuries - If people have been injured and there are no deaths, this is your lead emphasis. If there are deaths and injuries, put deaths first.
• Property damage - Usually expressed in dollar amounts, with estimates obtained from proper authorities. This is rarely the lead emphasis, but can be included after stating the WHAT (such as a fire or explosion, etc.) When there are no deaths or injuries, this becomes an important lead element.
• The bridge of the initial release is the next of kin statement: The names of the dead and injured are being withheld until 24 hours after notification of next of kin. When names are releasable, complete identification is released in the bridge with dead first.
• The body offers all releasable information available, e.g. where dead and injured were taken to include generic medical conditions.
• The conclusion for an initial press release is the investigation statement. The cause of the incident/accident is under investigation.
Conclusion

Understanding basic policy on the release of information within the Department of Defense is the cornerstone of everything we do in public affairs. It affects what information we release to the public, how we handle the media, what we publish in our installation publications and how we respond to the public in general.
References


DINFOS POPMAN 2.4.5.9.1, Plagiarism

Memorandum, Public Identification of Casualties, April 1, 2004

DOD Principles of Information, Nov. 9, 2001; Memorandum, Public Identification of Casualties, April 1, 2004
References

Memorandum, Principles of Information - Anonymous Quotations, July 29, 2005