Statutory Considerations of Public Affairs

Privacy is more than likely a very important consideration of yours in protecting your identity, finances and future. How do you think a family feels about media attention when they are grieving over the loss of a loved one in the service of their country? Protecting personal information isn’t just a personal responsibility. It is also a public affairs professional’s responsibility.

This lesson highlights the reality that public affairs can be an ambiguous business at times. There may not always be a black or a white answer on whether you can release certain information. Public affairs practitioners are going to be integral to your command’s decision-making process for releasing information.

When it comes to the release of information we cannot tell you exactly what information can and cannot be released in any particular case. That will depend upon many factors, as you will soon see. But our purpose is to help you learn the basic rules first, and then we’ll discuss the exceptions later.

Pay close attention to the guidelines. They will help you in your decision-making process. Decisions you make on the release of information have the potential to make or break you as a PAO. Once you release information, you can’t “un-release” it or hit the “recall” or “undo” button. Because PA practitioners work in a world of public information, it is critical for each of us to support privacy laws and concerns.
Limitations on Release of Information

The public’s right to know

According to Joint Publication 3-61, “It is the responsibility of the DOD to make available timely and accurate information so that the public, Congress and the news media may assess and understand facts about national security and defense strategy.”

The public’s “right to know” is a legal concept supported by both the Constitution and Congress. 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. The citizens of this nation, as taxpayers, willingly support their government with precious resources. In turn they expect - and deserve - to be told how their money is being spent. The government is accountable to taxpayers and relies on their continued support. The public has a right to know if their elected officials and appointed leaders, including military leaders, are acting on behalf of their best interest and making the right legal, moral and ethical decisions.

The Constitution guarantees its citizens that our government is by, of and for the people; therefore, we are the American public’s Air Force, Army, Marines, Navy, and Coast Guard.

The public’s “need to know”

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.

Some information is critically important to the operation and defense of government. Potential enemies could benefit from disclosure of this kind of information. This “need to know” concept has risen out of the democratic process and has been around for a while. During World War II, the War Department launched information campaigns to let people know the dangers of speaking publicly about certain things.

The need for some means of governmental classification in the interest of national defense and security has long been recognized. We have already established that the public indeed has a right to know some things. But making decisions on what information the public has a need to know can become a delicate balancing act.

The balancing act

This is where the gray area of your job comes into play as you decide which information to release. The “balancing act” refers to the decision-making process used by elected officials and appointed leaders to weigh the public’s right to know against the need for security and individual privacy of service members. This “balancing act” can often come down to two simple questions. Does the release of this information contribute to the principles of democracy, or could it harm the foundations of democracy? And who really benefits from the release of this information?

Public affairs practitioners are in the middle of this decision-making process. They are often tasked to advise their commands on maintaining this balance. Commanders look to them as the experts for this advice, and they should. It is important that you study these guidelines, and why you must continually keep abreast of any changes.

Release authority always lies with your commander or a higher command. Your job is to advise, but they are the leaders who ultimately say whether or not something is released. In the balancing act of the public’s right versus the public’s need to know, you must realize that increased public interest leads to a greater need to provide information.
Limitations on Release of Information (continued)

Public affairs practitioners should consider interest in the topic itself as part of his/her counsel. You must also consider the advantages or disadvantages to you as a service, military unit, or as an entity of the community in which you are located when deciding whether or not to release information. In doing so, you also must abide by individual service policies, as well as other factors. Although you have a number of policies regarding the release of information, you must learn to apply them properly to reach the correct decisions in this balancing act.

Photo courtesy of batavialaw.com
SAPP and ACA

The concepts of SAPP and ACA introduced here are strictly training aides originating at Defense Information School. They are based on DOD and service regulations, but the acronyms are not written in doctrine.

The mnemonics SAPP and ACA are not defined in DOD, joint, or service specific doctrine (except the Coast Guard), regulations or instructions. These terms do not exist in the media, nor should a PA practitioner expect a media representative to know these terms. They are meant to help PAOs recall boundaries for release of information to the public. Those boundaries are also known as ground rules.

Ground rules are developed to protect members of DOD from the release of information that could threaten their security or safety during ongoing operations yet facilitate the media’s access to timely, relevant information. Ground rules reconcile the desire of the media to cover military operations with DOD security and safety concerns and are in no way intended to prevent release of derogatory, embarrassing, negative, or non-complimentary information. Media ground rules include requirements designed to protect the security, health, and welfare of the media (JP 3-61, p. xiii).

The ground rules that military public affairs establish before speaking with the media is the premise behind the acronyms SAPP and ACA. With the backing of a myriad of regulations, directives and publications, you, as the public spokesman for your organization, establish those ground rules when talking to the media.

Security, Accuracy, Propriety and Policy

The 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 the DOD. The restrictions are security, accuracy, propriety and policy, also referred to as SAPP. SAPP is an internal acronym used by military PAOs.

Security is the need to safeguard classified and operationally sensitive information. It refers to information that falls under operational security. That information is likely to be sought out by our adversaries about specific intentions, capabilities, and activities to obtain answers critical to our operational effectiveness. Examples of secure information would be operational planning, troop movements, investigations, or unit strength in a theater of operation. Joint Publication 3-61 says that we practice security at the source to ensure protection of classified information. Always ensure you are following your service and organizational regulations and policies concerning release of sensitive information.

Accuracy demands that public affairs sources provide only factual information, not speculation. What does this mean? Do not answer a question or release information unless you are sure you have accurate information. Do not be pressured into providing an inaccurate release. According to DODD 5122.05, the policy of the Department of Defense is to make timely and accurate information available to the public, Congress and the news media so they may assess and understand the facts about national security and defense strategy.

Propriety, or appropriateness, ensures releases are in good taste. Out of respect for service members and their families, public affairs personnel will not help gather or publish inappropriate descriptions or images. For example, do not release grotesque accident photographs or make statements that may cause family members distress.

Propriety (and often policy) also pertains to the advertising of commercial products. It is inappropriate to release information that gives the perception of the DOD endorsing a product or to release information that shows bias toward commercial products or agencies, etc.

Policy dictates the procedure for release of topical information at various levels of authority. For example, DOD policy calls for releasing at the seat of government (Office of the Assistant Secretary of Defense level) the names of personnel killed in action. Different service policies or regulations vary somewhat on the release of information, and in a joint environment, this can often prove to be challenging. Plus, your commander’s policy
SAPP and ACA (continued)

matters greatly.

Other examples of specific policy include the Freedom of Information Act and Privacy Act, which also give release guidance for certain types of information. PAOs should understand and be able to explain public affairs, as well as operational policies regarding the release or non-release of information.

**Ability, Competency and Authority**

In addition to SAPP limitations on the release of information, there are other limitations you must consider: ability, competency and authority, or ACA guidelines. ACA guidelines refer to a particular person’s or command’s ability, competency and authority to release the information. These are additional guidelines for determining the release of information.

**Ability** refers to actually having the information. For example, a public affairs officer or other individual dealing with the media simply may not possess any information on the issues and therefore, at that point, will not have the ability to comment on or release any information.

**Competency** is having the expertise to speak about a subject. A PAO or other individual might, in fact, have the information, but not be qualified or have the competency to discuss it with news media. In other words, the PAO may not be the subject matter expert, or SME, on the topic. In these cases, a PAO can locate a SME who would have the competency to talk on the subject or refer the requester of the information to another agency’s public affairs office.

Reporters don’t necessarily want to talk with a public affairs specialist; they want to talk with the men and women who are doing the work. They want to talk with the pilot who flew the plane, the tank driver who advanced through a hostile zone, the Marine who was involved in the shoot-out, the engineer who can speak specifically about a weapons system, etc. They are the individuals with first-hand knowledge and a human interest story to tell the public.

Joint Publication 3-61, Public Affairs, encourages the DOD story to be told. Although commanders designate only military personnel or DOD civilian employees as official spokespersons, they should educate and encourage all their military, civilian employees, and contractors to tell the DOD story by providing them with timely information that is appropriate for public release. By projecting confidence and commitment during interviews or in talking to family and friends, DOD personnel can help promote public understanding of military operations and activities.

**Authority** means that information is released at the appropriate level of command. A good rule of thumb is that the release authority of a commander is the same level of authority in other military matters. For example, a base-level PAO is normally authorized to speak for anything involving his or her base but usually will not have the authority to speak on behalf of a higher headquarters.

Your level of command will have authority to talk about what they are responsible for. You should never comment on another command’s activities. In addition, policies or actions that happen at a higher level command are never your responsibility unless you receive authorization to talk about them as they pertain to your command.

We use the terms “usually,” and “normally,” because that is where the gray area really shows its color. Much of this ambiguity is based on what type of information is being considered for release. SAPP and ACA are derived from, but not explicitly defined in, public affairs or other doctrine. They exist to reinforce requirements specified in federal law, DOD/DHS and individual service regulations, instructions and directives. The acronyms are not written in doctrine.

A more representative sample of the information used to develop the acronyms SAPP and ACA, although not comprehensive, can be found by reading the DINFOS SAPP/ACA White Paper found in your reading materials.

**Setting ground rules**

Members of the media may or may not be familiar with military release restrictions in regards to specific topics. To avoid problems and promote better understanding and relations with media and other community representatives, you should always advise the media
SAPP and ACA (continued)

up front about any applicable restrictions that limit the amount of information you can provide to them.

Part of your job is to avoid any chance of misunderstanding or perceptions that you are somehow “covering up,” “stonewalling,” or withholding legitimate information. Be up front and establish ground rules on what you can and are able to talk about. Now that you know the mnemonics that can help you focus on informational boundaries, let’s look at the specific law and policy that you need to be aware of when releasing information to the public. These restrictions include those that fall under the Freedom of Information Act and the Privacy Act.
Freedom of Information Act

“A popular government without popular information or the means of acquiring it, is but a prologue to a farce or a tragedy or perhaps both. Knowledge will forever govern ignorance, and a people who mean to be their own governors, must arm themselves with the power knowledge gives.” - James Madison

The Freedom of Information Act 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, FOIA was the first law to establish legal right of access by citizens to government information. In other words, according to DOD 5400.7, FOIA was enacted to protect the American people from the government unnecessarily withholding information from them.

FOIA, Title 5 of the United States Code, section 522, generally provides people with the right to request access to federal agency records or information. 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, which we’ll now examine.

FOIA exemptions

PAOs must be familiar with FOIA and all of its exemptions. You must be able to identify what information is releasable and release it without forcing the media or the public to submit a formal FOIA request.

The FOIA program contains nine exemptions. DOD 5400.7-R says that some of the exemptions allow discretionary disclosure, while others do not leave the PAO any discretion at all. If the discretion is allowed and information is released, that information must be released for any subsequent requests.

The nine exemptions under FOIA:

1. National security. Documents classified top secret, secret or confidential are not releasable. For Official Use Only, or FOOU, 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 are the charter for the CIA or the Census Act, both of which protect information that are 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.

5. Inter-agency or intra-agency memoranda or letters. Designed to protect working papers, studies, and reports within an agency or circulated among government personnel and which are not available by law to a party.

6. Personnel and medical files. Overlaps with some of the same guidelines as the Privacy Act – that information which clearly constitutes unwarranted invasion of personal privacy.

7. Law enforcement information. Protects information that would jeopardize on-going investigations.

8. Bank reports. Reports prepared by federal agencies about the condition of banks and other federally-regulated institutions.

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.

FOIA guidance

When a FOIA request is received, it requires immediate action. Generally speaking, PAOs do not usually handle FOIA requests. They typically do not have the time or the personnel. FOIA requests are usually handled through a separate office, often in the legal
Freedom of Information Act (continued)

or communication sections of the command. As far as the exemptions to FOIA are concerned, PAOs do not decide whether exempted information will be released, but we should understand that the spirit of this guidance is to release, not to withhold.

A requester should expect their request to be handled within 20 working days. If the number of requests, or the complexity of a request, causes the final disposition of the FOIA request to be delayed, you should inform the requestor of this situation and give them a timeline you believe the request will take for the disposition (DOD 5400-.70R, p.15). Media requests are handled as described for those demonstrating a compelling need for the information.

PAOs must be familiar enough with FOIA to understand the basics of this law. To reiterate – the spirit of FOIA is to release, not to withhold, information. Think of it as the equivalent of the PA rule – “maximum disclosure, minimum delay.” This forthrightness enhances the trust the public has in the military.

Now that you understand the protection the American people have against the government withholding information, let’s discuss the protection people have concerning their privacy.

Photo courtesy of www.offutt.af.mil
Privacy Act

PAOs have access to a great deal of information, not only on their unit’s mission and operations, but also on individual service members. We are expected to protect the privacy rights of these service members while at the same time 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 be most valuable, as you weigh competing factors and make tough calls.

The Privacy Act, according to DOD 5400.11-R, requires DOD to establish appropriate administrative, technical and physical safeguards to ensure that the files in each system of records are protected from unauthorized access, alteration or disclosure. It also prevents government agencies from excessive disclosure of personal information to agencies that do not have a need to know. Lastly, the Privacy Act allows 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.

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 (DOD 5400.7-R). Sometimes subjective decisions have to be made, based on the circumstances. Always work closely with the JAG officer.

According to JP 3-61, DOD personnel shall not disclose any personal information contained in any system of records except as authorized by DOD 5400.11-R, DOD Privacy Program, or other applicable law or regulations.

In deciding what information to release, you will want to work closely with your local legal advisor or Judge Advocate General for assistance in these decisions. Service regulations regarding what is releasable vary. A PAO must keep this in mind while working in today’s joint environment.

Restrictions

Maximum disclosure/minimum delay does not mean we flood the public with all the information we have. It is a public affairs professional’s responsibility to protect the individuals for whom they are releasing information. Information such as “personally identifiable information,” or PII, that can be used to identify an individual, such as social security number, age, rank/grade, race, demographics, etc., are not allowed to be released per DOD 5400.11-R, p. 9, para. DL1.14.

Additionally, DODDI 1300.18 says that casualty information on ill or injured military members and DOD civilians may not be released without consent of the individual, unless otherwise authorized under the Privacy Act.

No casualty information on deceased military members or DOD civilians will be released to the media or general public until 24 hour after primary and secondary next of kin notification. The 24-hour clock restarts after any NOK notification concerning any status updates. Additionally, in cases of multiple casualty incidents the 24 hour clock begins after the final NOK notification per DODI 1300.18.

It is important to note that with the number of contractors working on government installations, HIPAA regulations say the government cannot release the cause of death for civilian contractors working on government installations, as the government has no legal responsibility to the individual contractors. Information about cause of death cannot be released without the approval of a legal representative of the deceased. Release authority for that information must come from the contractors’ employer or family members.

Other information normally protected by the Privacy Act that cannot be released includes medical records, pay records, age, race, sex and family background. However, age, sex and race may be released in certain cases, depending on the situation. In some cases, the media will persistently try to obtain information protected by the Privacy Act. In such cases, public affairs officers should consult with a staff judge advocate and seek their commanders’ guidance.
Privacy Act (continued)

Let’s discuss specific items and their releasable status according to DOD instruction and the Privacy Act.

Releasable information

Usually, PAOs have a measured response to the release of personal information in an attempt to provide the required information without sacrificing a service member’s right to privacy.

We are primarily talking about accidents or incidents where we will not have access to the military member to find out what their preferences are in releasing the information.

The following information is normally releasable to help properly identify service members who are killed or injured in accidents or incidents.

- **Name**: Releasable 24 hours after next of kin have been notified, in case of a service member death. Use full names and middle initials to clearly identify service members.

- **Rank and unit**: Releasable to help properly identify the individual service member.

- **Home of record**: There is no general rule across the services. However, in most cases hometown and state are releasable. The Privacy Act protects street address and home telephone number.

**THIS IS THE BASIC INFORMATION THAT IS RELEASABLE.** You must understand how to use information when you write your initial accident and accident follow-up releases.

Releasable information when requested

The following information may be released if specifically requested or if it would be beneficial to the service member and the service:

- **Pay grade/monthly salary - releasable.** However, other pay-related information such as allotments, court-ordered payments or letters of indebtedness are protected under the Privacy Act.

- **Military background - releasable.** Information on military training, occupational specialty, time-in-service, time-on-station, billet, duty status, and awards is releasable. Civilian education is normally releasable; however, the Air Force requires the member’s consent to release civilian schools. When dealing with multi-service environments, check the services’ regulations and guidelines on specific release of information. When dealing with multi-service environments, check the services’ regulations and guidelines on specific release of information.

When gathering information about people in your unit who were involved in accidents or incidents, it is good to rapidly gather this information so as not to hold up media requests when they inevitably come in. It is also good to prepare (with media training) unit members and even family members for potential interviews about the people who were involved with accidents and/or incidents.

This type of information is usually looked at before the decision is made to release it, BUT there is some information that is scrutinized even closer before its release. And this is where you will have to weigh the public or media interest. You will have to use some of the guidelines we talked about earlier including commander policy before you decide to release. What are some of these pieces of information?

Releasable information when relevant to a story

In some circumstances, normally because it is relevant to the story, it is permissible to release personal information. In such circumstances, PAOs should consult the staff judge advocate. In fact, it is a good idea to maintain a good relationship with your JAG. You may not always agree with them on what and when to release, but the relationship you maintain with JAG can keep you out of trouble.

- **Age/date of birth**: Normally not releasable, unless relevant to the story. An example of this is when a retired 70-year-old Reservist was called back to active duty during the Iraq War. He was a physician and his specialized skills were deemed needed. Age played a factor in reporters covering his story.

- **Gender**: Although we normally try to downplay the gender of service members, there are times when the information is relevant to the story. “The first female to ...“The first male to ...” stories. Stories about men and
Privacy Act (continued)

women who break stereotypes are newsworthy. But gender usually comes out in stories by virtue of the use of personal pronouns anyway.

- Race: Race is not releasable unless it is relevant to providing essential facts to the story, i.e. “The first African American male to...,” “The first Asian American female to...,” “The first Arab American male to,” etc.

- Marital status: The fact that a person is married or not is a matter of public record and is able to be disclosed under FOIA; however, the Privacy Act considers this information non-releasable unless the balancing test weighs in favor of public interest and relevance to the story. Of course, in many cases information may come out anyway, although it’s best if the family is involved in the release decision.

In all such cases, PAOs and their commanders must apply the balancing test to determine whether the release of information constitutes an unwarranted invasion of a service member’s privacy. It’s not possible to identify categorically military personnel information that must be released or withheld in every instance.

The following information on military personnel that can be released without invasion of privacy in response to media queries includes:

- Full name
- Rank/pay grade
- Date of rank
- Gross salary
- Awards and decorations
- Past duty assignments
- Present duty assignment
- Official future assignments
- Source of commission
- Promotion sequence number
- Attendance at military schools
- Duty status at any given time
- Home of record (state only)
- Length of military service
- Basic pay entry date
- Office or duty phone number

Here is a list of information that can be released on civilian personnel without invasion of privacy:

- Name
- Present and past position titles
- Present and past grades
- Present and past annual salary rates
- Present and past duty stations
- Office and duty phone numbers
- Position descriptions

These lists are based on Privacy Act guidelines as stated in DOD 5400.11-R. DOD/Service regulations may place additional restrictions on what is releasable. However, with family members’ consent, you may assist with releasing their information to the media. In times of accidents/incidents, release of information on surviving family members is allowed, but such release should be coordinated with the family via the casualty assistance officer. If the family does not want you to release the information about family members, you should not release it.

It is important to note as well that DOD has no legal authority to release information on family members of service members.

An essential resource for completing assignments in PAQC is the “DINFOS Consolidated Guidelines for Release,” which specifies release criteria that apply to release of information in this course.

As we discussed concerning the Privacy Act, medical information must be protected. Let’s discuss protection that is specifically in place to protect personal medical information.

Photo courtesy of /venturebeat.files.wordpress.com
HIPAA

The Health Insurance Portability and Accountability Act of 1996, Privacy Rule 2003, specifies the purposes for which health information may or may not be released without authorization from a patient. It requires that patients be advised of their privacy rights. Provisions under HIPAA involve notification of privacy procedures to the patient. In addition, HIPAA ensures all medical records, medical billing, and patient accounts meet certain consistent standards with regard to documentation, handling and privacy. HIPAA gives all patients the right to access their own medical records, correct errors or omissions, and be informed by their health care provider or military treatment facility of how personal information is shared or used.

As the POC for situations that may concern an individual's medical privacy, PAOs need to be familiar with HIPAA guidelines. This is especially important when dealing with the release of medical information regarding the status of service members who have been killed, injured or become seriously ill. We need to protect personal privacy and respect the family's wishes.

According to DODI 1300.18, casualty information on ill or injured military members and DOD civilians may not be released without consent of the individual, unless otherwise authorized under the Privacy Act. For detailed public affairs guidance on HIPAA, refer to Office of the Assistant Secretary of Defense for Public Affairs, Public Affairs Guidance on Casualty and Mortuary Affairs in Military Operations, March 31, 2003, paragraph 4.

We’ve discussed a lot of information about the public’s right to know and their privacy protection. Now let’s shift our focus to legal considerations on the release of information.

Legal Matters

Release of information concerning legal proceedings against a service member should always be coordinated with the command’s staff judge advocate. In general, PAOs should not provide any information on a criminal suspect until that person has been formally charged with violations of the Uniform Code of Military Justice. In some cases, a military judge may ask the public affairs officer to limit media coverage of a case, to avoid prejudicing potential court martial members. Such a request should not limit a PAO from releasing information according to established guidelines for release. Coordination is the key.

Here is something a PAO should consider when talking about suspects: once the suspect has been charged, the case becomes a matter of public record, and the normal guidelines for release and Privacy Act restrictions apply. Prior to the individual being formally charged, no information should be released, other than the fact that you have a suspect in custody.

Military Investigations

PAOs must carefully consider what information we divulge during investigations, to avoid influencing the outcome. Investigations may be the basis for punitive action, so we need to protect their integrity.

Okay, let’s talk about the release of information pertaining to service members accused of a crime.

The public release of information about accused service members is authorized. The challenge is striking a fair balance between improper or unwarranted publicity for individuals accused of offenses, public understanding of enforcing discipline in the military, and the workings of military justice. We must not appear to convict individuals before they get to trial. This requires careful wording and consideration of the information we release.

In general, the below information may not be released:

- Subjective opinions, observations, or comments concerning the character of the accused, demeanor, credibility, guilt, or expected testimony at any time of the alleged offense or offenses involved.

- Any other matter when there is a reasonable likelihood that the dissemination of such would affect the deliberations of an investigative body or the findings or sentence of a court-martial, or otherwise prejudice the due administration of military justice either before, during, or after trial.
HIPAA (continued)

Some latitude is allowed when the release of otherwise restricted information is designed to enlist public assistance in apprehending an accused or suspect who is a fugitive, or to warn the public of any potential danger.

Now that we’ve discussed what can be released in relation to a suspect and an ensuing investigation, let’s turn our focus to the written word and legal consideration that will guide you as you write your news releases.
Defamation

According to your AP Stylebook the definition of defamation is "injury to reputation" (AP, p. 400). The majority of defamation cases stem from routine stories, typically resulting from factual errors or inexact language.

So while accuracy is a critical element of PA for the organization’s reputation and credibility, it also plays a part for legal reasons. The point here is that accuracy is critical in even minor, routine articles, and getting it right matters. Getting it wrong can have grave implications.

Types of defamation include libel (written) and slander (spoken). Although, broadcasts are spoken formats they typically fall under libel because the defamation is written in a script.

Many believe that as long as the defamatory statement is an accurate, direct, cited quote, the publisher is immune from defamation charges. Your AP stylebook says THIS IS UNTRUE and falls under the conduit fallacy. In truth, common law holds the publisher just as responsible as the originator of the statement (AP, p. 400 (2011).

Fair Report Privilege deals with an accurate and impartial report of the contents of public proceedings or documents. For example, reporting the fact that a plaintiff has filed a libel suit against a defendant could lead to a claim against a publisher for repeating the alleged libel. The Fair Report Privilege protects a publisher against such claims as long as they are simply reporting contents of legal papers.

Wire Service Defense involves the use of news originally published in reputable newspapers and news agencies. If a publisher is simply republishing information from a reputable newspaper or news agency, the wire service defense may be used, as long as the publisher did not have substantial reason to question the accuracy of the original information.
Copyright Laws

As a PAO, it’s important you understand the scope of copyright policies and legal considerations. Copyright gives sole reproduction authority to the creator whenever an idea is fixed in any tangible medium of expression, such as a photograph, video, writing on paper, digital medium, internet, etc. (Circ. 92, p. 8). Copyright does not pertain to ideas and facts, only the manner of expression.

Copyrights don’t last forever. There is a limited time that copyrights are in effect. Circular 92, Copyright Law of the United States says that if a work was created on or after January 1, 1978, its copyright endures from its creation for a term consisting of the life of the author and 70 years after the author’s death.

In the case of an anonymous work, a pseudonymous work, or a work made for hire, the copyright endures for a term of 95 years from the year of its first publication, or a term of 120 years from the year of its creation, whichever expires first (p. 133). When the copyright ends, the created work then becomes “public domain” and can be used without limits.

Music, of course, is covered by copyright laws. Music can be in public domain, however a recorded performance of that music would generate a copyright for that recording.

Sometimes copyrighted material can be used but the uses are limited and fall under the “fair use” rule.

There are four factors that determine fair use (all from Circ. 92, p. 19):

- The purpose and character of the use, such as educational.
- The nature of the copyrighted material.
- The amount and substantiality of the portion of the work used.
- The effect of the use upon the potential market for or value of the work.

Always consult the JAG before using any materials that are or could be copyrighted.

Photo courtesy of cf.tlcdn.net
Conclusion

So, we arrive back where we started. Though there are guidelines and regulations governing the release of information, its practical application can sometimes be in the gray area. What one commander might decide is releasable information another might choose to withhold. Public affairs officers should be advocates for the release of information to which the public has a right to know, but be aware of the limitations and considerations. Now that you have completed this lesson, you should be prepared to Demonstrate how SAPP, ACA, FOIA, HIPAA and Privacy Act rules apply to material with news value.
References and Additional Resources

Associated Press Stylebook, (Online Edition)
DOD 5400.7-R (1998) Freedom of Information Act
DOD 5400.11-R (2007) DOD Privacy Program
HHS Summary of the HIPAA Privacy Rule (2003)
HIPAA updated guidelines for releasing information on the condition of patients (n.d.).
DODD 5122.05 Assistant Secretary of Defense for Public Affairs (ASD(PA))
SECNAVINST 5720.44C (2012) Public Affairs Policy and Regulations