

PRIVATE SUBPOENAS FOR ARMY WITNESSES AND RECORDS INFORMATION PAPER

1. Fort Knox organizations receive numerous requests seeking employment, military personnel, health care, and law enforcement records along with witness requests for personnel assigned to the installation. Army Regulation 27-40, Chapter 7, provides local attorneys the steps required to obtain official witness testimony or official records that are kept in an Army recordkeeping system. The Army's goal is to cooperate with local courts and administrative processes, while complying with Federal law and regulations.

2. Requests for Official Information and the Review Process. "Official information" is any information in Department of the Army (DA) custody or control or that was acquired by DA personnel as part of their official duties or due to their official status with DA. DA personnel includes former and present Army civilian employees, Soldiers, and Reserve Soldiers in an active status. For unofficial information which is not related to an individual's DA responsibilities, direct your request to the person in their personal capacity. When receiving a request for official information, records custodians must seek assistance from the Office of the Staff Judge Advocate (known as "JAG") for written advice and authorization to proceed. For information not protected by the Privacy Act, the OSJA considers the specificity of the request, whether the information is classified or privileged in some way, the volume of requested records, and whether the release would violate a Federal agency regulation, such as a security or safety regulation or an Inspector General rule. Keep this review process in mind when calculating the amount of time you allow for the request. The Code of Federal Regulations (32 CFR 516) states you should send such a request at least fourteen days in advance of the date you would like the information/witness.

3. Privacy Act and Subpoenas. The Privacy Act (5 USC 552a) generally prevents the release of personal information of DA personnel without the consent of the data subject. If you are seeking medical, employment, or service records, you will need to include a signed authorization from the subject of the records, (or their guardian) or obtain a subpoena or order signed by the court. The key distinction between a typical subpoena and one sent to a Federal agency is that release of subpoenaed information protected by the Privacy Act must include an order from "a court of competent jurisdiction." While Kentucky allows for subpoenas to be signed by an attorney, subpoenas to Federal agencies must be signed by the judge or magistrate presiding over the litigation. If your subpoena or request for records does not include the court's order, the DA employee may not comply because of the conflict with the Privacy Act, a Federal law.

4. Expert Testimony. DA personnel are not allowed to serve as expert witnesses, with a few key exceptions. If you desire to have a DA employee serve as an expert witness, contact the OSJA Administrative Law Division at (502) 624-7414 with this or any other questions regarding subpoenas.