

# Exhibit M



**Attention: Headquarters US Marine Corps (ARSF)**  
FOIA/PA Section (ARSF)  
3000 Marine Corps Pentagon  
Washington, DC 20350-3000

July 14, 2017

**Re: Request Under the Freedom of Information Act for Records Related to the Military Justice System**

To Whom It May Concern:

This letter constitutes a request (“Request”), pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for records<sup>1</sup> in the possession of the United States Marine Corps. The Request is submitted on behalf of Protect Our Defenders (“POD”) and the Connecticut Veterans Legal Center (“CVLC”), also referred to as the “Requesters.”

POD and CVLC request that you provide records related to the military justice system. Specifically, Requesters ask that you provide:

1. Official Biographies for all general courts-martial convening authorities, including staff judge advocates, who have referred a case to court-martial since January 1, 2014.
2. Records sufficient to show the total number of Marines who were prosecuted in the civilian justice system per year since January 1, 2012 for the following offenses:
  - a. A violation of the Uniform Code of Military Justice (“UCMJ”) Article 120.
  - b. A violation of UCMJ Article 125.
  - c. An attempt to commit an offense that constitutes a violation of UCMJ Article 120.
  - d. An attempt to commit an offense that constitutes a violation of UCMJ Article 125.
3. Records sufficient to show the average length of time for all special and all general courts-martial from the date the alleged violation was reported to the date of the verdict, per year since January 1, 2012.
4. Records sufficient to show, per year since January 1, 2007:
  - a. The top 10 most frequently tried offenses in Marine Corps general court-martial.
  - b. The top 10 most frequently tried offenses in Marine Corps special court-martial.
  - c. The top 10 most frequently tried offenses in Marine Corps summary court-martial.
  - d. The top 10 most frequently tried offenses adjudicated through the Marine Corps non-judicial punishment service.

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<sup>1</sup> The term “records” as used herein includes all records or communications preserved in electronic or written form, including but not limited to correspondence, documents, data, videotapes, audio tapes, emails, faxes, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, technical manuals, technical specifications, training manuals, or studies.

5. Records regarding victim preferences for civilian court versus military court as outlined in Pub. L. No. 113-291 § 534(b).<sup>2</sup> This information includes, but is not limited to:
  - a. Records sufficient to show the number of victims who have requested their cases be handled by civilian court.
  - b. Records sufficient to show whether or not the Marine Corps honored the victim's request.
  - c. Records sufficient to show the process for informing victims of the right to choose civilian court.
  - d. Records sufficient to show whether or not the Marine Corps is tracking how many victims have been informed of this right.
  - e. Records sufficient to show the number of victims who have been informed of this right.
  
6. Records regarding the courts-martial convened in Iraq and Afghanistan from October, 2001 to the present. Such information includes, but is not limited to:
  - a. Records sufficient to disclose the number of summary courts-martial, special courts-martial, and general courts-martial that were convened (actually tried).
  - b. Records sufficient to disclose the number of courts-martial that included charges for violations of Article 120, Article 125, or attempts to commit such offenses.
  - c. Records sufficient to disclose the number of summary courts-martial, special courts-martial, and general courts-martial that were guilty pleas.
  - d. Records sufficient to disclose the number of summary courts-martial, special courts-martial, and general courts-martial that included a pre-trial agreement.
  - e. Records sufficient to disclose the number of special courts-martial and general courts-martial that were tried by a judge alone.
  - f. Records sufficient to disclose the number of special courts-martial and general courts-martial that were tried by court members.
  - g. Records sufficient to disclose the physical location of the general courts-martial convening authorities including whether this location was in Iraq, Afghanistan, or another location.

Requesters agree to pay search, duplication, and review fees up to \$100. If the fees amount to more than \$100, Requesters request a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 32 C.F.R. § 286.12(l). FOIA requires federal agencies to furnish documents at zero or reduced charges if “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). This language also appears in the fee waiver requirement of the Department of Defense (DoD) FOIA regulations, which apply to all DoD Components.<sup>3</sup> See 32 C.F.R. § 286.12(l). FOIA's legislative

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<sup>2</sup> The Secretary of Defense is required to “establish a process to ensure consultation with the victim of an alleged sex-related offense that occurs in the United States to solicit the victim's preference regarding whether the offense should be prosecuted by court-martial or in a civilian court.” Pub. L. No. 113-291 § 534(b)(1).

<sup>3</sup> Components of the Department of Defense include the Marine Corps. *DoD Manual 5400.07: Freedom of Information Act (FOIA) Program* § 3.2, DEPARTMENT OF DEFENSE (May 2017), [http://www.dtic.mil/whs/directives/corres/pdf/540007\\_dodm\\_2017.pdf](http://www.dtic.mil/whs/directives/corres/pdf/540007_dodm_2017.pdf). The Department of Defense's regulations

history makes clear that the “fee waiver provision . . . is to be liberally construed in favor of waivers for noncommercial requesters.” *Fed. Cure v. Lappin*, 602 F. Supp. 2d 197, 201 (D.D.C. 2009) (internal quotation marks omitted); *see also Serv. Women’s Action Network v. DOD*, 888 F. Supp. 282, 288–90 (D. Conn. 2012) (granting a public interest fee waiver to Plaintiffs seeking records relating to sexual assault, equal opportunity, sexual harassment, and domestic violence complaints from all military departments).

Disclosure of the requested information would directly shed light on identifiable operations and activities of the Federal Government. 32 C.F.R. § 286.12(l)(2)(i). The Department of Defense and its Components are part of the Federal Government. The records requested concern the military justice system with respect to the Marine Corps.

The subject of this Request indisputably involves issues that will “contribute significantly to public understanding” of the operations or activities of the Department of Defense. 32 C.F.R. § 286.12(l)(2)(ii). In determining whether a request involves issues that will significantly contribute to public understanding, DoD and its Components consider whether disclosure of the requested records will be meaningfully informative and whether the disclosure contributes to the understanding of a reasonably broad audience of persons interested in the subject. 32 C.F.R. § 286.12(l)(2)(ii)(A–B).

The information requested will be meaningfully informative because the Department of Defense has failed to provide veterans and the general public with adequate information regarding the military justice system. Further, disclosure contributes to the understanding of a reasonably broad audience of persons interested in the subject. Requester POD is the “only national organization solely dedicated to ending the epidemic of rape and sexual assault in the military.”<sup>4</sup> POD has expertise in researching and disseminating information to the public regarding military sexual trauma and the military justice system generally.<sup>5</sup> This expertise is recognized by members of Congress, the press, and advocacy organizations who rely on POD’s reports for policy analysis.<sup>6</sup> POD has the ability and intention to convey information to the public as evidenced by their large network consisting of over 79,000 newsletter subscribers and over 24,000 social media subscribers.<sup>7</sup> This ability is further evidenced by POD’s experience in aggregating data and creating reports that receive attention from nationwide news sources.<sup>8</sup> Likewise, Requester CVLC has expertise in advocacy and education on behalf of veterans, evidencing that CVLC also has the ability and intent to convey information to the public. In

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related to the Freedom of Information Act “take[] precedence over all DoD Component publications that supplement and implement the DoD FOIA Program.” *Id.* at 1.

<sup>4</sup> *About Protect Our Defenders: Our Mission and Work*, PROTECT OUR DEFENDERS, <http://www.protectourdefenders.com/about/>.

<sup>5</sup> *2016 Annual Report: Five Years of Impact*, PROTECT OUR DEFENDERS, at [http://www.protectourdefenders.com/wp-content/uploads/2014/10/Annual\\_Reportv10-Online-single.pdf](http://www.protectourdefenders.com/wp-content/uploads/2014/10/Annual_Reportv10-Online-single.pdf).

<sup>6</sup> *Id.* at 5.

<sup>7</sup> *Id.* at 18.

<sup>8</sup> *Racial Disparities in Military Justice*, PROTECT OUR DEFENDERS (May 5, 2017), at [http://www.protectourdefenders.com/wp-content/uploads/2017/05/Report\\_20.pdf](http://www.protectourdefenders.com/wp-content/uploads/2017/05/Report_20.pdf) (POD report on data of racial disparities in military justice obtained through FOIA requests); *see also* Tom Vanden Brook, *Black Troops as much as Twice as Likely to be Punished by Commanders, Courts*, USA TODAY (June 7, 2017), at <https://www.usatoday.com/story/news/politics/2017/06/07/black-troops-much-twice-likely-punished-commanders-courts/102555630/> (discussing PODs report on racial disparity).

addition to communicating information with the general public in the state of Connecticut,<sup>9</sup> CVLC has the ability to reach nationwide public audiences through national news organizations<sup>10</sup> and manuals produced by CVLC that are referenced nationwide.<sup>11</sup>

In determining whether disclosure of information is primarily in the commercial interest of a requester, DoD and its Components consider “whether the requester has any commercial interest that would be furthered by the requested disclosure,” and, if a commercial interest exists, whether the requester’s primary interest in disclosure is commercial. 32 C.F.R. § 286.12(l)(2)(iii)(A–B). Requester CVLC is a nonprofit organization whose primary goal is to assist veterans. Similarly, Requester POD is a nonprofit organization whose primary goal is to assist veterans with a focus on military sexual trauma. Requesters will make no commercial use of the requested information and have no commercial interest in accessing the requested records. Therefore, the Requester’s primary interest in disclosure is not commercial.

Finally, Requesters expect the determination of this Request within twenty business days pursuant to 5 U.S.C. §552(a)(6)(A)(i). If this Request is denied in whole or in part, please justify all redactions by reference to the specific FOIA exemption(s) in accordance with *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). In addition, please release all disclosable portions of otherwise exempt material. We reserve the right to appeal your decision to withhold any information or to deny a fee waiver.

Thank you for your prompt attention to this matter.

Very Respectfully,



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<sup>9</sup> CVLC’s work has been repeatedly covered by Connecticut news organizations. *See, e.g.*, Peggy McCarthy, *Can Legal Services Lead to Better Health Outcomes For Veterans?*, THE HARTFORD COURANT (Jan. 14, 2014) at [http://articles.courant.com/2014-01-14/health/hc-vet-services-20140114\\_1\\_va-care-margaret-middleton-connecticut-veterans-legal-center](http://articles.courant.com/2014-01-14/health/hc-vet-services-20140114_1_va-care-margaret-middleton-connecticut-veterans-legal-center); Lucy Nalpathanchil, *Connecticut Law to Help Veterans Connect to Jobs, College Credit*, WNPR (June 11, 2014) at <http://wnpr.org/post/connecticut-law-help-veterans-connect-jobs-college-credit>.

<sup>10</sup> *See, e.g.*, Ellen Lawton & Martha Bergmark, *One reason so many veterans are homeless? They can’t afford lawyers*, THE WASHINGTON POST (July 8, 2016) at [https://www.washingtonpost.com/posteverything/wp/2016/07/08/one-reason-so-many-veterans-are-homeless-they-cant-afford-lawyers/?utm\\_term=.9ad5131591f5](https://www.washingtonpost.com/posteverything/wp/2016/07/08/one-reason-so-many-veterans-are-homeless-they-cant-afford-lawyers/?utm_term=.9ad5131591f5).

<sup>11</sup> *See Denying Credit: The Failure to Transition Troops to Civilian Employment*, CONNECTICUT VETERANS LEGAL CENTER (Sep. 8, 2014), at [https://law.yale.edu/system/files/documents/pdf/Clinics/wirac\\_DenyingCredit.pdf](https://law.yale.edu/system/files/documents/pdf/Clinics/wirac_DenyingCredit.pdf); *Veteran’s Discharge Upgrade Manual*, CONNECTICUT VETERANS LEGAL CENTER (2011), at [https://law.yale.edu/system/files/documents/pdf/Clinics/wirac\\_CTdischargeUpgradeManual.pdf](https://law.yale.edu/system/files/documents/pdf/Clinics/wirac_CTdischargeUpgradeManual.pdf).