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HEADQUARTERS
DEPARTMENT OF THE ARMY
WASHINGTON, DC, 15 November 1980

PERSONNEL—GENERAL
UNFAVORABLE INFORMATION

Effective 15 December 1980

This revision updates policies and procedures regarding unfavorable information considered for inclusion in official personnel files. Local limited supplementation of this regulation is permitted, but is not required. If supplements are issued, HQDA agencies and major Army commands will furnish one copy of each to HQDA(DAPE-MPO-C) WASH, DC 20310; other commands will furnish one copy of each to the next higher headquarters.

Interim changes to this regulation are not official unless they are authenticated by The Adjutant General. Users will destroy interim changes on their expiration dates unless sooner superseded or rescinded.

The word "he," when used in this publication, represents both masculine and feminine genders unless otherwise specifically stated.

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*This regulation supersedes AR 600-37, 18 May 1977.

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CHAPTER 1

GENERAL

1-1. Purpose. *a.* This regulation sets forth policies and procedures to—

(1) Authorize placement of unfavorable information about Army members in individual official personnel files.

(2) Insure that unsupported or unresolved unfavorable information is not filed in individual official personnel files.

(3) Insure that the best interests of both the Army and the individual are served by authorizing unfavorable information to be placed in and, when appropriate, removed from official personnel files.

b. This regulation also outlines primary staff responsibility for the following (and comparable) offices at all tables of organization and equipment (TOE) and tables of distribution and allowances (TDA) staff levels:

(1) Major commands.

(2) Office, Deputy Chief of Staff for Personnel.

(3) DA Suitability Evaluation Board.

(4) Office, Assistant Chief of Staff for Intelligence.

(5) HQDA Staff agencies.

(6) Law enforcement, personnel security, and intelligence agencies.

1-2. Applicability. This publication applies to the Active Army, Army National Guard, and US Army Reserve. (All units must maintain this regulation at company level and above.)

1-3. Objectives. Objectives of this regulation are to—

a. Apply fair and just standards to all Army members.

b. Protect the rights of individual Army members and, at the same time, permit the Army to consider all available relevant information when choosing persons for positions of leadership, trust, and responsibility.

c. Provide safeguards from adverse personnel action based on unproven derogatory information or mistaken identity.

d. Provide a means of correcting injustices if they occur.

e. Insure that persons of poor moral character are not continued in the Service or advanced to positions of leadership, trust, and responsibility.

1-4. Explanation of terms. For purposes of this regulation, the following terms apply:

a. Unfavorable information. Any credible derogatory information that may reflect on a person's character, integrity, trustworthiness, or reliability.

b. Favorable personnel action. Any personnel or career management decision that enhances a person's status or position. Included are—

(1) Promotions.

(2) Regular Army appointments.

(3) Selection for schooling.

(4) Entry or continuation on active duty.

(5) Awards, decorations and commendations.

(6) Reassignment.

(7) Retirement.

(8) Separation or release from active duty.

Although granting of a security clearance is a "favorable personnel action," it is not governed by this regulation. (See AR 604-5 and AR 604-10.)

c. Ancillary action. Action attendant to or subsequent to criminal justice action.

d. Official personnel files. These include the Official Military Personnel File (OMPF), Career Management Individual File (CMIF), and the Military Personnel Records Jacket (MPRJ). Also included are reports, forms, and records (in documents or data banks) maintained by the Army under AR 640-10 for consideration when making personnel management decisions affecting the person concerned.

e. Intelligence and personnel security, law enforcement, and other investigative files. Reports, dossiers, and case materials (in documents or data banks) that belong to intelligence, law enforcement, or other investigative agencies. (Examples: files of the US Army Investigative Records Repository, the US Army Criminal Investigation Command (USACIDC) Crime Records Repository, those pertaining to investigations conducted by general

courts-martial authorities, and inspector general files at all echelons.)

f. Crime records. CID reports of investigation, military police (MP) reports, and other reports maintained by (or belonging to) USACIDC. (Examples: CID and MP reports kept at the USACIDC Crime Records Directorate.)

g. Major commands. In addition to the designated major commands, separate DA agencies and activities, CONUS Armies, United States Army Recruiting Command, Military Enlistment Processing Command, and Army General and Special Staff agencies are considered major commands for the purpose of processing cases under this regulation.

CHAPTER 2

UNFAVORABLE INFORMATION IN OFFICIAL PERSONNEL FILES

2-1. General. *a.* Personnel management decisions will be based on the following:

(1) Review of official personnel files.

(2) The knowledge and best judgment of the commander, board, or other responsible authority. (Both favorable and unfavorable information regarding the person concerned will be considered.)

b. Personnel decisions which may result in selecting persons for positions of public trust and responsibility, or vesting such persons with authority over others, should be based on a thorough review of their records. This review will include an appraisal of both favorable and credible unfavorable information available.

2-2. Policies. *a.* Except as indicated in paragraph 2-3, unfavorable information will not be filed in an official personnel file unless the person affected knows. Moreover, he must be given the chance to either make a written statement or to decline, in writing, to make such a statement. This statement may include submitting supporting evidence replying to the unfavorable information. (See para 2-6.) Initiating officers should fully affirm and document unfavorable information to be considered for inclusion in official personnel files.

b. Unfavorable information filed in official personnel files must meet Privacy Act standards of accuracy, relevancy, timeliness, and completeness. (See AR 340-21.) Access to official personnel files will be granted to the person concerned under AR 340-21.

c. Unfavorable information that should be filed in official personnel files includes indications of substandard leadership ability, promotion potential, morals, and integrity. These must be identified early and shown in permanent official personnel records. Other unfavorable character traits of a permanent nature should be similarly recorded.

2-3. Filing of information exempt from the referral procedure. The following information may be filed in the performance portion of the OMPF without further referral to the person concerned:

a. Records of courts-martial, court-martial or-

ders, and records of nonjudicial punishment under the Uniform Code of Military Justice (UCMJ), Article 15. (See AR 27-1 and AR 640-10.)

b. Proceedings of boards of officers, if it is clear that the person concerned has been given a chance to present evidence or cross-examine witnesses in his own behalf.

c. Completed investigative reports. These include criminal investigation and inspector general reports (or authenticated extracts) which have resulted in elimination or disciplinary action against the person concerned. When it is not practical to include the entire report (or an extract), the investigative report will be referenced.

d. Active suspension of favorable personnel actions reported under AR 600-31.

e. Records of civilian convictions (to include the record of arrest), or extracts thereof, authenticated by civilian authorities. Minor traffic convictions are not included.

f. Officer and enlisted evaluation reports. Administrative processing of evaluation instruments is governed by AR 623-1, AR 623-105, and AR 623-205. Filing of evaluation instruments will be governed by AR 640-10.

g. Other unfavorable information of which the person concerned had prior official knowledge (as prescribed by para 2-6) and an adequate chance to refute. The notation "AR 600-37 complied with" will be entered below filing authority on such unfavorable information.

h. Internal staff actions and working papers within and among personnel management offices and personnel decisionmakers at HQDA. (Applies to the CMIF only according to AR 640-10.)

2-4. Filing of nonpunitive administrative letters of reprimand, admonition, or censure in official personnel files. *a. Filing in MPRJ.* Authority to issue and direct the filing of letters of reprimand, admonition, and censure in the MPRJ (after referral to the person concerned according to para 2-6) is outlined in (1), (2), and (3) below. If filing is intended for MPRJ only, the letter need not

be referred to a higher authority for review.

(1) Authority to issue and direct the filing of such letters in the MPRJ of enlisted personnel is restricted to the person's immediate commander or a higher commander in his chain of command. (See exception to this restriction in (3) below.)

(2) Authority to issue and direct the filing of such letters in the MPRJ of commissioned officers and warrant officers is restricted to—

(a) The person's immediate commander or a higher level commander in his chain of command (if such commander is senior in grade or date of rank to the person).

(b) The designated rater, intermediate rater, or senior rater under the officer evaluation reporting system (AR 623-105).

(See exception to this restriction in (3) below.)

(3) As an exception to the restrictions in (1) and (2) above, a letter may be filed in the MPRJ upon the specific direction of any general officer who is senior to the person concerned or by an officer exercising general courts-martial jurisdiction over the individual.

(4) Letters designated for filing in the MPRJ only may be filed for a period not to exceed 3 years or until reassignment of the person to another general courts-martial jurisdiction, whichever is sooner. Such letters will have a statement about the specific length of time the correspondence will remain in the MPRJ.

(5) Statements furnished by the person concerned, following referral under paragraph 2-6, will be attached to the letter upon filing in the MPRJ.

b. Filing in OMPF. A letter may be filed in the OMPF kept by the US Army Military Personnel Center, US Army Reserve Components Personnel and Administrative Center, or the proper State Adjutant General (for Army National Guard personnel) only upon the order of a general officer senior to the person concerned. These letters may also be filed by direction of an officer having general courts-martial jurisdiction over the individual. The direction for filing in the OMPF will be contained in the document itself or in an indorsement or addendum thereto. A letter to be included in a person's OMPF will—

(1) Be referred to the person concerned for comment according to paragraph 2-6. The referral will include reference to the intended filing of the letter.

(a) Statement(s) furnished by the person will be reviewed and considered by the officer authorized to direct filing in the OMPF. This will be done before a final determination is made to file the letter. Should filing in the OMPF be finally directed, the statement(s) will be attached as an inclosure to the basic letter.

(b) If it is desired to file allied documents with the letter, these documents must also be referred to the person concerned for comment. This includes statements, previous reprimands, admonitions, or censure. They must also be specifically referenced in the letter or referral document.

(2) Contain a statement which indicates it has been imposed as an administrative measure and not as a punishment under UCMJ, Art. 15.

(3) Be signed by (or sent under the cover of signature of) an officer authorized to direct such filing.

(4) Be forwarded for inclusion in the performance portion of the OMPF only after considering the circumstances and alternative non-punitive measures. Minor behavior infractions or honest mistakes chargeable to sincere but misguided efforts will not normally be recorded in a person's OMPF. Once placed in the OMPF, however, such correspondence will be permanently filed unless removed through the appeal process. (See chap. 6.)

c. Decisions against filing letters in the OMPF. If the general officer (or general court-martial authority) elects not to place the letter in the OMPF, the correspondence will be returned to the person writing the letter. That person will advise the intended recipient of the letter about the decision not to file the letter in the OMPF. He may, however, direct that the letter be placed in the person's MPRJ. (See *a* above.) The specific period of time will be specified.

d. Circumstances affecting the imposition or processing of administrative letters of reprimand.

(1) When the person to be reprimanded leaves the chain of command or supervision after a commander or supervisor has announced his intent to impose a reprimand, the action may be processed to completion in that chain of command.

(2) When the reprimanding official leaves the chain of command or supervision after stating (orally or in writing) his intent to impose a reprimand, his successor may complete appropriate action on the reprimand. In such cases, the successor should be familiar with relevant information about the proposed reprimand.

(3) When a former commander or supervisor discovers misconduct warranting a reprimand, admonition, or censure, he may—

(a) Send pertinent information to the individual's current commander for proper action.

(b) Personally initiate and process a letter of reprimand, admonition, or censure as if the former command or supervisory relationship continued. In such cases, further review (if needed) will be accomplished in the former chain of command or supervision or in the successor command. Officials should consider the timeliness and relevance of the adverse information before taking administrative action at the later date.

e. Reprimands and admonitions imposed as non-judicial punishment (UCMJ, Art. 15). These are governed by chapter 3, AR 27-10.

f. *Change from enlisted to commissioned status.* Upon approval of a change in status from enlisted to commissioned or warrant officer, letters of reprimand, admonition, or censure received while in an enlisted status and which are filed in the performance portion of the OMPF, will be moved to the restricted portion of the OMPF. Those letters filed in the person's MPRJ will be removed.

(1) Upon an individual's request, such letters received by commissioned officers or warrant officers while serving in an enlisted status before the effective date of this revision will be transferred to the restricted fiche. Those letters filed in the person's MPRJ will be removed.

(2) Such requests will not be a basis for Stand-by Board consideration.

2-5. Anonymous communications. Anonymous communications will not be filed in a person's MPRJ, OMPF, or CMIF unless, after proper investigation or inquiry, they are found to be true, relevant, and fully proven or supported. If not exempted under paragraph 2-3, the information must be referred to the person concerned according to paragraph 2-6 before such information is filed in the person's MPRJ, OMPF, or CMIF.

2-6. Referral of information. a. Except as provided in paragraph 2-3, unfavorable information will be referred to the person concerned for information and acknowledgment of his rebuttal opportunity. Acknowledgement and rebuttal comment(s) or documents will be submitted generally in the following form:

(1) "I have read and understand the unfavorable information presented against me and submit the following statement or documents in my behalf" _____."

(2) "I have read and understand the unfavorable information presented against me and elect not to make a statement."

b. If a person refuses to acknowledge the referral of unfavorable information, a statement will be prepared by the person's reprimanding official in generally the following form: "Individual (name) has been presented with the unfavorable information on (date) and refuses to acknowledge by signature."

CHAPTER 3

UNFAVORABLE INFORMATION IN INTELLIGENCE AND
PERSONNEL SECURITY FILES

3-1. Unresolved unfavorable information. To prevent undue credence being given to unresolved unfavorable information, with attendant harmful career implications, this chapter sets forth provisions for resolving such matters.

3-2. Security information. Derogatory information concerning loyalty and subversion (chap. 2, AR 604-10) will be processed as set forth in that regulation.

3-3. Security clearance. Commanders will insure that security clearances are not suspended in lieu of punishment under the UCMJ or other disciplinary measures. Denial or revocation of a security clearance will not be used as a punishment or disciplinary measure. Action to deny or revoke a security clearance will be taken only through the US Army Central Personnel Security Clearance Facility, Fort Meade, MD 20755. (See AR 604-5.)

3-4. Resolution of unfavorable information in intelligence and personnel security files. *a. Commander's responsibility.* When a commander learns of unfavorable information from intelligence or personnel security files and security investigations, he will take one or more of the following actions, as needed:

(1) Suspend access to classified information, begin investigation (under AR 381-20 or other proper directives) to gain complete facts in the case and notify the Commander, Central Personnel Security Clearance Facility (ATTN: PCCF-P-C), Fort Meade, MD 20755.

(2) Start action required to deny or revoke the person's personnel security clearance. (See AR 604-10 provision.) When a security clearance has been denied or revoked on an incumbent of a position of leadership, trust, and responsibility and the person has not been eliminated, the case will be referred to either the Major Command Suitability Evaluation Board, or the DA Suitability Evaluation Board. The board will decide what records, if any, will be made a part of the person's official personnel files.

(3) Take removal action under AR 135-175,

AR 135-178, AR 604-10, AR 635-100, AR 635-120, AR 635-200, or the UCMJ.

(4) Reassign the person to a less sensitive position.

(5) Close the case favorably and prepare a statement (for disposition according to para 3-6c(1) or 4-3d(1), as applicable) that information developed to date does not bar a personnel action under consideration.

b. Procedures for resolution. In connection with a(1), (2), and (3) above, the following procedures may be considered:

(1) If the unfavorable information involves elements of espionage, sabotage, treason, sedition, or criminal subversion, start an investigation according to AR 381-20.

(2) If the unfavorable information involves suitability issues (e.g., financial difficulties or moral), prepare a request for investigation and submit it to the Defense Investigative Service to resolve the issue.

(3) Use of added investigative resources available to the commander, such as military police, inspector general, Criminal Investigation Command, and investigating officers or board of officers who may investigate matters within their assigned area of responsibility.

c. Suspension of favorable personnel action. Suspension of favorable personnel action (under AR 600-31) will be considered in connection with a(1), (2), and (3) above.

3-5. Access to intelligence and personnel security files. AR 340-21 and AR 381-45 set forth procedures for gaining access to intelligence and personnel security files.

3-6. Use of intelligence and personnel security files in personnel actions. *a.* Intelligence and personnel security files are not a part of the military personnel records system as prescribed by AR 640-10. However, to insure that the Army's interests are protected when selecting a person for positions of leadership, trust, and responsibility, significant verified information will be correlated with

information in personnel files. If appropriate, this information will be made available to personnel decision makers.

b. Current intelligence and personnel security files may have unevaluated and dormant information of a nature which the person concerned might not have had a chance to comment upon. These files also have sensitive information. If disclosed prematurely, the information could jeopardize current investigations or sources of information. For these reasons, intelligence and personnel security files are not furnished to promotion selection boards or other personnel decisionmakers except as follows:

(1) The suitability evaluation boards outlined in chapters 5 and 6. These boards do not make personnel decisions per se; they merely determine what information will be considered for possible filing in official personnel files.

(2) Personnel managers in highly intensified personnel management areas are designated by the Secretary of the Army, the Chief of Staff of the Army, or the Deputy Chief of Staff for Personnel.

c. Commanders, heads of Army Staff agencies, and boards of officers referring to intelligence and personnel security files (after the action in (1) or (2) above and before taking personnel action) will take one of the following actions:

(1) When the information does not bar the contemplated personnel action, a written statement will be prepared. This statement will indicate that the commander, Army Staff agency head, or board of officers has determined that the information in the intelligence and personnel security files does not preclude the specific personnel action being considered. (Cite the specific personnel action under consideration.) The statement will be included as a permanent part of the proper file. Since the statement is based solely on the information reviewed at that time, care will be taken to insure that no later additions to these files will be filed under the statement. However, the favorable determination will not preclude commanders, Staff agency heads, or boards of officers from considering all information in intelligence and personnel security files when—

(a) New derogatory information is developed,

or

(b) Another personnel action is being considered.

(2) When the decisionmaking authority tentatively concludes that unfavorable information, if not adequately refuted or explained, would bar the personnel action being considered, the person concerned will be advised. At that time, he will be offered a chance to refute or explain the derogatory information. This applies unless an exception has been authorized as prescribed in *d* below. A final determination will be made only after considering the explanation the person offers. Added information obtained from further investigation may be considered. When a final conclusion has been reached, the responsible official will either—

(a) Determine that the unfavorable information does constitute a bar to the personnel action under consideration, notify the person of the determination, and place an information copy of the letter of determination in the person's intelligence or personnel security file. Elimination, disciplinary action, admonition, or referral to the proper suitability board will be considered if information in the files is major enough to warrant such, or

(b) Determine that the unfavorable information does not now bar the personnel action being considered. In these cases, a statement similar to that prescribed in (1) above will be prepared and attached to the intelligence or personnel security files.

d. Authority to grant exceptions to rebuttal procedures (see para 2-6) is limited to the Assistant Secretary of the Army (Manpower and Reserve Affairs).

(1) Consideration will be given to requests for exception. This will only be done when the information is exempt from access by the person concerned under the Privacy Act (AR 340-21) and a major and legitimate government purpose is served by claiming the exemption.

(2) When such an exception is requested by the responsible official(s), pertinent facts will be sent through intelligence channels to the Assistant Chief of Staff for Intelligence (HQDA(DAMI-CIS) WASH DC 20310).

CHAPTER 4

UNFAVORABLE INFORMATION IN ARMY LAW ENFORCEMENT FILES

4-1. Authorities for filing and using unfavorable information. Statutory or regulatory authorities govern the filing and use of unfavorable material in military police or USACIDC crime records. (See 5 U.S.C. 552a, AR 340-21, AR 190-45, AR 195-5, and AR 195-6; see also para 5-2 and 5-4 this regulation.) Law enforcement information may or may not resolve other types of unfavorable information. If resolution remains in question after criminal justice disposition, this chapter sets forth provisions to resolve such matters. These provisions also prevent undue credence being given questionable unfavorable information.

4-2. Disposition of information in law enforcement files. *a. Criminal justice action.* Copies of criminal investigative case files, military police reports, or information from these files or reports are provided commanders by law enforcement agencies for criminal justice disposition and ancillary actions.

(1) *Criminal justice disposition.* As a result of command consideration, criminal justice disposition proceeds to one of the categories listed below. To this end, the proper authority will—

- (a) Start court-martial action.
- (b) Start action under the UCMJ, Art. 15.
- (c) Decline to consider further criminal justice proceedings.

(2) *Ancillary action.* The actions described below are not considered to replace criminal justice disposition, but are properly started independent of criminal justice disposition.

(a) Action to suspend favorable personnel actions reported according to AR 600-31.

(b) Elimination action under AR 135-175, AR 135-178, AR 604-10, AR 635-100, AR 635-120, or AR 635-200.

(c) Action to suspend or deny access to classified information under AR 604-5 and, if needed, investigation under AR 381-20 or other proper directives to obtain more facts in the case.

(d) Other administrative action(s), as appropriate.

b. Noncriminal justice action. Independent of completing a criminal justice disposition (as listed in a(1) above), Army review of criminal investigative or military police cases about subject personnel, for suitability consideration, may result in action under one or more of the categories listed below.

(1) Elimination action under the provisions of AR 135-175, AR 135-178, AR 604-10, AR 635-100, AR 635-120, or AR 635-200.

(2) Action to suspend or deny access to classified information under AR 604-5 and, if needed, investigation under AR 381-20 or other proper directives to get more facts in the case.

(3) Action to deny or revoke the person's personnel security clearance under AR 604-5 or AR 604-10.

(4) Favorable closing of the case and preparation of a statement (for disposition under para 4-3d(1)) that information developed to date does not bar action being considered.

4-3. Access to law enforcement investigative files. *a.* AR 190-45, AR 195-2, AR 340-17, and AR 340-21 set forth procedures for gaining access to law enforcement investigative files.

b. Law enforcement records and reports are not a part of the military personnel records system as prescribed by AR 640-10.

(1) To insure that commanders and supervisors take proper actions as described in paragraph 4-2, information from criminal investigative and military police files is exchanged between USACIDC or military police elements and the commanders whom they support.

(2) AR 190-45, AR 195-2, and AR 340-21 set forth procedures to be followed to preclude the release of unfavorable information for purposes other than those described in paragraph 4-2.

(3) These safeguards do not preclude proper dissemination of information in law enforcement files when that information indicates that—

- (a) An offense is imminent.
- (b) Commission of that offense will affect national security or the security of US Army person-

nel, activities, or installations.

c. Release of information about an ongoing Army law enforcement investigation requires careful consideration of the following: the particular need for the information requested; the need to avoid dissemination of unproved allegations; requirement to protect a suspect's legal rights; and maintenance of the integrity and effectiveness of the investigation. (AR 190-45 and AR 195-2 provisions apply.) Criminal record data related to uses described by paragraph 4-2a are not provided Army selection boards or other personnel decisionmakers before initial determination of guilt based on criminal-justice disposition. Exceptions are as follows:

(1) Suitability evaluation boards, as outlined in chapters 5 and 6, subject to restrictions which may be imposed concerning secondary release.

(2) Personnel managers of intensified personnel management areas, specifically designated by the Secretary of the Army, the Chief of Staff of the Army, or the DCSPER.

d. Commanders, heads of Army Staff agencies, and boards of officers, not acting in a criminal-justice role, but referring to Army law enforcement records and reports, will take one of the following actions after reviewing such information:

(1) When the information does not bar the personnel action considered, prepare a written statement. This statement will indicate that the commander, Staff agency head, or board of officers has determined that the unfavorable information in the files does not preclude the specific personnel action being considered. (Cite the specific personnel action being considered.) This statement will be sent to the US Army Crime Records Center, USACIDC, 2301 Chesapeake Avenue, Baltimore, MD 21222, to be kept as a permanent document in the criminal investigative case or military police files.

(2) When the decisionmaking authority concludes that the unfavorable information, if not adequately refuted or explained, would bar the personnel action being considered, the person concerned

will be given a chance to refute or explain the derogatory information. (This applies unless an exception has been authorized as set forth in *e* below.) A final determination will be made only after the explanation offered by the person concerned has been considered. When a final determination has been reached, the responsible official will either—

(a) Make an unfavorable determination regarding the personnel action being considered, notify the person of such determination, and place an information copy of the letter of such determination in the person's law enforcement file. Elimination, disciplinary action, admonition, or referral to the proper suitability board will be considered if information in the file is major enough to warrant such, or—

(b) Determine that the unfavorable information does not now bar the personnel action being considered. In these cases, a statement similar to that set forth in *d*(1) above will be prepared and attached to the criminal investigative case or military police files.

e. Authority to grant exception to rebuttal procedures, as set forth in paragraph 2-6, is limited to the Assistant Secretary of the Army (Manpower and Reserve Affairs).

(1) Consideration will be given to requests for exception when the information is exempt from access under the Privacy Act (as implemented by AR 340-21, and according to AR 190-45 and AR 195-2), when a major and legitimate governmental purpose is served by claiming the exemption.

(2) When such an exception is requested by the responsible officials, the pertinent facts will be sent according to AR 340-21 to—

(a) The Commander, US Army Criminal Investigation Command, ATTN: CIJA, 5611 Columbia Pike, Falls Church, VA 22041, for CID records and information, or

(b) The Deputy Chief of Staff for Personnel, ATTN: DAPE-HRE, WASH, DC 20310, for military police records and information.

CHAPTER 5

RESPONSIBILITIES

5-1. Major commanders. *a.* Major commanders may set up suitability evaluation boards and prescribe procedures to resolve cases of unfavorable information arising within their commands. Operation of such boards will be consistent with the policies and procedures set forth herein and by other applicable directives.

b. Major commanders who set up suitability evaluation boards will make one of the following determinations after receiving the report of such boards:

(1) That certain specific unfavorable information is, or is not a bar to a favorable personnel action being considered. A written statement similar to that set forth in paragraph 3-6c(1) and 4-3d(1) is required.

(2) That the unfavorable information should or should not be made a part of the person's personnel security or law enforcement file for future consideration.

(3) That the unfavorable information should or should not be noted in the performance portion of the person's official military personnel files. If it is found the unfavorable information should be noted in the person's OMPF, a general officer must direct (and sign) the action. (See also paras 2-3 and 2-6.)

(4) That all available information about the case be sent to the immediate commander of the Army member concerned for preliminary inquiry and report. This includes any action deemed proper under the UCMJ.

(5) That separation or elimination should be started.

c. Major commanders will refer cases to the DA Suitability Evaluation Board (DASEB) for review and recommendation when—

(1) It is found that unfavorable information concerning a person cannot be practicably resolved by other means.

(2) The severity and complexity are such that the commander does not feel the case can be adequately resolved by the suitability evaluation board within the command.

5-2. Deputy Chief of Staff for Personnel (DCSPER). The DCSPER will—

a. Set up the DASEB as a continuing board under the supervision of the Director of Military Personnel Management (DMPM), ODCSPER, to make determinations about the filing of unfavorable information in the OMPF or removing information under appeal procedures in chapter 7.

b. Determine DASEB membership and appoint a president and additional members as required.

c. Prescribe policies governing operations of the DASEB.

d. Approve, disapprove, refer to higher authority, or direct proper action on all adverse DASEB determinations. Also, the DCSPER is authorized to direct similar actions on all other DASEB determinations as deemed proper (insuring compliance with para 2-6).

e. Monitor and coordinate all DASEB activities not otherwise prescribed.

Note. The DMPM, ODCSPER, is delegated authority to act on behalf of the DCSPER for the responsibilities in *b* through *e* above.

5-3. Department of the Army Suitability Evaluation Board (DASEB). The DASEB—

a. Deliberates on cases referred for determination as to whether unfavorable information should be filed in the performance portion of the OMPF, or separation or elimination should or should not be started.

b. Deliberates on appeals (under provisions of chap. 7) for removing unfavorable information from the performance portion of the OMPF.

c. Reviews and evaluates evidence presented to support appeals for removing unfavorable information from the performance portion of the OMPF.

d. Revises, amends, or removes from the OMPF those case summaries or other documents having unfavorable information or reports that are determined to be unjust or untrue, in part or in whole.

e. Revises, amends, or removes those administrative letters of reprimand, admonition, or censure from the OMPF determined to be unjust or untrue

(in part or in whole) or to have served their intended purpose. Removal of such letters because "justice or the letter's intended purpose has been served" is subject to stipulations noted in paragraphs 7-2b(1) and (2).

5-4. Assistant Chief of Staff for Intelligence (ACSI). The ACSI will—

a. Insure that the US Army Intelligence and Security Command (through the Central Personnel Security Clearance Facility) provides help needed by the DASEB by making files available as required.

b. Set forth procedures to release information from intelligence and personnel security files to commanders, the DASEB, and other suitability boards when established.

5-5. Army Staff agencies. The Army Staff agencies will—

a. Screen official records continuously for suitability information and refer cases which they are unable to resolve to the DASEB.

b. Provide recommendation for disposition from among those listed in paragraph 5-1, if proper, when referring cases to the DASEB.

c. Take action needed to carry out the DASEB or DCSPER decision on cases that have been reviewed by or referred to them by higher authority

5-6. Law enforcement, personnel security, and intelligence agencies. Those agencies responsible for releasing information from intelligence, personnel security, and investigative files will act under the procedures governing the use of investigative records outlined in this regulation. (AR 190-45, AR 340-21, AR 381-45, AR 40-66, and AR 40-400

also apply.)

a. Law enforcement agencies will (according to chap. 4 of this regulation, AR 190-45, and AR 195-2)—

(1) Advise the DASEB (or other proper HQDA adjudicating agency), upon request, when unfavorable information provided for criminal justice action exists on an individual.

(2) Provide file copies (or extracts thereof) to these requestors, as appropriate.

(3) Insure that the results of adjudicating agency decision relative to information provided are attached to the file report.

b. Commander, US Army Central Personnel Security Clearance Facility (CCF) will (under chap. 3 of this regulation and AR 604-5)—

(1) Advise the DASEB (or other proper HQDA adjudicating agency) regarding unfavorable information or cases of denial or revocation of security clearance involving senior enlisted (E7 or above) or commissioned or warrant officer personnel.

(2) Provide file copies or information to major commanders, the DASEB, or other HQDA adjudicating agencies when requested. Files may be requested under AR 381-45.

(3) Provide file copies (or extracts thereof) on all cases of denial or revocation of security clearances involving senior enlisted (E7 or above) and commissioned or warrant officer personnel to the proper personnel management agency at MILPERCEN.

(4) Insure that unfavorable information received after review by an adjudicating agency is identifiable for later reviews.

CHAPTER 6

ORGANIZATION AND PROCEDURES OF THE DASEB

6-1. Board membership and voting procedures.

a. The DASEB will consist of commissioned officers in the rank of colonel or lieutenant colonel (promotable). The board membership will include an enlisted member when considering cases involving enlisted personnel. A quorum will be not less than three active members for each case considered. Determination and recommendations will be by majority vote.

b. Voting members on any case will be senior in rank to any person whose case is being reviewed and evaluated. No DASEB member will vote on a case on which he was personally involved or in which he knowingly has any bias for or against any of the parties concerned.

6-2. Adverse suitability information. *a.* The DASEB is authorized direct communication with all commanders, agencies, and individuals. In general, cases will be referred to the DASEB only when resolution of adverse suitability information is not practicable under provisions of other directives and guidance.

b. The DASEB may find that adverse suitability information can be best resolved by returning the case to the chain of command. In such cases, the DASEB will make a proper recommendation to the DCSPER.

6-3. DASEB review of case records. The

DASEB will review the records of each case referred to the board. It may consider other unfavorable information previously recorded in the OMPF. Such consideration is proper if the information indicates a recurrent pattern of aberrant behavior. When the board concludes tentatively that specific unfavorable information should be made a part of the performance portion of the OMPF, a case summary of the information will be prepared and sent to the person concerned by registered mail for comment, explanation, or rebuttal. The person's reply will then be evaluated and the board will make one of the following determinations:

a. The unfavorable information (expunged of any portion adequately refuted or explained) should be made a part of the performance portion of the person's OMPF for consideration in personnel action decisions; or, separation or elimination action should be started under proper regulations. The DASEB can only make a recommendation about the filing of unfavorable information in the OMPF or about separation or elimination. The DCSPER is the decision authority for filing the unfavorable information in the OMPF. Action on separation or elimination must be started by the commander or proper personnel management official.

b. The unfavorable information being considered will not be made a part of the person's OMPF.

CHAPTER 7

APPEALS

7-1. Removal of unfavorable information from OMPF. The DASEB has been set up as the appeal authority for matters of unfavorable information entered in the performance portion of the OMPF under this regulation. This chapter sets forth policies and procedures whereby a person may appeal for removal of unfavorable information from his OMPF.

7-2. Policies. *a.* Once an official document having unfavorable information is included in an official personnel file, the person concerned must prove that the document is unjust or untrue, in part or in whole, and therefore should be removed from the record or amended. Any person may appeal the inclusion of a document placed in his file under the provisions of this regulation. The person must submit substantive evidence to support his claim that it is unjust or untrue. Appeals which merely allege an injustice or error are not acceptable and will not be considered as valid appeals.

b. In addition to *a* above, administrative letters of reprimand, admonition, or censure may be appealed based on the letter having served its intended purpose, or of justice having been served.

(1) Removal of such letters from the OMPF because "justice or the letter's intended purpose has been served" will not normally be a basis for standby advisory board (STAB) consideration. The DCSPER has the decision authority regarding STAB.

(2) Letters removed from the OMPF under (1) above will be filed in the restricted portion of the OMPF.

c. An appeal must be filed within 3 years after knowledge of the alleged error or injustice. Requests for exception must be justified.

d. An appeal must be in writing. No appellant is authorized to appear in person before the DASEB.

e. An officer who directed the filing of unfavorable information in the OMPF may request its revision, amendment, or removal if later investigation determines it was untrue or unjust, in part or in whole.

f. Appeals for removal of Article 15's from the OMPF are not covered by this regulation. Such appeals should be submitted under AR 27-10.

7-3. Processing appeals—OMPF. *a. Active Army personnel.*

(1) Appeals (in military letter format) should be prepared and sent direct to the President, DA Suitability Evaluation Board (HQDA(DAPE-MPC-E) WASH, DC 20310).

(2) The DASEB will review and evaluate the evidence submitted. It will also, as appropriate, provide a proper recommendation to the DCSPER regarding approval or disapproval of the appeal.

b. Reserve Component personnel.

(1) Appeals submitted by USAR officer and enlisted personnel not on active duty are normally processed through the Commander, Reserve Components Personnel and Administration Center (CDR, RCPAC). CDR, RCPAC will refer the appeal through the Office of the Chief, Army Reserve (DAAR-PE) to the DCSPER (ATTN: DAPE-MPC-E) with a proper recommendation. The DASEB will then take action on the appeal.

(2) Appeals submitted by Army National Guard officers and enlisted personnel not on active duty will be processed through the proper State Adjutant General and the Chief, National Guard Bureau to the DCSPER (ATTN: DAPE-MPC-E) for proper action.

7-4. Processing appeals—MPRJ. Appeals to remove letters of reprimand, admonition, or censure from the MPRJ will not be sent to the DASEB. Authority to remove such letters from the MPRJ before the specific period designated in the letter ends is vested in the following:

a. The officer having general courts-martial jurisdiction over the person concerned (Active Army personnel) or the CDR, RCPAC (Reserve Component personnel not on active duty and retired Army personnel whose official personnel files are kept by RCPAC), and the State Adjutant General for ARNG personnel not on active duty.

b. The commander or supervisor who first di-

rected that the letter be filed in the MPRJ or a higher level commander or supervisor of the chain of command in which the letter was issued.

7-5. Amendments rights. This regulation does not limit or restrict a person's right to request amendment of his records under the Privacy Act and AR 340-21. Neither does it limit or restrict the authority of the DASEB to act as an Access and Amendment Refusal Authority under AR 340-21.

7-6. Correction of military records. AR 15-185 contains policy and procedures for applying to the Army Board for Correction of Military Records (ABCMR) and for correcting military records by the Secretary of the Army. Applications should be sent to the ABCMR to correct an error or remove an injustice only after all means of administrative appeal have been exhausted. This includes appeal action under this chapter.

CHAPTER 8

PROCESSING UNFAVORABLE INFORMATION CASES

8-1. Procedures. *a.* Except as otherwise provided in this regulation, the development of procedures for referring cases to suitability evaluation boards is a function of command. In general, cases will be referred only when unfavorable information cannot be resolved under the provisions of other directives.

b. When a case has been resolved without referral to a suitability evaluation board, the commander or head of the DA agency responsible for the personnel action will outline the details of the action in a memorandum for record. This memo will be sent, as appropriate, to—

(1) Commander, US Army Central Security Clearance Facility, ATTN: PCCF-P-C, Fort Meade, MD 20755.

(2) Commander, US Army Criminal Investigation Command, ATTN: CICR-CR, 2301 Chesapeake Avenue, Baltimore, MD 21222.

c. Suitability evaluation boards will make independent evaluations of all relevant information. More information, including medical and legal evaluations, will be obtained as required.

d. Boards will be given information and help to allow them to make detailed and objective evaluations. Prior decisions made by commanders, courts-martial, elimination boards, or other authorities will not relieve the boards of responsibility to proceed in an impartial and independent manner. Consideration will be given to double jeopardy limitations. (See para 5-4, AR 635-100, and para 1-19b,

AR 635-200.)

e. AR 15-6 does not apply to suitability evaluation board proceedings. To insure protection of individual rights, each board member must be senior in rank to the person being evaluated. Also, the person must be given the chance to review the evidence against him and to submit a written rebuttal for the board's consideration before any adverse finding or recommendation.

8-2. Requirement for documentation. Suitability evaluation boards will document their findings, conclusions, and recommendations. A determination of "no bar" to favorable personnel actions will be placed only in the file having the unfavorable information and the board's record file. This also applies to determination that the filing of a case summary of unfavorable information in the OMPF is unwarranted. A "no bar" determination does not preclude future reconsideration if more facts or unfavorable information, not considered by the board before, become available at a later date. Other determinations will be filed in official personnel files according to governing regulations.

8-3. ARNG and USAR personnel not on extended active duty. Coordination with the Chief, National Guard Bureau or the Chief, Army Reserve will be accomplished before making adverse determinations about ARNG and USAR personnel not on extended active duty.

APPENDIX RELATED PUBLICATIONS

Army Regulations

15-6	Procedures for Investigating Officers and Boards of Officers
15-185	Army Board for Correction of Military Records
27-10	Military Justice
40-66	Medical Record and Quality Assurance Administration
40-400	Patient Administration
135-175	Separation of Officers
135-178	Separation of Enlisted Personnel
190-45	Records and Forms
195-2	Criminal Investigation Activities
195-5	Evidence Procedures
195-6	Department of the Army Polygraph Activities
340-17	Release of Information and Records from Army Files
340-21	The Army Privacy Program
381-20	US Army Counterintelligence (CI) Activities
381-45	Investigative Records Repository (IRR)
600-31	Suspension of Favorable Personnel Actions for Military Personnel in National Security Cases and Other Investigations or Proceedings
600-37	Unfavorable Information
604-5	Clearance of Personnel for Access to Classified Defense Information and Material
604-10	Military Personnel Security Program
623-105	Officer Evaluation Reporting System
623-205	Enlisted Evaluation Reporting System
635-100	Officer Personnel
635-120	Officer Resignations and Discharges
635-200	Enlisted Personnel
640-10	Individual Military Personnel Records



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The proponent agency of this regulation is the Office of the Deputy Chief of Staff for Personnel. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) direct to HQDA(DAPE-MPO-C) WASH DC 20310.

By Order of the Secretary of the Army:

Official:

J. C. PENNINGTON
Major General, United States Army
The Adjutant General

E. C. MEYER
General, United States Army
Chief of Staff

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