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*AR 600-37

ARMY REGULATION
No. 600-37

HEADQUARTERS
DEPARTMENT OF THE ARMY
WASHINGTON, DC, 18 May 1977

**PERSONNEL GENERAL
UNFAVORABLE INFORMATION**

Effective 1 July 1977

This regulation updates the policies and procedures for resolution of unfavorable information. Local limited supplementation of this regulation is permitted, but is not required. If supplements are issued, Army Staff 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.

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*This regulation supersedes AR 600-37, 16 October 1972 and DA message DAPE-MPO-C 131310Z Jun 74, subject: Change to AR 600-37, Unfavorable Information.

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CHAPTER 1

GENERAL

1-1. Purpose. This regulation establishes policies and procedures—

a. For the resolution of unfavorable information.

b. To ensure that unsupported or unresolved unfavorable information, which may prejudice the individual's reputation or future in the military service, is not filed in an individual's official personnel files (chap. 2).

1-2. Applicability. This regulation applies to the resolution of unfavorable information concerning all active, inactive, and retired Army personnel irrespective of component.

1-3. Objectives. Objectives are to—

a. Apply fair and just standards to all military personnel.

b. Protect the rights of individual member of the Army, and, at the same time, enable the Army to consider all available information when selecting individuals for positions of leadership, trust, and responsibility.

c. Provide safeguards from adverse personnel action based on unsubstantiated allegations or mistaken identity.

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

e. Ensure that individuals of questionable moral character are not continued in the service or elevated to positions of leadership and responsibility.

1-4. Explanation of terms. *a. Unfavorable information.* Any credible derogatory information that may reflect unfavorably on an individual's character, integrity, trustworthiness, and reliability.

b. Favorable personnel action. Any personnel management or career management decision that enhances the individual's status or position. Included are promotions, Regular Army appointments, selection for schooling, entry or continuation on active duty, awards, decorations,

commendations, and sometimes reassignment, retirement, separation, or release from active duty. Although the granting of security clearance is a "favorable personnel action" with far-reaching affects upon the career of an individual, it is not governed by this regulation (see AR 604-5 and AR 604-10).

c. Official personnel files: The Official Military Personnel File (OMPF), Career Management Individual File (CMIF) and the Military Personnel Records Jacket (MPRJ). Reports, forms, and records (in documents or data banks) that are maintained by the Army for consideration when making personnel management decisions affecting the individual.

d. Intelligence, law enforcement, and other investigative files. Reports, dossiers, and case materials (in documents or data banks) that are the property of intelligence, law enforcement or other investigative agencies. Examples are files of the US Army Investigative Records Repository, files of the Crime Records Repository, files pertaining to investigations conducted by officers exercising general courts-martial jurisdiction, and files of inspectors general at all echelons.

e. Crime records. CID Reports of Investigation, Military Police Reports, and other reports that are maintained by, or the property of the US Army Criminal Investigation Command. Examples are the CID and MP reports maintained at the US Army Criminal Investigation Command, Crime Records Directorate.

f. Major commands. In addition to the designated major commands, separate Department of the Army agencies and activities, CONUS armies, United States Army Recruiting Command, and Headquarters, DA 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. Policies. *a.* Favorable personnel decisions will be based on review of official personnel files and the knowledge and best judgments of the commander, board, or other responsible authority. Both favorable and unfavorable information regarding the individual will be considered. Performance and potential will be assessed based on a review of all pertinent records.

b. Unfavorable information will not be filed in an official personnel file without the knowledge of the affected individual, and an opportunity being afforded him/her to either make a written statement in reply to the unfavorable information, or to decline, in writing, to make such a statement. (Exceptions are contained in para 2-3.) Initiating officers should fully substantiate and document allegations. 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 individual concerned in accordance with AR 340-21.

c. Personnel decisions which may result in the selection of individuals for positions of public trust and responsibility or vesting such individuals with authority over others should be based upon a thorough review of the records of such individuals—including appraisal of both favorable and credible unfavorable information which may be available. The Army selects individuals for promotion or appointment to such positions on a competitive basis and only the best qualified should be promoted or appointed.

2-2. Unfavorable information that should be filed in official personnel files. Indications of substandard leadership ability, promotion potential, morals, and integrity must be identified early and reflected 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 efficiency portion of the Official Military Personnel File (OMPF) without further referral to the individual.

a. Records of courts-martial, and courts-martial orders, and record of nonjudicial punishment under Article 15, UCMJ. (See AR 27-10.)

b. Proceedings of boards of officers, provided that it is clearly indicated that the individual concerned has been given an opportunity to present evidence or cross-examine witnesses in his/her own behalf.

c. Completed investigative reports, including criminal investigation and inspector general reports, or duly authenticated extracts thereof which have resulted in elimination or disciplinary action against the individual concerned. When inclusion of the entire report or an extract of the report is not practicable, the investigative reports will be referenced.

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

e. Civilian convictional record data which reflects both arrests and convictions, not to include minor traffic convictions.

f. Officer and enlisted evaluation reports. Filing of evaluation instruments in official personnel files will be governed by AR 600-200, AR 623-1, and AR 623-105.

g. Other unfavorable information of which the individual concerned had prior official knowledge as prescribed by paragraph 2-6 and an adequate opportunity to refute. A 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 decision makers at Headquarters, Department of the Army. (Applicable to the career management individual file only.)

2-4. Filing of nonpunitive administrative letters of reprimand, admonition, or censure (as outlined in para 128c, MCM, 1969 (Rev.) in Official Military Files. *a.* Any commander, supervisor, officer exercising general court-martial jurisdiction over the individual concerned, or general officer senior to the individual concerned, may direct the filing of such letters in the MPRJ after referral to the individual in accordance with paragraph 2-6. Each letter will contain a statement regarding the length of time the correspondence will remain in

the MPRJ. Only an officer exercising general court-martial jurisdiction over the individual may direct removal from the MPRJ prior to expiration of the designated period.

b. Any letter in the nature of an administrative reprimand, admonition, or censure, not imposed by an officer authorized to direct filing in the OMPF (see *c* below), will be reviewed by a general officer in the chain of command for the purpose of determining whether the letter should be filed in the individual's OMPF.

c. A letter may be filed in the OMPF maintained by the Cdr, MILPERCEN, or the Cdr, USAERC upon the specific direction of any general officer senior to the individual concerned or by an officer exercising general court-martial jurisdiction over the individual concerned. The direction for filing in the OMPF will be contained in the document itself, or in an indorsement or addendum thereto. A letter designated for inclusion in an individual's OMPF will—

(1) Be signed by or forwarded under the cover of signature of, an officer authorized to direct such filing;

(2) Contain a statement indicating that it has been imposed merely as an administrative measure and not as punishment under Article 15, UCMJ;

(3) Be referred to the individual for comment in accordance with paragraph 2-6. The referral will include reference to the intended filing of the letter. Statements furnished by the individual will be reviewed by the officer intending to direct filing in the OMPF, and will be attached to the basic letter should filing in the OMPF be finally directed.

(4) Be forwarded for inclusion in the efficiency portion of the OMPF only after due consideration of the circumstances and alternative nonpunitive measures. It is emphasized that it is not intended that minor behavior infractions or honest mistakes chargeable to sincere but misguided efforts be permanently recorded in an individual's OMPF. Once placed in the OMPF, such correspondence may be removed only through the appeal process (see chap. 6).

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

(1) Where the individual to be reprimanded leaves the chain of command or supervision after

a commander or supervisor has initially indicated his intent to impose a reprimand, the action may be processed to completion in that chain of command.

(2) Where the reprimanding official leaves the chain of command or supervision after indicating his intent to impose a reprimand, his successor may complete appropriate action on the reprimand. In such cases, the successor should thoroughly familiarize himself with relevant information concerning the proposed reprimand.

(3) Where misconduct warranting a reprimand is discovered by a former commander or supervisor of the individual responsible, that official may:

(a) forward pertinent information to the individual's current commander for appropriate action;

(b) Forward pertinent information to the appropriate career branch officials for appropriate action (Heads of HQDA Staff agencies and their superiors maintain authority to impose administrative reprimands against present or former members of their agency for misconduct committed by active duty service members).

Officials should give due consideration to the timeliness and relevance of the adverse information before taking administrative action at the subsequent date.

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

2-5. Anonymous communications. Anonymous communications will not be filed in an individual's MPRJ, OMPF, and CMIF unless after appropriate investigation or inquiry, they are found to be true, relevant, and fully substantiated or supported and, absent exemption under paragraph 2-3, paragraph 2-6 of this regulation is complied with.

2-6. Referral of information. *a.* Except as specifically provided in paragraph 2-3, unfavorable information will be referred to the individual concerned for information and acknowledgement of his/her rebuttal opportunity in generally the following form:

(1) "I have read and understand the allegations made and submit the following statement in my behalf"

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(2) "I have read and understand the allegations and elect not to make a statement."

b. In the event an individual refuses to acknowledge the referral of unfavorable information, a statement will be prepared by the individual's commanding officer in generally the following form: "Individual (name) has been shown the

allegations on (date) and refuses to acknowledge receipt by signature."

2-7. Resolution of unfavorable information in personnel files. Chapters 5, 6, and 7 outline the responsibilities and procedures for resolving unfavorable information in personnel files.

CHAPTER 3

UNFAVORABLE INFORMATION IN INTELLIGENCE FILES

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

3-2. Security information. Derogatory information within the purview of paragraph 2-4, AR 604-10 (concerning loyalty and subversion), will be processed as prescribed by that regulation.

3-3. Security clearance. In taking action under this regulation, commanders will ensure that security clearances are neither revoked nor denied in lieu of action under other regulations, or the Uniform Code of Military Justice, or other criminal justice disposition. Denial or revocation of a security clearance will not be used as a punishment or disciplinary measure. Denial or revocation of personnel security clearances will be accomplished pursuant to the provisions of AR 604-5.

3-4. Resolution of unfavorable information in intelligence files. a. General. When a commander becomes aware of unfavorable information derived from intelligence files and security investigations, he/she will take one or more of the following actions:

(1) Suspend or deny access to classified information under the provisions of AR 604-5, and, if necessary, initiate investigation under the provisions of AR 381-20 or other appropriate directives to gain complete facts in the case.

(2) Deny or revoke the individual's personnel security clearance pursuant to AR 604-5 or AR 604-10. When a security clearance has been denied or revoked on an incumbent of a position of leadership, trust and responsibility, and elimination action has not been accomplished, that fact will require referral of the case to either the Command Suitability Evaluation Board, or the Department of the Army Suitability Evaluation Board, for determination as to what records will be made a part of the individual's official personnel files.

(3) Initiate elimination action under the provisions of AR 135-175, AR 135-178, AR 604-10, AR 635-100, AR 635-120, AR 635-200, or action under the uniform code of military justice.

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

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

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

(1) Interview under oath, giving the individual a full opportunity to rebut the unfavorable information which can be made available to him/her under current disclosure criteria (AR 381-20). Interviews should only be conducted by trained interviewer or interrogator.

(2) Use of additional investigative resources available to the commander such as military police, Inspector General, Criminal Investigation Command, and Military Intelligence agencies, who may conduct an investigation of a matter within their assigned area of responsibility.

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

3-5. Access to intelligence files. AR 340-21, AR 381-45, and AR 381-46 set forth procedures for gaining access to intelligence files.

3-6. Use of intelligence files in personnel actions. a. Intelligence files are not a part of the military personnel records system as prescribed by AR 640-10. However, in order to ensure that the interests of the Army are protected when selecting an individual for positions of leadership, trust, and responsibility, a screening system has been established to ensure that significant, verified information is correlated with information in personnel files, and, if appropriate, is made available to personnel decision makers.

b. It is recognized that current intelligence files may contain unevaluated and dormant information of a suitability nature which for the most part, the individual concerned has had no opportunity to comment upon. Intelligence files also contain sensitive information which, if disclosed prematurely, could jeopardize current investiga-

tions or sources of information. For these reasons, intelligence files are not furnished to promotion selection boards or to other personnel decision-makers except the following:

(1) The suitability evaluation boards outlined in chapters 5 and 6 (These boards do not make personnel decisions per se, but merely determine what information will be furnished to personnel decisionmakers.)

(2) Personnel managers in highly intensified personnel management areas as specifically 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 staff agencies, and boards of officers referring to intelligence files, subsequent to the action in b(1) or (2) above, prior to taking personnel action will, after review of the unfavorable information in the file, take one of the following actions:

(1) When the information does not constitute a bar to the contemplated personnel action, a written statement will be prepared to the effect that the commander, staff agency head, or board of officers had determined that the unfavorable information contained in the intelligence file does not preclude the specific personnel action under consideration (the specific personnel action under consideration will be cited). This statement will be included as a permanent part of the intelligence file. Since the statement is based solely on the information reviewed at that particular time, care will be exercised to ensure that no subsequent additions to the intelligence file 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 contained in the intelligence file when new derogatory information is developed or another personnel action is under consideration.

(2) When the decisionmaking authority tentatively concludes that the unfavorable infor-

mation, if not satisfactorily refuted or explained, would constitute a bar to the personnel action under consideration, the individual will be offered an opportunity to refute or explain the derogatory information, unless an exception has been authorized as prescribed in d below. A final determination will be made only after consideration of the explanation offered by the individual. Additional information obtained from further investigation may be considered. When a final conclusion has been reached, the responsible official will either:

(a) Make unfavorable determination regarding the personnel action under consideration, notify individual of determination, and place information copy of letter of determination in individual's file. (Elimination, disciplinary action, admonition, or referral to the appropriate suitability board will be considered if information contained in the files is significant enough to warrant an unfavorable determination), or

(b) Determine that the unfavorable information does not now constitute a bar to the personnel action under consideration. In these cases a statement similar to that prescribed in (1) above will be executed and attached to the intelligence file.

d. Authority to grant exceptions to rebuttal procedures as prescribed in paragraph 2-6 is limited to the Under Secretary of the Army or his Special Assistant.

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

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

CHAPTER 4

UNFAVORABLE INFORMATION IN ARMY LAW ENFORCEMENT FILES

4-1. **General.** Legal or regulatory parameters, such as 5 USC 552a, paragraphs 5-2 and 5-4, AR 340-21, AR 190-45, AR 195-5, and AR 195-6, govern the filing and use of unfavorable material concerning individuals found in military police or USACIDC crime records. Policy concerning law enforcement collection and filing of information, supporting the execution of criminal laws, dictates practices involving the filing of unfavorable personal information, which may be limited to only criminal-justice and crime prevention purposes. Law enforcement information may or may not resolve other unfavorable information. If resolution remains in question after criminal-justice disposition, this chapter prescribes provisions to resolve such matters and to prevent undue credence being given questionable unfavorable information.

4-2. **Disposition of information contained 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:

(a) Initiation of court-martial action;

(b) Initiation of action under the provisions of Article 15, Uniform Code of Military Justice, or other administrative action, as appropriate.

(c) Declination to further consider criminal-justice proceedings.

(2) *Ancillary action.* Consideration of action attendant or subsequent to criminal-justice action, which may result in action under one or more of the below listed categories. These actions are not considered to replace criminal-justice disposition, but are appropriately initiated independent of criminal-justice disposition.

(a) Initiation of action to suspend favorable personnel actions reported in accordance with the provisions of AR 600-31;

(b) Initiation of elimination action in accordance with the provisions of AR 135-175, AR

135-178, AR 604-10, AR 635-100, AR 635-120, AR 635-200 and AR 635-206;

(c) Initiation of action to suspend or deny access to classified information under the provisions of AR 604-5; and if necessary, initiation of investigation under the provisions of AR 381-20, or other appropriate directives to obtain additional facts in the case.

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

(1) Initiation of elimination action in accordance with the provisions of AR 135-175, AR 135-178, AR 604-10, AR 635-100, AR 635-120, AR 635-200 and AR 635-206.

(2) Initiation of action to suspend or deny access to classified information under the provisions of AR 604-5; and if necessary, initiation of an investigation in accordance with the provisions of AR 381-20, or other appropriate directives to obtain additional facts in the case.

(3) Initiation of action to deny or revoke the individual's personnel security clearance pursuant to AR 604-5 or AR 604-10.

(4) Favorable closing of the case and preparation of a statement (for disposition in accordance with para 4-3*d*(1)) that information developed to date does not constitute a bar to the personnel action under consideration.

4-3. **Access to law enforcement investigative files.** *a.* AR 190-45, AR 195-2, AR 195-6, 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 assure that commanders and supervisors effect appropriate criminal-justice decisions in the best interests of all concerned, information from criminal investigative and military police files is exchanged between USACIDC/military police elements and the commanders whom they support.

(2) AR 190-45, AR 195-2, and AR 340-21 prescribe procedures to be followed to preclude the release of unfavorable information for other than criminal-justice purposes.

(3) These safeguards do not preclude appropriate dissemination of information contained in law enforcement files, when that information provides indications that an offense is imminent and commission of that offense will affect national security or the security of US Army personnel, activities or installations.

c. Release of information concerning an ongoing Army law enforcement investigation requires careful consideration with respect to the particular need for the information requested, the necessity to avoid dissemination of unsubstantiated allegations, requirements to protect a suspect's legal rights, and maintenance of the integrity and effectiveness of the investigation. The provisions of AR 190-45 and AR 195-2 apply in this regard. Criminal record data related to uses described by paragraph 4-2a(2) are not provided Army selection boards or other personnel decision makers prior to initial determination of guilt based on criminal-justice disposition except:

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

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

d. Commanders, heads of 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 constitute a bar to the contemplated personnel action, prepare a written statement to the effect that the commander, staff agency head, or board of officers has determined that the unfavorable information contained in the files does not preclude the specific personnel action under consideration (the specific personnel action under consideration will be cited). This statement will be forwarded to the US Army Crime Records Directorate, 2301 Chesapeake Avenue, Baltimore, MD 21222 to be retained as a permanent

document in the criminal investigative case/military police files;

(2) When the decisionmaking authority tentatively concludes that the unfavorable information, if not satisfactorily refuted or explained, would constitute a bar to the personnel action under consideration, the individual will be offered an opportunity to refute or explain the derogatory information, unless an exception has been authorized as prescribed in e below. A final determination will be made only after the explanation offered by the individual has been considered. Additional information obtained from further investigation may be considered. When a final determination has been reached, the responsible official will either:

(a) Make unfavorable determination regarding the personnel action under consideration, notify the individual of such determination and place information copy of letter of determination in individual's file. Elimination, disciplinary action, admonition, or referral to the appropriate suitability board will be considered if information contained in the file is significant enough to warrant such, or;

(b) Determine that the unfavorable information does not now constitute a bar to the personnel action under consideration. In these cases a statement similar to that prescribed in (1) above will be executed and attached to the criminal investigative case/military police files.

e. Authority to grant exceptions to rebuttal procedures, as prescribed in paragraph 2-6, is limited to the Under Secretary of the Army or his Special Assistant.

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

(2) When such an exception is requested by the responsible official(s), the pertinent facts will be forwarded as outlined in AR 340-21 to the Commander, US Army Criminal Investigation Command, ATTN: CIJA, 5611 Columbia Pike, Falls Church, VA 22041, for CID records and information; or the Deputy Chief of Staff for Personnel, ATTN: DAPE-HRE, Washington, DC 20310 for military police records and information.

CHAPTER 5

RESPONSIBILITIES

5-1. Major commanders. *a.* Major commanders may, by supplementing this regulation, establish suitability evaluation boards and prescribe procedures to resolve cases arising within their commands. Operation of such boards will be consistent with the policies and procedures prescribed herein and by other applicable directives.

b. Major commanders who establish suitability evaluation boards, will make one of the following determinations after receipt of the report of such boards:

(1) That certain specific unfavorable information is or is not a bar to a favorable personnel action under consideration. A written statement similar to that prescribed in paragraph 3-6c(1) or 4-3d(1) is required.

(2) That the unfavorable information should be made a part of the individual's intelligence or law enforcement file for future consideration.

(3) That the unfavorable information should be noted in the individual's official personnel files. Such action must be directed over the signature of a general officer.

(4) That all available information concerning the case be transmitted to the immediate commander of the service member concerned for preliminary inquiry and report, including, any action deemed appropriate under the Uniform Code of Military Justice.

(5) That separation or elimination action should be initiated.

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

(1) It is determined that unfavorable information concerning an individual cannot be practically 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. Department of the Army Suitability Evaluation Board (DASEB). DASEB is established as a continuing board, under the Deputy Chief of

Staff for Personnel. The DASEB will review the records of each case referred to the board. When the Board concludes tentatively that specific unfavorable information should be made a part of the individual's Official Military Personnel File (OMPF), a case summary of the information will be prepared and forwarded to the individual by registered mail for comment, explanation, and/or rebuttal. The individual's reply will then be evaluated and the board will make one of the following determinations:

a. That certain unfavorable information will be made part of, or excluded from, the efficiency portion of the individual's OMPF for consideration in personnel action decisions and/or that separation or elimination action should be initiated under appropriate regulations. The DASEB can only make a recommendation regarding separation or elimination. The actual action regarding separation or elimination must be initiated by the commander or appropriate personnel management official.

b. That the information under consideration is not a bar to favorable personnel actions.

5-3. The Deputy Chief of Staff for Personnel (DCSPER). DCSPER will—

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

b. Prescribe policies governing operations of the DASEB.

c. Approve, disapprove, refer to higher authority, and/or direct appropriate action on all adverse DASEB determinations.

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

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

a. Ensure that the US Army Intelligence Command provides necessary assistance to the DASEB by making files available as required.

b. Prescribe procedures for release of information from intelligence files to commanders, the DASEB, and to other suitability boards, if established.

5-5. Department of the Army Staff agencies and commanders responsible for personnel actions. These agencies and commanders will—

a. Continuously screen official personnel records for suitability information and refer cases to the DASEB which they are unable to resolve.

b. Query, when deemed necessary, the holders of intelligence and investigative files through established channels concerning the existence of unfavorable information as discussed in chapters 3 and 4 respectively prior to taking favorable personnel actions involving promotion or appointment to, or continuation in, positions of leadership, trust, and responsibility, and refer cases containing significant derogatory information to the DASEB for resolution. (This is not applicable in the determination of assignments by the HQDA career management divisions in filling worldwide requirements.)

c. When referring cases to the DASEB, provide recommendation for disposition from among those listed in paragraph 5-1, if appropriate.

d. Take necessary action to execute the decision of the DASEB or of the Deputy Chief of Staff for Personnel, on cases that have been reviewed by, or referred to them by higher authority.

5-6. Agencies responsible for release of information from intelligence and investigative files. These agencies will act in accordance with the procedures governing the use of investigative records outlined in this regulation, AR 190-45, AR 195-2, AR 381-45, AR 381-46, AR 40-42 and AR 40-400.

a. Intelligence agencies will, in accordance with chapter 3—

(1) Continuously screen files for information which should be made available to decisionmakers when considering individuals for positions of leadership, trust, and responsibility.

(2) Submit to the DASEB for consideration all unfavorable information that exists on enlisted personnel, officers and warrant officers.

(3) Advise the appropriate personnel management agency or commander of the existence of unfavorable information on individuals in, or being considered for, positions of leadership, trust, and responsibility.

(4) Provide file copies or information to major commanders, the DASEB, or other HQDA adjudicating agencies when requested. Files may be requested in accordance with AR 381-45 and AR 381-46.

(5) Ensure that unfavorable information received after review by an adjudicating agency is identifiable for subsequent reviews, after any initial determination.

b. Law enforcement agencies will, in accordance with chapter 4 of this regulation, AR 190-45 and AR 195-2:

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

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

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

CHAPTER 6

APPEALS

6-1. Processing appeals. Authority to revise, amend, or eliminate from the record, those case summaries, reports, or other matters of unfavorable information in the OMPF, which are determined to be unjust or untrue, in whole or in part, is delegated to the Deputy Chief of Staff for Personnel (DCSPER), Headquarters, Department of the Army. To assist in carrying out this responsibility, the DCSPER has established the DA Suitability Evaluation Board (DASEB) as the appeal authority for matters of adverse information entered in the OMPF under the provisions of this regulation. The DASEB is under the direct supervision of the Director of Military Personnel Management (DMPM), ODCSPER. The DASEB is responsible for—

a. The review and evaluation of the validity of items of unfavorable information included in OMPF's.

b. The revision, amendment, or elimination from official personnel records of those case summaries or other documents containing adverse information or reports that are determined to be unjust or untrue, in whole or in part.

6-2. Organization and procedures of the DASEB.

a. The DASEB operates under the direct supervision of the Director of Military Personnel Management (DMPM), ODCSPER, Headquarters, DA.

b. 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.

c. The DASEB will consist of senior commissioned officers. A quorum will be not less than three active members for each case considered. Determination and recommendations will be by majority vote.

d. Voting members on any case will be senior in the grade serving to any individual 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.

6-3. Reserve personnel appeals. Appeals submitted by Reserve officers and enlisted personnel not on active duty are normally processed through the Commanding General, US Army Reserve Components Personnel and Administration Center (RCPAC) and referred to the DCSPER by the CG, RCPAC, with appropriate recommendation. DCSPER will refer such cases to DASEB for evaluation.

6-4. Individual responsibilities. Once an official document containing adverse information is accepted by HQDA for inclusion in official personnel files, the individual has the burden of proving that the document is unjust or untrue, in part or in whole, and therefore should be removed from the record or amended. Any individual may appeal the inclusion of a document placed in his/her file under the provisions of this regulation. However, an individual appealing inclusion of such a document in his/her file must submit substantive evidence to support his/her claim that it is unjust or untrue. An appeal which merely alleges an injustice or error is not acceptable and will not be considered as a valid appeal.

a. An appeal must be filed within 3 years after knowledge of the alleged error or injustice.

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

c. Appeals should be prepared in the form of a military letter and submitted directly to President, DA Suitability Evaluation Board (HQDA (DAPE-MPC-E) WASH DC 20310).

d. Appeals for removal of Article 15's from the official file do not fall within the purview of this regulation. Such appeals should be submitted in accordance with the provisions of AR 27-10.

6-5. Amendment rights. Nothing herein shall be construed to limit or restrict an individual's right to request amendment of his records under the Privacy Act and AR 340-21, or to limit or restrict the authority of the Department of the Army

Suitability Evaluation Board to act as an Access and Amendment Refusal Authority under AR 340-21.

6-6. Correction of military records. AR 15-185 contains policy and procedures for application to the Army Board for Correction of Military Records

(ABCMR) for relief, and for the correction of military records by the Secretary of the Army acting through the ABCMR. Appeals should be submitted to the ABCMR to correct an error or remove an injustice only after all other means of appeal have been exhausted.

CHAPTER 7

PROCEDURES FOR PROCESSING UNFAVORABLE INFORMATION CASES

7-1. Procedures. *a.* Except as otherwise specifically 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 and transmit it to the Commander, US Army Intelligence Agency, ATTN: MIIA-CAR, Fort Meade, MD 20755 or Commander, US Army Criminal Investigation Command, ATTN: CICR-CR, 2301 Chesapeake Avenue, Baltimore, MD 21222 as appropriate.

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

d. Boards will be provided information and assistance to enable them to conduct 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. Due consideration will be given to the double jeopardy limitations

prescribed by paragraph 5-4, AR 635-100 and paragraph 1-13, AR 635-200.

e. The provisions of AR 15-6 do not apply to suitability evaluation board proceedings. To ensure protection of individual rights, each board member must be senior in rank to the individual being evaluated. Additionally, the individual must be afforded the opportunity to review the evidence against him/her and to submit a written rebuttal for consideration by the board prior to any adverse finding or recommendation.

7-2. 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 containing the unfavorable information and the board's record file. A "no bar" determination does not preclude future reconsideration if additional facts or additional unfavorable information, not previously considered by the board, becomes available at a later date. Other determinations will be filed in official personnel files in accordance with governing regulations.

7-3. ARNG and USAR personnel not on active duty. Coordination with the Office of the Chief, National Guard Bureau, or of the Chief, Army Reserve, Department of the Army, will be accomplished prior to making adverse determinations pertaining to ARNG and USAR personnel not on active duty.



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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:

BERNARD W. ROGERS
General, United States Army
Chief of Staff

Official:

PAUL T. SMITH
Major General, United States Army
The Adjutant General

DISTRIBUTION:

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