



**U.S. Department of Justice**  
Civil Division, Federal Programs Branch

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October 19, 2021

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Re: *In re: 3M Combat Arms Earplug Products Liability Litigation*, No. 3:19-md-2885 (N.D. Fl.)

Dear counsel:

I write regarding Plaintiffs' requests in the above-referenced litigation for various government records, and to identify online resources that provide access to such records. In particular, on August 8, 2019, Plaintiffs submitted a *Touhy* request to the Department of Defense ("DoD") seeking various medical and personnel records pertaining to Plaintiffs. Since then, Plaintiffs have periodically provided government counsel with Privacy Act Orders authorizing DoD and related federal agencies to produce records maintained on various individuals that are responsive to the August 8, 2019 *Touhy* request and/or the related request dated June 28, 2019.<sup>1</sup>

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<sup>1</sup> See Privacy Act Orders at ECF Nos. 499, 669, 712, 750, 787, 817, 829, 855, 862, 952, 957, 995, 1030, 1039, 1083, 1112, 1144, 1174, 1216, 1269, 1313, 1366, 1419, 1471, 1514, 1549, 1581, 1617, 1682, 1745, 1760, 1784, 1800, 1821, 1835, 1843, 1847, 1861, 1928, 2172.

The parties have also indicated their intention to seek records relating to large numbers of additional plaintiffs to be identified by the Court through a series of upcoming orders.

Under the Federal Rules of Civil Procedure, the scope of discovery is limited by, *inter alia*, “the parties’ relative access to relevant information[.]” Fed. R. Civ. P. 26(b)(1); *see also* Fed. R. Civ. P. 45(d)(1) (“A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena.”). Many of the records sought by Plaintiffs are already available to them through the websites described herein. Utilizing these resources will allow Plaintiffs convenient access to their records while lessening the burden on the non-party federal agencies.

Accordingly, DoD will defer further action on the August 8, 2019 *Touhy* request (and the related requests associated with the Court’s Privacy Act Orders) until Plaintiffs’ counsel have (1) identified the Plaintiffs, if any, who are unable to access records through the sources described herein and (2) specified the records they could not access. Also, in any future requests to the Government for medical or personnel records, Plaintiffs should state in the request whether they have attempted to access the requested records through sources already available to them and whether they were able to obtain the records from those sources.

Please note that the sources described herein are intended for use by the servicemembers and Veterans themselves and should not be accessed by third parties. Plaintiffs must follow all applicable regulations and rules regarding access to government websites, including restrictions on the sharing of passwords.

### **Medical Records**

Many current and retired servicemembers may access their DoD medical records through the TRICARE Online Patient Portal (“TOL”) at [www.tricareonline.com](http://www.tricareonline.com).<sup>2</sup> TOL is DoD’s online patient-focused portal providing access to online health care information and services. Users may access the website using a premium (level 2) DoD self-service logon, DoD common access card, or Defense Finance Accounting Services myPay credentials.<sup>3</sup> Once the user has logged on, he or she may click “Health Record” to access online health records.

The VA also provides Veterans online access to their medical records through MyHealthVet at <https://www.myhealth.va.gov/mhv-portal-web/home>. There are two ways for Veterans to access the registration page at MyHealthVet: (1) select the green “Register Today Start Here” button, on the landing page, or (2) select the red “REGISTER” button in the member

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<sup>2</sup> Medical records are available through TOL for many current servicemembers as well as certain servicemembers who separated or retired from the Army, Navy, Air Force, or Marine Corps after December 31, 2013, or from the Coast Guard after September 30, 2014.

<sup>3</sup> If a user does not have a premium DoD self-service logon, he or she may register for one at <https://www.dmdc.osd.mil/identitymanagement>. For assistance with a DoD logon, please contact the Defense Manpower Data Center Support Office at (800) 538-9552 or (866) 363-2883 for the hearing impaired.

login box on the right side of the screen.<sup>4</sup> A premium MyHealthVet account (an account that has been identity proofed) is required to access certain medical information on the site. A premium account can be obtained in person at a VA facility or online.<sup>5</sup> Once the Veteran has logged into the MyHealthVet site, he or she can access his or her VA healthcare records using the site's "Blue Button" feature. After logging in, the Veteran should look for the Blue Button icon on the MyHealthVet homepage. Blue Button gives Veterans access to their Veterans Health Administration electronic medical records and the ability to download, save, and/or print the records. The following records are available to Veterans through Blue Button:

- VA Admissions and Discharges
- VA Allergies and Adverse Reactions
- VA Appointments
- VA Labs and Tests
- VA Immunizations
- VA Health Summary
- VA Demographics
- VA Electrocardiogram
- VA Chemistry/Hematology
- VA Microbiology
- VA Notes
- VA Pathology
- VA Cytology
- VA Electron Microscopy
- VA Prescription Refills & Prescription History
- VA Problem List
- VA Radiology
- VA Vitals and Readings
- VA Medical Images
- DoD Military Service Information

For more information about Blue Button, please see the Blue Button user guide.<sup>6</sup>

### **Personnel Records**

DoD also makes certain personnel documents available to current and/or former servicemembers through various online resources. Many current or former servicemembers may access their personnel records through MilConnect<sup>7</sup> using a DoD logon, DoD common access

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<sup>4</sup> Additional instructions for registering are available here: <https://www.myhealth.va.gov/documents/25286/25831/Registration-BxD4bxhG.pdf/840b9104-fcef-43a5-99f3-6f33ce54a396>

<sup>5</sup> Directions for obtaining a premium account are available here: <https://www.myhealth.va.gov/mhv-portal-web/upgrade>

<sup>6</sup> <https://www.myhealth.va.gov/documents/25286/25831/BlueButtonUserGuide-OzNR1OIR.pdf/b0e35dbd-f2dc-445d-be0a-2530681d1a67>

<sup>7</sup> <https://milconnect.dmdc.osd.mil/milconnect/>

card, or Defense Finance Accounting Services myPay credentials.<sup>8</sup> The user may request a copy of his or her Official Military Personnel File (“OMPF”) using the Defense Personnel Records Information Retrieval System (“DPRIS”) in MilConnect. Once logged into the DPRIS system, users should select “Correspondence/Documentation,” and then select “Defense Personnel Records Information.” From that link, the user can select a copy of his or her OMPF under the “Request Personnel File” tab. Users may also view their Military Service History (“MSH”) (including history of military schools attended, military courses completed and military occupations held) and request a Verification of Military Experience and Training (“VMET”) document on the DoDTAP page in MilConnect.<sup>9</sup>

In addition to MilConnect, there are various websites specific to particular branches of the military that host personnel records. In some cases, these websites may contain more current information than available through MilConnect. Active duty Navy servicemembers and Marines can access their OMPF using their common access card at <https://BOL.Navy.mil> (or via <https://mynavyhr.navy.mil>) and <https://sso.tfs.usmc.mil/sso/LoginRequest.do>, respectively.

Active duty members of the Air Force can obtain personnel records, including Enlisted Performance Reports and Officer Performance Reports, through the Air Force Portal<sup>10</sup> by using a common access card or username and password.

Active duty and reserve Army servicemembers can obtain personnel records from the Personnel Electronic Records Management System (“iPERMS”) using their common access card.<sup>11</sup> Another option is to use the U.S. Army Human Resources Command’s My Record Portal, which is accessible to both active and retired servicemembers. From the homepage,<sup>12</sup> the user should click the “Self Service” button under “Services,” then click on the appropriate button (“My Officer Record Brief,” “My eMILPO,” etc.), and enter his or her login and password or use a common access card to view the desired personnel record.

Sincerely,

/s/

Josh Kolsky

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<sup>8</sup> Personnel records are available through MilConnect for servicemembers who served in the Air Force on or after October 1, 2004, in the Marine Corps on or after January 1, 1999, in the Navy on or after January 1, 1995, and in the Army on or after October 1, 2002.

<sup>9</sup> <https://myaccess.dmdc.osd.mil/identitymanagement/authenticate.do?execution=e1s1>

<sup>10</sup> <https://federation.prod.cce.af.mil/pool/sso/authenticate/msg/19?m=GET&r=f&u=https%3A%2F%2Fwww.my.af.mil%2Fgcass-af%2FUSAF%2Fep%2Fhome.do>

<sup>11</sup> <https://www.hrc.army.mil/content/iPERMS%20Access>

<sup>12</sup> <http://www.hrc.army.mil/>

CC: Counsel for 3M