

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

IN RE: 3M COMBAT ARMS
EARPLUG PRODUCTS
LIABILITY LITIGATION

Case No. 3:19md2885

This Document Relates to the Cases
Identified on Exhibit A

Judge M. Casey Rodgers
Magistrate Judge Gary R. Jones

PRIVACY ACT ORDER NO. 1

This matter is before the Court on Plaintiffs' motion for an order authorizing complete disclosure of certain confidential information in the custody, control, or possession of the Department of Defense, Defense Logistics Agency, and the United States Army, Navy, Marine Corps, Air Force, and/or Coast Guard for use in the above-captioned litigation. Disclosure of this information is governed by the Privacy Act, 5 U.S.C. § 552a, which, *inter alia*, allows federal government agencies to release records maintained on individuals "pursuant to the order of a court of competent jurisdiction." *See* 5 U.S.C. § 552a(b)(11). Requests for court orders under § 552a(b)(11) are evaluated by balancing the need for disclosure against any potential harm from disclosure.

Applying this principle to this case, the Court finds that the records sought by Plaintiffs are relevant to the claims and defenses in this litigation, and that any Privacy Act concerns are outweighed by the need for disclosure. More specifically,

the information contained in the records is highly relevant to the issues of causation and damages as it will assist the parties in evaluating whether and when each servicemember began experiencing hearing problems, the extent of any hearing problems, and whether the hearing problems are connected to noise exposure during military service. The privacy concerns are especially minimal here as it is the individual servicemembers themselves who are requesting that these records be disclosed. On balance, the Court finds that disclosure of the records requested is appropriate under 5 U.S.C. § 552a(b)(11).

Accordingly, it is **ORDERED** that:

1. Plaintiffs' motion, ECF No. 496, is **GRANTED**.
2. The Clerk is directed to file and maintain the attached Exhibit A1 **UNDER SEAL**.
3. The Department of Defense, Defense Logistics Agency, and the United States Army, Navy, Marine Corps, Air Force, and Coast Guard are directed to produce all records maintained on the individuals identified in Exhibit A1 that are responsive to Plaintiffs' accompanying *Touhy* request, in unredacted form, to be used solely for the purposes of this litigation and not otherwise.
4. All records obtained from the Department of Defense, Defense Logistics Agency, and the United States Army, Navy, Marine Corps,

Air Force, and Coast Guard pursuant to this Order are hereby designated as “Confidential Information,” as that term is defined in Pretrial Order No. 9, Stipulated Order Governing Confidentiality and Privilege, ECF No. 442. The parties may not further disclose the information contained in the records except as provided in Pretrial Order No. 9.

SO ORDERED, on this 16th day of July, 2019.

M. Casey Rodgers

M. CASEY RODGERS
UNITED STATES DISTRICT JUDGE