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epic.org

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**VIA U.S. Mail (CERTIFIED DELIVERY)**

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**RE: Freedom of Information Act Request**

To Whom It May Concern,

This letter constitutes a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. §552, and is submitted on behalf of the Electronic Privacy Information Center ("EPIC"). EPIC seeks all documents provided to students pursuant to the Armed Services Vocational Aptitude Battery exams administered during the 2007 – 2008 and 2008 – 2009 school years, as well as related records in the agency's possession.

Background

## I. JAMRS Database

The JAMRS database contains personal information about American youth between the ages of 16 and 25, totaling approximately 30 million records.<sup>1</sup> The JAMRS database is funded by the Department of Defense to maximize recruitment efforts. The database contains personal information including, but not limited to: name, date of birth, gender, mailing address, race and ethnicity, telephone number, high school name, graduation date, Grade Point Average, college intent, military interest, field of study, and information collected through the Armed Services Vocational Aptitude Battery (ASVAB) exam.<sup>2</sup> The JAMRS Affiliations webpage stated that the DOD uses JAMRS data to participate in "cooperative and interdependent partnerships" with each branch of the armed services, multiple offices within the US DOD, Selective Service and the ASVAB program.<sup>3</sup>

<sup>1</sup> JAMRS Affiliations, United States Department of Defense, available at <http://web.archive.org/web/20060602120605/http://www.jamrs.org/about/affiliations.php>. (This was available from April 19, 2005 to at least July 9, 2006).

<sup>2</sup> JAMRS, NYCLU Project on Military Recruitment and Students' Rights, available at <http://www.nyclu.org/milrec/jamrs>.

<sup>3</sup> *Id.*

Students' information may be collected for recruitment purposes through the administration of the ASVAB, a test generally categorized as a career resources test. As plainly stated by its name, this test is geared towards determining whether the student is one that would be a prime candidate for military recruitment. According to a 2008 report in the *Philadelphia Inquirer*, thousands of high schools across the nation administer the test, and more than 620,000 students took the test during the 2006-07 school year.<sup>4</sup>

According to the Department of Defense, "the ASVAB Career Exploration Program [is] a tool to help students figure out their strengths and better understand themselves while also motivating them and helping them plan their future."<sup>5</sup> Although the Department of Defense states that the ASVAB test is not specifically targeted towards obtaining student information for military recruitment purposes, the Army's School Recruiting Program Handbook states that the primary purpose of the ASVAB is "to provide the field recruiter with a source of leads of high school seniors and juniors qualified through the ASVAB for enlistment into the Active Army and Army Reserve ... [the ASVAB test printout] identifies the best potential prospects for recruitment that allows recruiters to work smarter."<sup>6</sup> Often, the information provided by students for the purposes of the ASVAB Career Exploration Program is provided to the military for inclusion in the JAMRS database.

The "ASVAB test results contain a student's name, address, telephone number, date of birth, social security number, sex, ethnic group identification, plans after graduation, as well as those areas of academia and extracurricular activities that are of particular interest to the student."<sup>7</sup> After the school has administered the test, school administrators are given eight options regarding the dissemination of the information. The first seven options allow for the release of student information to military recruiters through various methods and at various points in time. Only the eighth option allows the school administration to choose not to share this information with military recruiters. Less than 10 percent of high schools that administer this test nationwide choose this option.<sup>8</sup>

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<sup>4</sup> Hardy, Dan, and Purcell, Dylan, Growing Hesitancy Over a Military Test, THE PHILADELPHIA INQUIRER, (Aug. 6, 2008), available at [http://www.philly.com/inquirer/education/20080806\\_Growing\\_hesitancy\\_over\\_a\\_military\\_test.html?adString=inq.living/education:!category=education;&randomOrd=102708080904&viewAll=y&c=y](http://www.philly.com/inquirer/education/20080806_Growing_hesitancy_over_a_military_test.html?adString=inq.living/education:!category=education;&randomOrd=102708080904&viewAll=y&c=y).

<sup>5</sup> Vittrup, Meghan, Aptitude Test Helps Students Find Strengths, American Forces Press Services: News Articles, (June 26, 2008), available at <http://www.defenselink.mil/news/newsarticle.aspx?id=50333>.

<sup>6</sup> School Recruiting Program Handbook, USAREC Pamphlet 350-13 § 6-2(a)-6-5, (September 1, 2004) available at [http://www.usarec.army.mil/im/formpub/REC\\_PUBS/p350\\_13.pdf](http://www.usarec.army.mil/im/formpub/REC_PUBS/p350_13.pdf); see also STRINGER, SCOTT M. NEW YORK CIVIL LIBERTIES UNION, WE WANT YOU(TH)!: CONFRONTING UNREGULATED MILITARY RECRUITMENT IN NEW YORK CITY PUBLIC SCHOOLS, 11.

<sup>7</sup> 68 Fed.Reg. 65045.

<sup>8</sup> Hardy, Dan, and Purcell, Dylan, Growing Hesitancy Over a Military Test, THE PHILADELPHIA INQUIRER, (Aug. 6, 2008), available at [http://www.philly.com/inquirer/education/20080806\\_Growing\\_hesitancy\\_over\\_a\\_military\\_test.html?adString=inq.living/education:!category=education;&randomOrd=102708080904&viewAll=y&c=y](http://www.philly.com/inquirer/education/20080806_Growing_hesitancy_over_a_military_test.html?adString=inq.living/education:!category=education;&randomOrd=102708080904&viewAll=y&c=y).



Pursuant to military guidelines, school principals control the student information gathered from the ASVAB exam.<sup>9</sup> The principals, not the students, are given control over whether student information obtained through the ASVAB exam is released to the military, again leaving the students with no alternative but to adhere to the decision that the principal makes.<sup>10</sup>

Essentially the ASVAB exam is a school record. Other “career” driven exams would cost the school district money, however, the ASVAB is provided by the DOD free of charge to high schools.<sup>11</sup> As a result, the ASVAB generally is administered in school and during class time.<sup>12</sup> The grades are given directly to the principal rather than to the individual students.

There is a “privacy clause” within the ASVAB test. This clause requires the student’s signature to share the test results with military recruiters. However, students are told that if they do not sign the privacy clause, they will not be entitled to see the results of the exam—an exam that was administered during class time.

A student also may opt-out directly to the Department of Defense so that they are not included in the JAMRS military recruitment program, which uses data gathered from the ASVAB test.<sup>13</sup> According to the Department of Defense website, individuals can access what, if any, information the DOD has obtained about them and then ask to have this information excluded from the JAMRS database. The DOD states that, “individuals, who are 15 1/2 years old or older, or parents or legal guardians acting on behalf of individuals who are between the ages of 15 1/2 and 18 years old, seeking to have their name or the name of their child or ward, as well as other identifying data, removed from this system of records (or removed in the future when such information is obtained)” can write to the DOD so long as the “requests must contain the full name, date of birth, and current address of the individual.”<sup>14</sup> These opt-out requests are honored by the DOD for ten years, assuming the current address of the individual remains the same.<sup>15</sup>

The Department of Defense, which is responsible for the military recruitment that takes place through the ASVAB exams and JAMRS database, is required to comply with the Privacy Act. The Privacy Act, “establishes a code of fair information practices that

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<sup>9</sup> STRINGER, SCOTT M. NEW YORK CIVIL LIBERTIES UNION, WE WANT YOU(TH)!: CONFRONTING UNREGULATED MILITARY RECRUITMENT IN NEW YORK CITY PUBLIC SCHOOLS, 11.

<sup>10</sup> Summary of Changes Personnel Procurement Student Testing Program, USMEPCOM Regulation 601-4§ 3-2(a), (November 13, 2006), available at <http://www.mepcom.army.mil/publications/pdf/regs/r-0601-004.pdf>;

see also STRINGER, SCOTT M. NEW YORK CIVIL LIBERTIES UNION, WE WANT YOU(TH)!: CONFRONTING UNREGULATED MILITARY RECRUITMENT IN NEW YORK CITY PUBLIC SCHOOLS, 11. g

<sup>11</sup> Are You Taking the Military Entrance Exam?, Student Peace Action Network, available at <http://www.studentpeaceaction.org/Act/campaign/ASVAB.pdf>.

<sup>12</sup> *Id.*

<sup>13</sup> Donna Lieberman, NYCLU Executive Director, To Settle NYCLU Lawsuit, Defense Department Reforms Student Military Recruiting Database, (Jan. 9, 2007), available at [www.nyclu.org/node/130/print](http://www.nyclu.org/node/130/print).

<sup>14</sup> JAMRS DATABASE OPT-OUT PROCEDURES, U.S. Department of Defense, available at [http://www.defenselink.mil/sites/jamrs\\_optout.html](http://www.defenselink.mil/sites/jamrs_optout.html).

<sup>15</sup> *Id.*

governs the collection, maintenance, use, and dissemination of personally identifiable information about individuals that is maintained in systems of records by federal agencies.”<sup>16</sup> The Privacy Act also prohibits the disclosure of information from a system of records without the written consent of the individual.<sup>17</sup> There remains serious speculation as to whether the JAMRS database violates rights under the Privacy Act, particularly the consent requirements. The Privacy Act states that consent is necessary in order to disseminate personal identifiable information. However, it is not clear whether students or parents have given written explicit consent to have their information disclosed to the military during the JAMRS data collection process.

It is unclear the extent to which students and parents are educated regarding the opt-out policies and procedures for the ASVAB program and the JAMRS database. It is important for the public to be aware of how this information is being collected, retained, and used. Therefore, EPIC should request the following documents from the Department of Defense and the Department of Education.

#### Documents Requested

EPIC requests the following agency records, including but not limited to electronic records:

1. Privacy policies regarding compliance with the Privacy Act as it relates to the JAMRS database, including but not limited to policies concerning safeguards against unauthorized access or use of personal information in the JAMRS database.
2. Policies regarding notification of breaches of the JAMRS database resulting in unauthorized access to personal information.
3. All records describing breaches of the JAMRS database.
4. All documents reflecting the total number of requests made by students or parents to the Department of Defense to opt out of data collection and military recruitment pursuant to the ASVAB program in the 2007-2008 school year.
5. All documents, from 2005 through present, regarding complaints filed by students or parents related to the collection, retention, and use of high school students’ personal information.
6. All documents setting forth a list of schools or school districts that administered the ASVAB in the 2007-2008 school year.

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<sup>16</sup> 5 U.S.C. § 552a (1974).

<sup>17</sup> 5 U.S.C. § 552a (1974). (This excludes the exception laid out in 5 U.S.C. § 552a(b)(12), referring to debt collection exceptions which allow disclosures of identifiable information.)



7. All forms submitted by school administrators indicating the level of privacy to be maintained for student information collected during the administration of the ASVAB for the 2007-2008 school year.
8. All contracts, agreements, or memoranda of understanding regarding the ASVAB between participating schools and the DOD, or DOD components.
9. All documents regarding statistics relating to the number of students who took the exam in the school years 2007 – 2008 and 2008 – 2009, including but not limited to actual representations, percentages, and statistical analyses based on such factors such as geographic location, age, race, gender, and family income.
10. All policies or procedures relating to the use of ASVAB data for recruitment purposes, including but not limited to any evaluation criteria used to analyze the ASVAB student information and responses in order to identify potential recruits.
11. All documents provided to students pursuant to the administration of the ASVAB exam in:
  - a. The 2007 – 2008 school year, and
  - b. The 2008 – 2009 school year.
12. The forms provided to the administrators of secondary education institutions soliciting authorization of dissemination of information gathered from the ASVAB exams.

Request for “News Media” Fee Status

EPIC is a “representative of the news media” for fee waiver purposes. *EPIC v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003). Based on our status as a “news media” requester, we are entitled to receive the requested record with only duplication fees assessed. Further, because disclosure of this information will “contribute significantly to public understanding of the operations or activities of the government,” any duplication fees should be waived.

Thank you for your consideration of this request. As the FOIA provides, I will anticipate your determination on our request within twenty (20) business days.

Respectfully submitted,

  
Heather Brondi  
EPIC Clerk

A handwritten signature in black ink, appearing to read "J Verdi". The signature is fluid and cursive, with the first letter "J" being particularly large and stylized.

John Verdi  
Director, EPIC Open Government Project