

United States Senate

October 12, 2022

The Honorable Frank Kendall, III
Secretary of the Air Force
1670 Air Force Pentagon
Washington, DC 20330-1670

General Daniel R. Hokanson
Chief of the National Guard Bureau
111 South George Mason Drive
Arlington, VA 22204

Dear Secretary Kendall and General Hokanson:

On October 7, 2022, Politico published highly private information from the military records of Lieutenant Colonel Jennifer-Ruth Green, USAF, including both the contents of her Officer Performance Reports and her own detailed account of being sexually assaulted while serving in Iraq—an assault she had chosen to keep private until Politico decided to ignore her objections and publish the details anyway.

The Politico reporter claims in the article that “the documents...were obtained by a public records request and provided to [Politico.]” Separately, in a statement to Fox News Digital, a Politico spokesperson contends that “[t]he records in question are publicly available documents that can be obtained by a standard FOIA request.”

But absent the written consent of the servicemember, military performance evaluations appear to be protected by the Privacy Act and not releasable under the Freedom of Information Act (FOIA), based on the statutes themselves,¹ various government FAQs,² and the Air Force itself in response to a formal congressional inquiry from my office into whether Officer Performance Reports (OPRs) are releasable under FOIA: An “OPR could only be released if that member agreed, in writing, to release his/her document. Without written consent/release, Air Force has no authority to release these documents.”

If that’s true, the release of Lt Col Green’s personnel records appears to be a grave violation of both Lt Col Green’s privacy and federal law.³

¹ 5 U.S.C. § 552(b)(6) (exempting “personnel” files from disclosure); 5 U.S.C. § 552a(b) (requiring written consent before disclosing such records to a third party).

² See, e.g., National Archives, Access to Official Military Personnel Files (OMPF) for the General Public, *available at* <https://www.archives.gov/personnel-records-center/ompf-access-public> (explaining that, under FOIA and the Privacy Act, the public cannot access more than cursory information about even a deceased veteran’s military service unless either (a) the veteran’s next-of-kin gives written consent or (b) 62 years have passed since the deceased veteran’s end of service).

³ 5 U.S.C. § 552a(i)(1)-(3) (establishing criminal penalties for violations of the Privacy Act).

Of additional concern is the appearance that the party responsible for releasing these Air Force documents may be exploiting private matters, including a sexual assault, for partisan purposes to interfere in the democratic process just weeks before an election.

I am therefore formally requesting a full accounting of how and on what basis these documents were released or leaked, and who is responsible.

Please respond to the above request by 5:00 PM on Friday, October 21.

Sincerely,

A handwritten signature in blue ink that reads "Tom Cotton". The signature is written in a cursive style with a horizontal line underneath it.

Tom Cotton
United States Senator