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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-03978

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COUNSEL: NONE

HEARING REQUESTED: NO

APPLICANT'S REQUEST

His adverse information summary (AIS), Substantiated Investigation Without Written Command Action, dated 30 Nov 21, be removed from his records.

APPLICANT'S CONTENTIONS

In accordance with Department of the Air Force Instruction (DAFI) 36-2907, *Adverse Administrative Actions*, to be adverse, the information must be derogatory, unfavorable or of a nature that reflects clearly unacceptable conduct, integrity or judgment. As the findings in his case state, his intent was to be transparent and to deter future incidents. There was no malicious intent. He also did not receive any verbal counseling and there is no Record of Individual Counseling (RIC) attached to the investigation. He was acting in the best interest of the mission, and he was correcting false profiles (malingerer) that negatively impacted manning and arming. He also did not get a copy of the mentioned Memorandum for Record (MFR) of the investigation findings, and none is included in his records. He was advised the AIS would drop off in 2024; however, it was still in his selection folder as of 22 Oct 24.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a currently serving Air Force lieutenant colonel (O-5).

The applicant's records include the memorandum, Substantiated Investigation Without Written Command Action, dated 30 Nov 21. The AIS states the applicant conducted a commander's call where he showed photos of subordinate members on Facebook while discussing disciplinary information. The complainant claimed the release of the information was a violation of the Privacy Act. The substantiated finding approved in Jul 18 reflects the applicant violated the Privacy Act in discussing openly the result of disciplinary actions in his unit. The investigating officer (IO) found there was no malicious intent but substantiated the finding he violated AFI 33-332, *Air Force Privacy Act and Civil Liberties Program*, and AFMAN 33-302 and DoDM 5400.07, *Freedom of Information Act Program*. The command action taken was verbal counseling conducted on 26 Jul 18 by the applicant's group commander. The applicant, on 2 Dec 21, acknowledged the contents of the MFR and the AIS.

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For more information, see the excerpt of the applicant's record at Exhibit B and the advisory at Exhibit C.

APPLICABLE AUTHORITY/GUIDANCE

Per 10 U.S.C. § 615(a)(3), DoDI 1320.14, *DoD Commissioned Officer Promotion Program Procedures*, Department of the Air Force Policy Memorandum (DAFPM) 2021-36-03, *Adverse Information for Total Force Officer Selection Boards*, dated 14 Jan 21, DAFI 36-2907, *Adverse Administrative Actions* and DAFI 36-2501, *Officer Promotions and Selective Continuation*, paragraph A14.2.1. All adverse information an officer receives will be filed in the officer selection record (OSR) and be considered by promotion selection, special selection, and selective continuation boards to the grade of O-4 and above (to include processes for O-3 promotions that have "extraordinary adverse information"). Adverse information is any substantiated finding or conclusion from an officially documented investigation or inquiry or any other credible information of an adverse nature. To be adverse, the information must be derogatory, unfavorable or of a nature that reflects unacceptable conduct, integrity or judgement on the part of the individual. Adverse information includes but is not limited to any substantiated finding or conclusion from an investigation or inquiry, regardless of whether command action was taken, court-martial findings of guilt, nonjudicial punishment (NJP) pursuant to Article 15, letter of reprimand, letter of admonishment, relief of command for cause, removal from developmental education for cause, and letter of counseling. All adverse information as defined will be permanently placed in the record. Except for set aside of a court-martial or NJP action, removal of adverse information from the records may only be directed by an AFBCMR recommendation.

AIR FORCE EVALUATION

AFPC/JA recommends denial. The applicant failed to prove any material error or injustice. The applicant's MFR/AIS is legally sufficient and properly filed in his record. According to DAFI 36-2907, any substantiated adverse finding or conclusion from an officially documented investigation or inquiry, regardless of whether command action was taken as a result, to include verbal counseling, must still be documented and filed in the Master Personnel Record Group (MPerRGp) and OSR via an MFR and AIS.

The applicant challenges the MFR/AIS as not constituting adverse information. He claims he had no malicious intent in violating the Privacy Act and that he did not receive verbal counseling, a copy of the MFR or an RIC. He also contends someone told him the MFR/AIS would be removed from his record in 2024. While the applicant may not have had any malicious intent, such is not a requirement to substantiate a Privacy Act violation. A violation of the Privacy Act meets the definition of adverse action. Consequently, the MFR/AIS documenting the substantiated adverse finding against the applicant was properly filed in his record and should remain.

With regard to the verbal counseling and RIC, the applicant's commander signed an MFR on 31 Jul 18 to memorialize he verbally counseled the applicant regarding the Privacy Act violation. There is no requirement to provide a copy of an MFR to the counselee. While DAFI 36-2907 does indicate an RIC may be used to document a verbal counseling session, it is not required.

It is unclear who told the applicant the MFR/AIS would be removed in 2024, but such was incorrect. Per DAFI 36-2907, the adverse information is filed in the OSR for 10 years. Because the investigation substantiated the adverse finding against the applicant in 2018, the applicant's MFR/AIS will remain in his OSR until at least 2028 (unless removed earlier by this Board).

The complete advisory opinion is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 18 Feb 25 for comment (Exhibit D) but has received no response.

FINDINGS AND CONCLUSION

1. The application was timely filed.
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale and recommendation of AFPC/JA and finds a preponderance of the evidence does not substantiate the applicant's contentions. The applicant contends he had no malicious intent, and the AIS does not constitute adverse actions in accordance with DAFI 36-2907; however, the Board disagrees. Although the AIS indicates there was no written command action taken, the Board finds the AIS documenting the substantiated finding from an investigation/inquiry that the applicant violated the Privacy Act is properly filed in his records in accordance with 10 U.S.C. § 615(a)(3), DoDI 1320.14 and DAFI 36-2907. Therefore, the Board recommends against correcting the applicant's records.

RECOMMENDATION

The Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

CERTIFICATION

The following quorum of the Board, as defined in DAFI 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2024-03978 in Executive Session on 30 May 25:

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Panel Chair
Panel Member
Panel Member

All members voted against correcting the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 8 Nov 24.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/JA, dated 14 Feb 25.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 18 Feb 25.

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Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.

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