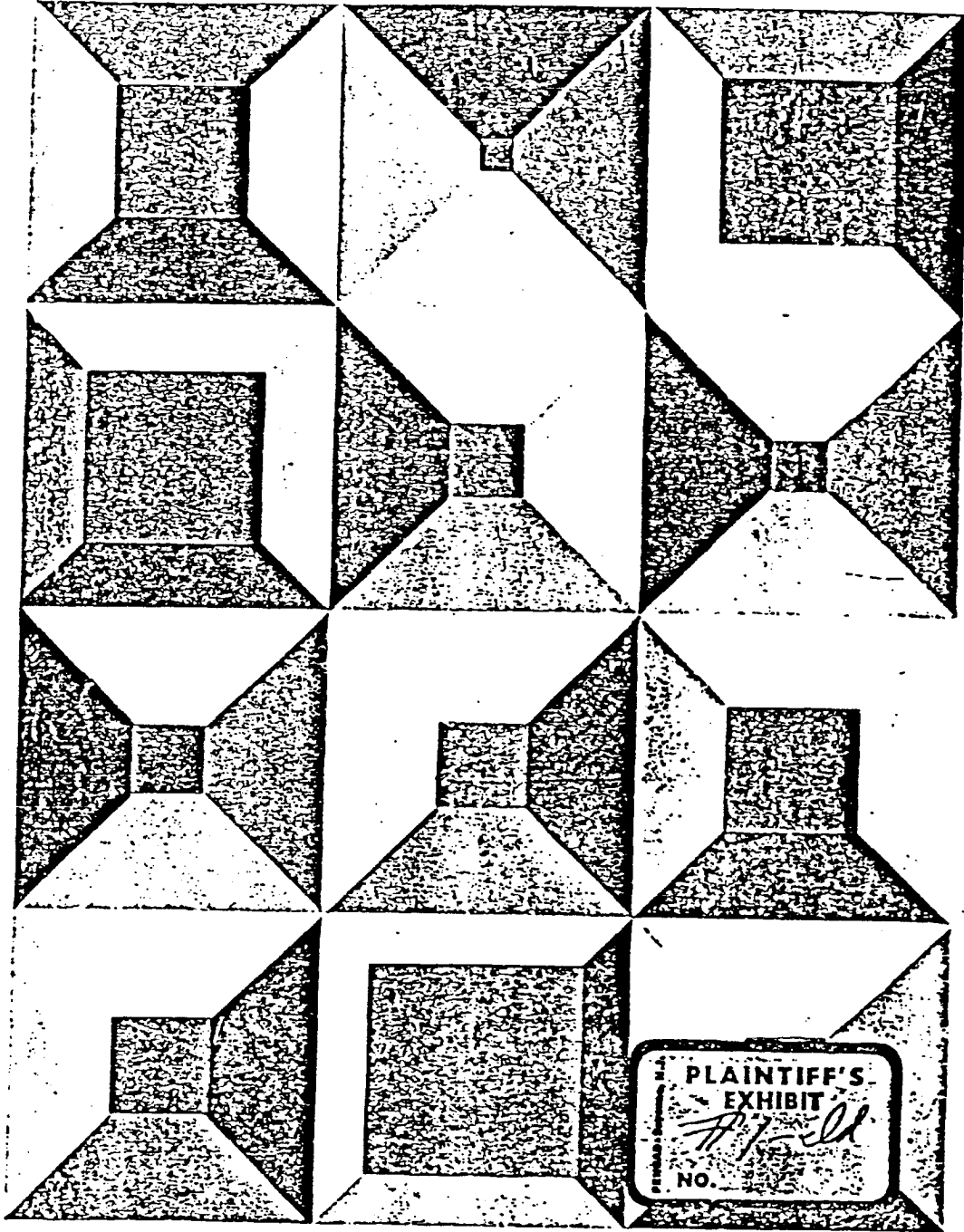


Personal  
Privacy  
in an  
Information  
Society

The Report of  
The Privacy  
Protection  
Study  
Commission



The Employment Relationship

records so that it will not be available to persons who have no need for it.

MILITARY-RECORD INFORMATION

SPN Codes. The use some employers make of military discharge records, and of the administrative codes found on the Department of Defense (DOD) form known as the "DD-214," raises still another set of fairness issues. Of particular concern is the use of the separation program number (SPN) codes that the DOD assigned to all discharges beginning in 1953. These codes may indicate many things, including an individual's sexual proclivities, psychiatric disorders, discharge to accept public office, or status as sole surviving child. The DOD uses them in preparing administrative and statistical reports and in considering whether an individual should be permitted to re-enlist. The Veterans Administration uses them to determine eligibility for benefits. Employers, however, also use them, and in the employment context they can do a great deal of harm.

SPN codes are frequently assigned on the basis of subjective judgments which are difficult for the discharger to challenge. Until recently, the codes had different meanings in each branch of service, and they have been changed several times, leaving them prone to misinterpretation by employers not possessing the proper key. (Although employers are not supposed to know what the SPN codes mean, many have found out as a result of leaks from the agencies authorized to have them.)<sup>44</sup>

In 1974, the DOD tried to stop unfair use of SPN codes by leaving them off its forms and offering anyone discharged prior to 1974 an opportunity to get a new form DD-214 without a SPN code. This solution has several defects. For one thing, not all pre-1974 discharges know of the reissuance program. For another, a pre-1974 DD-214 without a SPN code may raise a canny employer's suspicion that the applicant had the SPN code removed because he has something to hide.

Inasmuch as this problem still seems to be a significant one, the Commission believes that the DOD should reassess its SPN code policy. The Department might consider issuing new DD-214 forms to all discharges whose forms presently include SPN codes. Although such a blanket reissuance could be costly, without it employers will continue to draw negative inferences from the fact that an individual has exercised his option to have the SPN code removed. In any case, SPN code keys should stay strictly within the DOD and the Veterans Administration.

Issuing new DD-214s and tightening code key disclosure practices, however, will not resolve the problem if employers can continue to require that discharges applying for jobs authorize the release of the narrative descriptions in their DOD records. The most effective control over this information would be a flat prohibition on its disclosure to employers, even when the request is authorized by the applicant. This would have to be done

<sup>44</sup> Need for and Uses of Data Recorded on DD Form 214 Report of Separation from Active Duty. Report of the Subcommittee on Drug Abuse in Military Services of the Committee on Armed Services, U.S. Senate, January 23, 1975.

REPORT OF  
PRIVACY PROTECTION  
STUDY COMMISSION  
PERSONAL PRIVACY  
IN AN INFORMATION  
SOCIETY

JULY 1977

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in such a way as not to preclude individuals from requesting narrative descriptions from the DOD for their own purposes, since they are entitled to do so under the Privacy Act.<sup>45</sup>

*Military Discharge Records.* The military discharge system, as it works today, still influences employment opportunities. There are five types of discharges: honorable, general, other than honorable, bad conduct, and dishonorable. General and other than honorable discharges are products of an administrative process which usually includes the right to a hearing before a board and a subsequent right of administrative appeal. Bad conduct and dishonorable discharges, on the other hand, are only given after a full court-martial.

In practice, it appears that employers tend to disregard the distinction between the administrative discharge and discharges resulting from courts-martial.<sup>46</sup> Thus, any discharge except an honorable one can be the ticket to a lifetime of rejected job applications. Nor is that accidental. The DOD has intentionally linked discharge status to future employment as an incentive to good behavior while in the service.<sup>47</sup>

It can be argued that military service is just another kind of employment, and that discharge information is no different from information about any other past employment which applicants routinely release to prospective employers. Military service and civilian employment are not, however, comparable, since few civilian jobs involve supervision of almost every aspect of an employee's life.

On March 28, 1977, the Secretary of Defense announced a program for reviewing Viet Nam era discharges. It applies to two categories of individuals: (1) former servicemen who were discharged during the period August 4, 1964 to March 28, 1973, and who, if enlisted, received an undesirable or general discharge, or if an officer received a general or other than honorable discharge; and (2) servicemen in administrative desertion status whose period of desertion commenced between August 4, 1964 and March 28, 1973, and who meet certain other criteria. The discharge review portion of this program gives eligible veterans six months to apply for possible upgrading if positive service or extenuating personal circumstances appear to warrant it. The program aims at adjusting inequities that occurred during a particularly troubled period in our nation's history. It does not, however, address all the problems mentioned above. It does not extend to veterans with honorable discharges that carry possibly stigmatizing SPN codes. Nor does it apply to anyone separated from service with a general or undesirable discharge after March 28, 1973, although the normal channels for administrative review of such discharges are open to such individuals.

<sup>45</sup> Letter from Walter W. Stender, Assistant Archivist for Federal Records Centers, General Services Administration National Archives and Records Service, to the Privacy Protection Study Commission, March 3, 1977; see also, General Services Administration "Release and Access Guide for Military and Personnel Records at the National Personnel Records Center," December 30, 1976.

<sup>46</sup> See, for example, Testimony of the Ford Motor Company, Employment Records Hearings, December 16, 1976, p. 585.

<sup>47</sup> Letter from D. O. Cooke, Deputy Assistant Secretary of Defense, to the Privacy Protection Study Commission, January 18, 1977.

Thus, despite this welcome initiative, the Commission recommends:

*Recommendation (13):*

That Congress direct the Department of Defense to reassess the extent to which the current military discharge system and the administrative codes on military discharge records have needless discriminatory consequences for the individual in civilian employment and should, therefore, be modified. The reassessment should pay particular attention to the separation program number (SPN) codes administratively assigned to discharges so as to determine how better to limit their use and dissemination, and should include a determination as to the feasibility of:

- (a) issuing new DD-214 forms to all discharges whose forms currently include SPN numbers;
- (b) restricting the use of SPN codes to the Department of Defense and the Veterans Administration, for designated purposes only; and
- (c) prohibiting the disclosure of codes and the narrative descriptions supporting them to an employer, even where such disclosure is authorized by the dischargee.

#### NOTICE REGARDING COLLECTION FROM THIRD PARTIES

The background check is the most common means of verifying or supplementing information an employer collects directly from an applicant or employee. Some employers have their own background investigators,<sup>48</sup> but many hire an outside firm. The practices of private investigative firms are discussed in detail in Chapter 8. The discussion here focuses on the employer's responsibility when it conducts such an investigation itself, or hires a firm to do so in its behalf.

A background check may do no more than verify information provided by an applicant. It may, however, seek out additional information on previous employment, criminal history, life style, and personal reputation. The scope of such a background check depends on what the employer asks for, how much it is willing to pay, and the character of the firm hired to conduct the investigation. The Fair Credit Reporting Act (FCRA) protects the subject of certain types of pre-employment investigations by providing ways for him to keep track of what is going on and contribute to the investigative process. The Act's protections, however, do not extend to many applicants and employees, and the FCRA pre-notification requirement and the right of access the Act affords an individual to investigative reports are both too limited.

The FCRA requires that an individual be given prior notice of an employment investigation, but only if the investigation relates to a job for

<sup>48</sup> See, for example, Testimony of the Ford Motor Company, Employment Records Hearings, December 16, 1976, p. 531; and Testimony of Rockwell International, Employment Records Hearings, December 17, 1976, pp. 953, 955, 957.