

Psychiatrists' Responses to Requests for Psychiatric Information in Federal Personnel Investigations

RESOURCE DOCUMENT

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The findings, opinions, and conclusions of this report do not necessarily represent the views of the officers, trustees, or all members of the American Psychiatric Association. Views expressed are those of the authors. "-- *APA Operations Manual*.

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Introduction

Psychiatrists routinely receive and respond to patient authorizations to release information to third parties. However, a security clearance-related request for information differs from an ordinary release of information generally encountered in clinical practice. An ordinary release specifies records, notes, admission or discharge summaries, or other information generated in the course of clinical care. Most often, the information is to be released to another provider or facility for use in a therapeutic context, for the benefit of the individual patient. In contrast, the security clearance-release may call for the psychiatrist to make a judgment about his or her patient (i.e., does the patient have a condition that could impair judgment or reliability in the context of safeguarding national security information, or be at risk for future violent behavior) that could be disqualifying for employment. Although this resource document deals only with requests for psychiatrists' disclosures with regard to security clearances, the similarities to other work-related evaluations (e.g., can the individual return to work, can the individual function as a police officer), or to other circumstances in which disclosures may be used for legal or administrative purposes (e.g., forensic evaluations) should be noted.

Background

Millions of U.S. citizens are employed in positions that require security clearances. The U.S. government requires background investigations for clearance purposes for individuals who are to hold positions involving national security or other positions of public trust. In general, the security clearance process affects people employed in jobs that provide access to information that is restricted, often referred to as "classified," by the federal government. Alternatively, they may hold positions of public trust that involve substantial discretionary judgment, including employment in secure facilities, such as military or defense facilities, or have access to nuclear materials. Security clearances are a prerequisite for employment for members of the military and certain employees of the government or government contractors, and some employees of entities that are grantees or licensees of the government. The requirement for security clearance encompasses employment in the telecommunication industry, educational institutions, and financial entities. The Office of Personnel Management estimates that nearly a million clearance requests are initiated annually.

Following a conditional offer of employment for a position requiring a security clearance, an individual is asked to complete the Questionnaire for National Security Positions, Standard Form 86, known as SF-86, that calls for extensive disclosure of information regarding personal history, including residential, employment, travel, education, relatives, police and correctional history, illegal drug use, alcohol use, financial information, civil legal history, and related information. The SF-86 describes the investigatory process and includes a release of information form, to be signed by the potential employee. Instructions inform the applicant that information will be used for the purpose of the security clearance investigation and that the federal Privacy Act (5 USC 552a(b)) governs any subsequent disclosure of the information without consent.

The investigation that leads to a security clearance is designed to

screen out individuals who should not be entrusted with government secrets, weapons, or other assets that could be used to endanger the public. Investigators conduct in-person interviews with clearance applicants and review the disclosed information, including questions regarding mental health treatment. The ensuing investigations seek to confirm the veracity of the information reported by the applicants on SF-86 and during the interviews, and seek to ascertain whether the subjects of investigation are "reliable, trustworthy, of good conduct and character, and loyal to the United States" (Executive Orders 10450 and 12968). The instructions also inform the subjects of investigation:

In addition to the questions on this form, inquiry also is made about a person's adherence to security requirements, honesty and integrity, vulnerability to exploitation or coercion, falsification, misrepresentation, and any other behavior, activities, or associations that tend to show the person is not reliable, trustworthy, or loyal.

The depth of the investigation is based on the level of security clearance that is required for a given position. Once the investigation is complete, the information is reviewed in the adjudication phase, in accordance with established guidelines. Additional information, including past mental health treatment records may be sought, prior to adjudication. The adjudicative process is described as "the careful weighing of a number of variables known as the whole person concept." In essence, this means that the adjudicator takes into consideration a broad range of information in reaching a determination.

According to the Adjudicative Guidelines, final determination concerning clearance is in the hands of the specific department or agency responsible for the position. The ultimate determination "must be an overall commonsense judgment based upon careful consideration of ":

- (A) allegiance to the United States,
- (B) foreign influence,
- (C) foreign preference,
- (D) sexual behavior,
- (E) personal conduct,
- (F) financial considerations,
- (G) alcohol consumption,
- (H) drug involvement,
- (I) psychological conditions,
- (J) criminal conduct,
- (K) handling protected information,
- (L) outside activities, and
- (M) use of information technology systems.

According to the Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (approved by the President, December 29, 2005), the following factors are considered in weighing the relevance of an individual's conduct

- a) The nature, extent, and seriousness of the conduct;
- b) The circumstances surrounding the conduct, to include knowledgeable participation;
- c) The frequency and recency of the conduct;
- d) The individual's age and maturity at the time of the conduct;
- e) The extent to which the participation is voluntary;
- f) The presence or absence of rehabilitation and other permanent behavioral changes;
- g) The motivation for the conduct;
- h) The potential for pressure, coercion, exploitation, or duress; and
- i) The likelihood of continuation or recurrence.

Obtaining a security clearance typically requires 6 months to a year. Recent expansion in defense-related industries has resulted in a backlog of several hundred thousand security clearance requests. An individual with a security clearance is required to update and resubmit a security application every 5 to 15 years, depending on the type of clearance. This process also entails a reinvestigation. In addition, random periodic reinvestigations are also conducted.

Security Clearances and Psychiatry

The SF-86 asks applicants several questions that relate to psychiatric treatment. The first question asks applicants to indicate whether they have consulted with a mental health professional within the last 7 years and, if so, to disclose the dates of treatment, and the name and address of the physician or therapist. However, the disclosure of treatment dates and the contact information is not required if the "consultation(s) involved only marital, family, or grief counseling, not related to violence by you." In another section, the applicant is asked if their use of alcohol has resulted in any alcohol-related treatment or counseling in the last 7 years. Again, if the applicant replies affirmatively, they must supply the dates of treatment, identity of the physician or counselor, and related contact information.

The SF-86 includes an "Authorization for Release of Medical Information". This authorization allows the investigator to obtain responses to three questions concerning "mental health consultations." The form indicates to applicants, "Your signature will allow the practitioner(s) to answer only these questions." The three questions are: (1) Does the person under investigation have a condition or treatment that could impair his/her judgment or reliability, particularly in the context of safeguarding classified national security information or special nuclear information or material? (2) If so, please describe the nature of the condition and the extent and duration of the impairment or treatment, (3) What is the prognosis?

At the time of the in-person interview with the investigator, upon verification of past or current mental health treatment, the clearance applicant is asked to sign a second release, Specific Release OFI-16A. The OFI-16A authorizes the federal investigator to obtain information from clinicians or organizations identified by the applicant. This form provides two boxes that the applicant can check to specify the information to be released. The first, headed "Medical," states, parenthetically, "May include, but not limited to: dates of confinement, participation, or treatment; diagnosis; doctors' orders; medication sheets; urine result reports; prognosis; and medical opinions regarding my health, recovery and/or rehabilitation; as well as other information indicated below," followed by lines to be filled in by the applicant. At the end of the lines appears the statement, "I am aware that the information released by the above named person or organization may, but not necessarily, contain data pertaining to my use and/or abuse of alcohol and/or drugs, and my participation in a rehabilitation program with the above named organization." The second box, headed "Other," provides several lines for information to be specified.

The standard investigator practice is to arrange to meet with the applicant-identified psychiatrist and to present the signed OFI-16A. The SF-86 release is not routinely presented, except in unusual circumstances: for example, when the investigator interviews the psychiatrist prior to the applicant interview and, therefore, an OFI-16A has not been executed. The OFI-16A is the preferred release form.

The Office of Personnel Management provides an investigator's handbook that provides a set of questions about applicants, to be answered by the identified psychiatrists. These questions are as follows:

1. Dates of treatment;
2. The initial complaint/reason why treatment was sought;
3. The identity and amount of any medication prescribed;
4. The nature of any additional treatment provided or recommended;
5. Whether the Subject followed all prescribed or recommended treatment;

6. The exact nature of any diagnoses made;
7. Whether and to whom the Subject was referred and whether and from whom the Subject was referred;
8. The prognosis;
9. The potential for the Subject's condition or treatment to impact on their ability to properly safeguard sensitive (in public trust cases) or classified (in national security cases) information;
10. The potential for the Subject's condition or treatment to impact their judgment or reliability; and
11. Whether Subject has or may engage in any violent or otherwise reckless or aberrant behavior because of their condition or treatment.

Adjudicators review all information compiled during the course of the investigation and determine whether clearance will be granted. In some cases, adjudicators may require that specialized evaluations be performed to assess security risk. A positive response from the treating psychiatrist to questions 9, 10, or 11 indicating that the person under investigation has a condition that could affect their ability to safeguard information, impair judgment or reliability, or is at risk for violent or aberrant behavior, is likely to trigger a request for more information and a specialized mental health evaluation. Specialized mental health evaluations also result when treating psychiatrists are unable to address those questions, or indicate that they have "no opinion." Reportedly, the majority of applicants with psychiatric treatment histories, and the majority of those who have specialized evaluations, receive security clearances. In some instances, clearance may be made contingent upon continued psychiatric treatment.

Adjudicative Guidelines

The Adjudicative Guidelines provide greater context regarding how psychiatric information is used in the clearance process. Guideline I, Psychological Conditions, in its entirety reads as follows:

The Concern. Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified mental health professional (e.g., clinical psychologist or psychiatrist) employed by, or acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and mitigating information under this guideline. No negative inference concerning the standards in this Guideline may be raised solely on the basis of seeking mental health counseling.

Conditions that could raise a security concern and may be disqualifying include:

- a) Behavior that casts doubt on an individual's judgment, reliability, or trustworthiness that is not covered under any other guideline, including but not limited to emotionally unstable, irresponsible, dysfunctional, violent, paranoid, or bizarre behavior;
- b) An opinion by a duly qualified mental health professional that the individual has a condition not covered under any other guideline that may impair judgment, reliability, or trustworthiness;
- c) The individual has failed to follow treatment advice related to a diagnosed emotional, mental, or personality condition, e.g., failure to take prescribed medication.

Conditions that could mitigate security concerns include:

- a) The identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;
- b) The individual has voluntarily entered a counseling or

treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;

- c) Recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;
- d) The past emotional instability was a temporary condition (e.g., one caused by death, illness, or marital breakup), the situation has been resolved, and the individual no longer shows indications of emotional instability;
- e) There is no indication of a current problem.

Other Adjudicative Guidelines also address the mental health of the applicant. Guideline D, Sexual Behavior identifies concern as applying to "sexual behavior that involves a criminal offense, indicates a personality or emotional disorder." Guideline G, Alcohol Consumption, states, "Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness." Guideline H, Drug Involvement, indicates that "Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations."

Responding to a Release of Information for Security Clearance

There are two releases that may result from applicants' disclosure of psychiatric treatment. The first release is attached to the applicant questionnaire, SF-86. This release authorizes psychiatrists to answer three questions. In doing so, the psychiatrist is called on to provide an opinion that is likely not to have been formulated in the course of treatment and, therefore, not directly documented in the medical records. The first question is, "Does the person under investigation have a condition or treatment that could impair his/her judgment or reliability, particularly in the context of safeguarding classified national security information or special nuclear information or material?" The second release, the OFI-16A, resembles an ordinary medical record release form, authorizes a broad range of information to be released, and provides a blank space that may be filled in to authorize specific disclosures. Investigators generally present the OFI-16A and ask the former or current treating psychiatrists to respond to questions (see above) that address treatment, compliance, referrals, and diagnoses. In addition, the questions call for psychiatrists to address applicants' judgment and reliability, potential for violence, and ability to safeguard information.

The security clearance process raises two areas of concern for psychiatrists:

1. Providing assessments of patients' abilities related to safeguarding security. Treating psychiatrists are not expected to provide specialized assessments of patients' (or former patients') reliability or judgment in the context of safeguarding sensitive information, or potential for future violence. Indeed, few treating psychiatrists will have experience with the special circumstances of handling classified information or nuclear material. Specialized assessments of patients' potential for future violence are generally conducted by forensic psychiatrists, or by other psychiatrists with the requisite training and experience. However, the treating psychiatrist may have some perspective on the patient's judgment and reliability based on information gathered in the course of treatment. Psychiatrists typically make similar judgments regarding patients' ability to return to work, to be allowed on unsupervised passes, or to be discharged from the hospital. Psychiatrists often make clinical judgments about the risk of violence, for example in civil

commitment proceedings. It is appropriate for the treating psychiatrist to formulate responses to the security questions based on his or her general view of the patient's psychiatric history, judgment, risk, and reliability. In some cases, for example, when the patient was seen briefly in the past, the psychiatrist may not have a reasonable basis for forming an opinion.

2. Privacy and the authorizations for release of information.

Psychiatrists should be aware of potential problems related to the release authorizations. Some security clearance applicants may give little thought to how their psychiatrists will respond to investigators' questions. Also, the routine use of two authorization forms (SF-86 and OFI-16A) may be confusing and, unintentionally, may mislead applicants. For example, applicants may reasonably interpret the SF-86 form as limiting the scope of disclosure provided by the OFI-16A. Moreover, it is reasonable to assume that patients or former patients under investigation have authorized release (via the SF-86 form) with the expectation that their psychiatrists will not indicate they have impaired judgment or reliability. Finally, applicants may not be aware that their OFI-16A releases authorize investigators to ask not only about routine clinical matters (e.g., handbook questions 1-8), but also their risk for violence (which is not covered by the SF-86 release). These problems are addressed below.

- In many, perhaps most, instances the treating psychiatrist will not identify the subject of investigation as having impaired judgment or reliability, or as being at risk for violent or aberrant behavior. In these circumstances, responding could be viewed as a routine matter. However, when the psychiatrist reaches the judgment that there is a basis for concern, or has no opinion and, therefore, cannot provide the sought-after clearance, automatic compliance with investigators' questioning may not be appropriate.
- Even if signed requests for psychiatrists to speak with investigators meet the legal requirements for authorization, psychiatrists may want to speak directly with patients and former patients before talking with investigators, when the consequences are likely to be negative or problematic. This may facilitate preservation of the therapeutic relationship and the maintenance of patients' trust in psychiatry. Many patients (or former patients) applying for security clearance will not have full appreciation of the relationship between their psychiatric diagnoses and treatment, and the government's security interests. Discussion of the nature and scope of disclosure in this context may be useful in strengthening the therapeutic alliance and in allowing patients to anticipate the consequences of disclosure. In particular, when a patient (or former patient) has signed both an SF-86 release and an OFI-16A, it is important to convey to the patient (or the former patient) that investigators will be seeking answers to questions in addition to those specified by the SF-86. Ideally, the psychiatrist would review the anticipated questions and clarify the patient's intended scope of authorization to disclose.

As an example, consider the case of a patient who has been in therapy for over a year and is now applying for a security clearance. He initially sought treatment because of marital problems; also, he had done some questionable things while intoxicated. The treating psychiatrist believes that the patient does have a condition that, if untreated or exacerbated, could impair judgment or reliability and this could occur in the context of national security. The psychiatrist schedules a special session to discuss the security clearance release. The patient is surprised to learn that there would be any security concern based on his psychiatric history. He had not considered his problems or his treatment to be alcohol-related. The patient had indicated on the SF-86 that he had not had alcohol-related

treatment. He now realizes that his answer was incorrect and may be viewed as deceptive. The psychiatrist points out that the patient's prognosis is very good: the alcohol abuse had stemmed from his wife's infidelity and had resolved following their agreement to a divorce. The psychiatrist had planned to divulge this information during the security clearance interview. The patient asks the psychiatrist not to indicate details of his wife's infidelity. The psychiatrist agrees that details are not germane to the security inquiry. As a result of the discussion, the patient amended his SF-86 and authorized the psychiatrist to disclose the relevant psychiatric history and some details of the prognostic factors.

This brief example underscores the importance of discussing security clearance releases with patients. It should be emphasized that it is not appropriate for psychiatrists to negotiate their opinions with patients (or former patients). In interviews with investigators, psychiatrists must not conceal information in their responses to questions within the scope of the authorized disclosure. Discussion, however, may lead patients to revoke their authorizations. Psychiatrists should respect these decisions and convey to investigators that the subject of investigation has revoked authorization.

In the typical practice, a security clearance investigation will be an unusual occurrence and will likely involve a patient/applicant seeking an initial clearance. However, in some settings, such as the practices of military psychiatrists and State Department psychiatrists, security clearance-related issues are common and are often at the forefront of patients' concerns as they enter treatment. Psychiatrists who practice in these settings often engage their patients in discussions of the impact of psychiatric diagnoses, treatments, and judgments on security clearance. These discussions occur as part of the process of informing patients about the implications of treatment and are important to the development of a therapeutic relationship.

The following suggested approaches were formulated with a general psychiatric practice in mind. By following these approaches, psychiatrists can comply with government requests for information while acting in their patients' best interests.

Considerations for Psychiatrists

1. The psychiatrist has no professional obligation to perform any additional evaluation or specialized assessment as part of the security investigation. Responses to the questions should be based on diagnoses and judgments formed in the course of the treatment relationship. The psychiatrist should make clear to the investigator that no specialized security risk assessment was performed.
2. The psychiatrist should ask the investigator to present both the authorization forms provided by the applicant. Under current procedures, every applicant is required to provide an SF-86 authorization. The psychiatrist should read the OFI-16A release carefully, taking note of any modifications that may have been made in the space provided on the form. For example, applicants may have indicated authorization for release of information regarding their risk for violent or aberrant behavior.
3. The psychiatrist should decline to provide the investigator with additional information or judgments that fall outside the scope of the authorized disclosure(s). The psychiatrist should inform the investigator that the requested information falls outside the scope of the patient's authorization and, if additional information is required, a new authorization will need to be obtained from the patient. This applies specifically to those instances in which the security applicant has signed only the SF-86 authorization (and not the OFI-16A). It also applies to instances in which applicants have not modified the OFI-16A to authorize disclosure of information relevant to their risk for violent or aberrant behavior. In these instances, psychiatrists should restrict disclosures to information relevant to answering the three SF-86 questions.
4. When the psychiatrist believes that a patient (or former patient) under investigation does not have a condition or treatment that could impair his/her judgment or reliability as specified in the SF-86 release, then it is sensible practice to respond accordingly when contacted by the security investigator. In this context, the psychiatrist is complying with the request and responding as expected by the patient who signed the SF-86 release. To require more would be burdensome and not alter the outcome.
5. When the psychiatrist believes that a patient (or former patient) has a condition that could impair judgment or reliability as specified by the federal guidelines, or has no opinion, then a sensible procedure is for the treating psychiatrist to engage in a discussion with the patient under investigation. The psychiatrist should formulate responses to the eleven anticipated questions in advance and share them with the patient, prior to disclosure to the security investigator. The psychiatrist should review the basis for the opinion, including anticipated responses to the investigator's questions regarding the nature, extent, and duration of the underlying condition, and the prognosis.
6. In some cases, it may not be possible to locate a patient or a patient may not wish to discuss the release, it may be counter-therapeutic to contact the patient, or it may not be practical to engage the patient in a discussion for other reasons. In these cases, it is reasonable for psychiatrists to respect authorizations for disclosure without further discussion.
7. Following disclosure of information to the investigator, the psychiatrist should document the exchange.