

**DEPARTMENT OF THE AIR FORCE
HEADQUARTERS USAF TRIAL JUDICIARY**

UNITED STATES OF AMERICA

v.

CAPTAIN JACOB R. WULFSON
[REDACTED]

)
)
) **Government Response to Defense**
) **Motion to Compel Discovery -- Criminal**
) **Injuries Compensation Scheme**
)

) **7 April 2026**
)

The United States Government, by and through counsel, moves this Honorable Court to deny the Defense Motion to Compel Discovery – Criminal Injuries Compensation Scheme. The Government does request an Article 39a session to present additional argument.

SUMMARY

Defense Counsel in this case, after learning that [REDACTED] the named victim, had made a request for compensation under the [REDACTED] Criminal Injuries Compensation Scheme, submitted a production request, asking the Government to obtain and disclose “all documents” submitted by [REDACTED] to the [REDACTED]’s Criminal Injuries Compensation Authority (CICA). The Government denied this request, noting that Defense had failed to establish how such evidence was relevant and necessary, as is required under RCM 703(e). Defense, in its motion to compel production now before this court, again wholly fails to carry its burden and establish how such evidence or information is relevant and necessary in this case. As such, Defense’s motion should be denied.

FACTS

1. The Government agrees with paragraphs 1-8 in Defense’s motion.
2. Based on the available information/evidence, a person’s request for compensation to the [REDACTED]’s CICA does not require a recitation of facts from the victim’s perspective related to that incident, or even a generalized description of the event. According to CICA, “[i]t is not necessary for the person who injured [a claimant] to be identified, or convicted, in order for [the claimant] to be eligible for a payment.” Rather, the “Scheme requires that [the claimant] co-operate as far as is reasonably practicable in bringing the assailant to justice.” Defense Motion to Compel Discovery, Attachment 2, pgs 8-9. “The application process should take no longer than 20 minutes,” and following its submission, CICA will then “ask the police for evidence.” *Id.*, Attachment 2, pg. 22. Due to CICA’s need to obtain evidence from police, “the Scheme requires that the incident has been reported to the police.” *Id.*, attachment 2, pg. 8.
3. A claimant is expected to provide the following evidence: (1) “proof that [they] meet the residency requirements”; (2) “medical evidence that shows [they] suffered an injury that can be

compensated under the Scheme.”; (3) “evidence to support a claim for loss of earnings or special expenses.” *Id.*, Attachment 2, pg. 25. Prior to asking for medical evidence, CICA will seek “confirmation from the police that the incident in which [the claimant was] injured was reported to the police”, “confirmation from the police that [the claimant’s] behaviour did not contribute to the incident in which [their] injuries were received”, “confirmation from the police that [the claimant] co-operated with them”; and “evidence from the police about [the claimant’s] criminal record, should [they] have one.” *Id.*

4. [REDACTED] has already agreed to produce numerous pieces of medical evidence to corroborate the Accused’s criminal misconduct in this case, including medical records contemporaneous to the sexual and physical assault, as well as records documenting their impact more recently. Attachments 1-4.

5. On 2 December 2023, approximately 24 hours after the assault by the Accused, [REDACTED] reported to [REDACTED] Hospital in [REDACTED]. There, she reported she was engaged in consensual activity with someone “then she was strangled and blacked out after that.” Attachment 1, page 1. She reported “During intercourse male put his right hand around her neck and pressed her hard into the bed until she was unable to speak and couldn’t breathe normally. “[S]he felt him penetrate her vaginally, she couldn’t tell if he had used a condom.” She also stated she thrashed “around resulting in head butting him with the left side of her forehead and kicking something hard.” *Id.*, page 5. At [REDACTED]’s she reported experiencing “further episodes of vomiting, headache and pain in her forehead, and a very sore throat and pain where she has developed bruising”, as well as persistent diarrhea and “recurrent vomiting.” *Id.*

6. The attending physician, [REDACTED] and other medical staff at [REDACTED] Hospital documented injuries to [REDACTED] as follows: “left eyelid bruising + left eyebrow haematoma, 3 linear abrasions towards hairline”, “bilateral petechiae below eyes”, “right forearm 8mm bruises”, “anterior chest bruises – multiple 5-10 mm bruises above left breast”, “bilateral knee bruises”, “bruised left 3rd toe with tenderness on palpitation”, “anterior neck tender on palpation.” *Id.* at page 7.

7. On the morning of 3 December 2023, [REDACTED] also consented to a full sexual assault forensic examination at a separate facility, [REDACTED] where she underwent a full head to toe examination. Attachment 2. During this examination, [REDACTED] reported experiencing abdominal pain “like a really bad period”, pain urinating. Attachment 2, pg. 7. The Sexual Assault Nurse Examiner, [REDACTED] also documented bruising on [REDACTED]’s face, neck, left and right arm, right hand, left breast, right thigh, right and left lower leg, left foot/ankle, and lacerations and abrasions on [REDACTED]’s female genitalia. Attachment 2, pg. 22. These same injuries were further documented on various body maps, which clearly indicate the location of the injuries. Attachment 2, pgs. 24-30.

8. [REDACTED] also consented to the release of numerous records from her regular doctor, known as a General Practitioner, in the [REDACTED]. On 5 December 2023, [REDACTED] reported having difficulty swallowing days after the assault, and struggling with nausea. Attachment 3, page 2. Other records document that [REDACTED] was diagnosed with “moderate symptoms of depression” and “severe symptoms of anxiety.” Attachment 4, page 1. Other records document significant mental health

challenges faced by ■■■ because of the fallout of the sexual assault, including increased irritability, anger, and demotivation, and that “she recognizes herself she if full of anger. She has more temper, snapped at a student which she doesn’t do normally. not sleeping, having nightmares, struggling generally, having vivid flashbacks. can wake up screaming and her son has woken up as a result sometimes.” Attachment 3, page 7.

BURDEN

9. The Government concurs that under RCM 905(c), the Defense bears both the burden of proof and persuasion for this motion, to include that the specific items “being requested actually exist.” *United States v. Warda*, 84 M.J. 83, 91 (C.A.A.F. 2023) (citing *United States v. Rodriguez*, 60 M.J. 239, 246 (C.A.A.F. 2004)).

LAW

10. Article 46(a), UCMJ, provides: “[T]he trial counsel, the defense counsel, and the court martial shall have equal opportunity to obtain witnesses and other evidence in accordance with such regulations as the President may prescribe.”

11. Consistent with 10 U.S.C. § 846(a), the President has prescribed RCM 703, which outlines the process and standards by which the parties may request and produce both witnesses and evidence. “The prosecution and defense and the court-martial shall have equal opportunity to obtain witnesses and evidence, subject to the limitations set forth in RCM 701, including the benefit of compulsory process.” RCM 703(a). However, each party is only entitled to the production of evidence which is relevant and necessary. RCM 703(e)(1).

12. Under MRE 401, “[e]vidence is relevant if it has any tendency to make a fact of consequence in determining the action more or less probable than it would be without the evidence.”

“Relevant evidence is necessary when it is not cumulative and when it would contribute to a party’s presentation of the case in some positive way on a matter in issue.” RCM 703(b)(1) Discussion. When Defense requested evidence is determined to be relevant and necessary, the “Government is obligated to produce [it] by compulsory process.” *United States v. Rodriguez*, 60 M.J. 239, 246 (C.A.A.F. 2004). However, as a threshold matter, “the Defense, as the moving party, [is] required as a threshold matter to show that the requested material exist[s].” *Id.* at 246. Relevance must be underpinned by evidence, not mere speculation. *See, e.g., United States v. Douglas*, 2009 CCA LEXIS 41 (A.F.C.C.A. 2009) (“While the defense speculated during argument that [the] records may contain other relevant information, such as contradictory statements made during counseling or therapy sessions, speculation alone is not sufficient.”), *rev’d on other grounds*, 68 M.J. 349 (C.A.A.F. 2010); *United States v. McClure*, 2021 CCA Lexis 454 (A.C.C.A. 2021) (“[Counsel’s] request for production was nothing more than a fishing expedition based on an assumption.”).

13. Furthermore, a party is not entitled to the production of evidence, which is destroyed, lost, or otherwise not subject to compulsory process. RCM 703(e)(2).

14. “Evidence under the control of the Government may be obtained by notifying the custodian of the evidence of the time, place, and date the evidence is required and requesting the custodian to send or deliver the evidence.” RCM 703(g)(2). Evidence not under the control of the Government may be obtained by subpoena, which shall command each person to whom it is directed to produce evidence – including books, papers, documents, data, writings, or other objects or electronically stored information designed therein at the proceeding or at an earlier time for inspection by the parties. RCM 703(g)(3).

15. To the extent the defense requests the United States to facilitate the production of evidence, it must follow the procedure in RCM 703, including subsection (c). Specifically, the defense must “list the items of evidence to be produced and shall include a description of each item sufficient to show its relevance and necessity, a statement where it can be obtained, and, if known, the name, address and telephone number of the custodian of the evidence.” *Id.*

16. In *US v. Gere*, the Defendant appealed his conviction for sexual assault of a child, in part arguing that the military judge erred in ruling that the Government did not need to produce the cell phone of the victim under RCM 703. The AFCCA confirmed, opining that “Appellant’s motion to compel the cellular phone fails, because the Defense never established the sought-after Snapchat messages existed on the phone, a prerequisite for the production request.” *United States v. Gere*, 2020 CCA LEXIS 429, *16-17. Further, the Court noted that “[t]rial defense counsel offered no specific information that any other relevant evidence not already in the possession of the Defense was on the phone.” *Id.* at *17.

17. Denial of motions to compel the production is reviewed for an abuse of discretion. *United States v. Powell*, 49 M.J. 220 (C.A.A.F. 1998). Courts do not abuse their discretion when they deny Defense requests for production without a sufficient showing of relevance and necessity/materiality. See e.g. *United States v. Ansari*, 2001 CCA LEXIS, 268 (A.F.C.C.A. 2001) (unpub. op.); *United States v. Spies*, 1991 CMR LEXIS 891 (A.F.C.M.R. 1991); *United States v. Hargrove*, 33 M.J. 515 (A.F.C.M.R. 1991).

18. A separate but related area of the law—unavailable evidence—is illustrative of Defense’s burden in requests for production. Specifically, numerous cases discussing defense’s burden related to requests for relief related to unavailable evidence illuminate the obligations, and burden, of Defense counsel when submitting such requests or motions.

19. Specifically, in *United States v. Stafford*, the Appellant argued that the case should have been abated because of unavailable text messages. 2023 CCA LEXIS 497 (A.F.C.C.A. 2023). However, the Appellant could not articulate exactly what would have been exculpatory in the messages rather than pure speculation. Specifically, the Court held that “Appellant speculates about lost evidence without identifying any specific communication, image, or other item of digital evidence that had actually existed and would have been exculpatory, materially contradicted the victim’s testimony, or was otherwise essential. We are not persuaded the Defense met its burden to demonstrate the unavailable evidence was essential to a fair trial.” *Id.*

20. In *United States v. Douglas*, 2017 CCA LEXIS 407 (A.F.C.C.A. 2017), the Air Force Court of Criminal Appeals reviewed appellants contentions that investigators failure to take crime

scene photographs was a discovery violation necessitating action under Article 46 and RCM 703. Specifically, Defense argued the photos were necessary “to show the officers were at the correct crime scene and to eliminate the possibility that the victims were assaulted at a different location.” *Id.* at *24. In rejecting this claim, the Court noted “this argument ignores the victim’s consistent description of where the assault took place and once again fails to show how the evidence would be exculpatory as opposed to inculpatory.” *Id.* Appellant also made similar arguments, which were rejected, regarding law enforcement’s failure to collect clothing from an assault victim which could have been examined for blood and photos of injuries to a victim’s head “to show injuries from the assault or powder burns from the gun discharging near his head.” *Id.* at *25. “In each case, defense counsel asserted the possible relevance of the evidence, at times arguing the evidence was potential impeachment material, while also arguing it was ‘possibly’ exculpatory.” *Id.* In denying each of these arguments, the appellate court noted that defense counsel in each case failed to carry its burden to show the evidence “was truly exculpatory or essential to a fair trial.” *Id.*

21. In contrast, in *United States v. Warda*, also cited by Defense in this case, the defense counsel carried its burden because it specifically established that the named victim would have been required to declare and provide facts related to whether she was the victim of an offense, and such evidence was of heightened importance because the victim’s testimony was the sole piece of evidence because there was “no substantial evidence supporting the complaining witness’s allegation of domestic abuse” causing the victim’s credibility, and testimony, to be “of central importance” 84 M.J. 83, 93-94 (C.A.A.F. 2023).

ARGUMENT

22. A single line of Defense’s motion illuminates the defense’s failure to carry its burden related to this motion: “Capt Wulfson has a vital interest in being able to obtain evidence that *could* impeach [REDACTED]’s testimony at trial, in this case being the CICS application records, which would undermine her overall credibility.” Defense Motion to Compel Discovery– Criminal Injuries Compensation Scheme, paragraph 23. Defense can only speculate as to what specific part, or piece of information or evidence, in [REDACTED]’s request for compensation, is relevant and necessary to impeach [REDACTED] testimony, or any other part of their case.

23. Defense is correct to note that the fact that [REDACTED] could, or indeed has, applied for compensation in the [REDACTED]’s process, is fair grounds for cross examination, as it provides a potential motive to fabricate the allegations in this case, even if her decision to file compensation nearly 3 years later cuts strongly against this inference. Anything beyond this piece of confrontation, already fully and unequivocally available to defense, that may exist in the records sought by Defense is pure speculation. Such speculation as a basis for the motion is sufficient alone for Defense’s motion to be denied.

24. But going further, the very evidence Defense provides cuts against its argument of relevance and necessity somehow existing in the actual records sought. The evidence before the Court shows that the documentation sought has no reasonable possibility of providing anything beyond that which the Defense is already in possession of – that [REDACTED] has submitted a request for compensation, and that she may be entitled to compensation for the injuries she suffered. As

discussed further below, the evidence before this Court shows the actual application is only administrative in nature, meaning that Defense's motion falls flat on its face, and fails to meet the relevant and necessary standard in RCM 703.

25. Attachment 2 to defense's motion, which details the requirements and procedures of a claim to CICS, makes it abundantly clear it is wholly administrative in nature and does not record specific recollection of events or alleged misconduct directly from the victim. In fact, the application instruction and processes make clear the entire application will take the applicant twenty minutes or less. Moreover, the instructions make clear the claimant only needs to report the incident to the police, establish that they have "co-operate[d] as far as is reasonably practicable in bringing the assailant to justice" and that after submitting the application, CICA will "ask the police for evidence." As a result, there is no possibility that underlying documentation submitted by [REDACTED] will contain exculpatory information or evidence regarding the charged conduct, beyond the fact that the possibility of an application, and the submission of such, both form a motive to fabricate in this case. This adequate substitute, to use the terminology used by Defense in paragraph 26 of its motion, makes any additional information in such records cumulative of the information already available and in Defense's possession.

26. Defense has also failed to establish the possibility that any medical records potentially, and speculatively, provided by [REDACTED] to CICS may contain relevant and necessary information or evidence. Again, the evidence before this court is clearly to the contrary. The Government, and Defense, are already in possession of troves of medical records in this case, spanning a lengthy period of time after the charged conduct in this case. This evidence, already in the parties possession, is the only potential evidence that [REDACTED] could have been asked for from CICA, per the instructions for such an application in Attachment 2 to Defense's motion. There is no evidence before this court that additional medical records exist, let alone ones that meet the relevant and necessary standard, particularly when all the records now available cut against, rather than benefit, the Accused's defense in this case.

27. Seemingly added as a throwaway statement, Defense counsel claims that [REDACTED]'s recitation of events "are largely unsupported by other evidence" and that "[t]he only piece of evidence that could conceivably tie up the loose ends in the Government's case is [REDACTED]'s sworn, in-court testimony," and that from this, "[c]onsidering [REDACTED]'s credibility is the matter of central importance in this case, the Government's failure to produce this information prevents the Defense from effectively attacking [REDACTED]'s credibility and would result in the finder of fact receiving an incomplete picture of the evidence." Defense Motion to Compel Discovery, paragraphs 23, 25. Nothing could be further from reality in this case. While the Government does not dispute that [REDACTED] testimony will be critical, there is other independent admissible evidence that provides significant corroboration to [REDACTED]'s version of events. Numerous medical records establish contemporaneous accounts of what happened to [REDACTED] as well as the resulting injuries. Attachments 1-3. Other witnesses witnessed injuries to [REDACTED] immediately after the incident, or took consistent statements close in time to the assault, [REDACTED] documented the injuries in photographs, and toxicological analysis and DNA evidence collected from [REDACTED] and the Accused corroborate [REDACTED]'s version of events, and that she was drugged. And last, most powerfully, the Accused's apologizing to [REDACTED] immediately after the assault, and expressing regret for his actions, and a determination to never get into the position he was in at that precise moment, are

admissible to show consciousness of guilt on his part. *See* Attachments 4, 5, 12 of the Government's Response to Defense Motion to Dismiss: Speedy Trial. This case is different than the situation in *Warda* because not only has defense failed to carry its burden, but because the relative strength of the evidence in this case is overwhelming compared to *Warda*, where the sole basis for the conviction was the named victim's testimony.

28. Last, to the extent Defense uses the speculative possibility that [REDACTED] may deny having actually filed a claim for compensation, such an argument is speculative at this point, and as such is not a basis for a motion to compel discovery at this point. If [REDACTED] wholly denies having submitted a claim for compensation, something the Government has no reason to anticipate, such an issue could be taken up by the Court at that time, as the underlying application would certainly be of heightened importance due to such testimony. If as anticipated, [REDACTED] admits to submitting such a claim, than any further administrative information is both not relevant or necessary, as Defense has all the information and potential outcomes resulting from such an application at its fingertips at the time this motion is filed, giving them the full tools for their cross examination of [REDACTED]

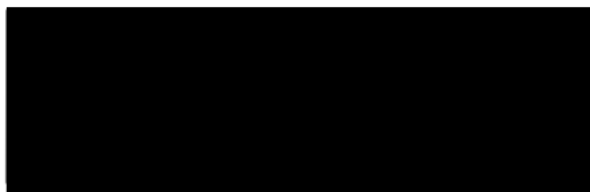
29. In conclusion, Defense has failed to carry its burden to establish that the underlying application, and its administrative information, is relevant and necessary to the presentation of Defense's case here. Rather, the evidence before the Court, including that provided by the Defense and Government, make clear that nothing in the records are relevant and necessary. Accordingly, this Honorable Court should deny this motion.

REQUESTED RELIEF

30. THEREFORE, the Government respectfully requests that this Court deny the Defense Motion to Compel Discovery– Criminal Injuries Compensation Scheme.

31. The Government requests to give additional argument at the scheduled Article 39(a).

Respectfully submitted on this 7 April 2026.



CHRISTOPHER D. MITCHELL, Maj, USAF
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4 Attachments:

1. [REDACTED]'s Medical Records, various dates, 18 pages
2. [REDACTED] Medical Records, various dates, 30 pages
3. [REDACTED] Street Medical Records, various dates, 7 pages
4. [REDACTED] Medical Records, dated 7 Aug 24, 2 pages

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Government's Response to the Defense Motion to Compel Discovery – Criminal Injuries Compensation Scheme was served on Defense Counsel and Military Judge on 7 April 2026.



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Special Trial Counsel