

"A subpoena duces tecum to produce books, papers, documents, data, electronically stored information, or other objects for a pretrial investigation pursuant to Article 32 may be issued by the investigating officer or counsel representing the United States. See R.C.M. 703(f)(4)(B).

The investigating officer may find that evidence is not reasonably available if: the subpoenaed party refuses to comply with the duly issued subpoena duces tecum; the evidence is not subject to compulsory process; or the significance of the evidence is outweighed by the difficulty, expense, delay, and effect on military operations of obtaining the evidence."

(f) The Discussion immediately following R.C.M. 405(g)(3) is amended to read as follows:

"See Department of Defense Joint Travel Regulations, Vol. 2, paragraph C7055."

(g) The Discussion immediately following R.C.M. 405(i) is amended to read as follows:

"With regard to all evidence, the investigating officer should exercise reasonable control over the scope of the inquiry. See subsection (e) of this rule. An investigating officer may consider any evidence, even if that evidence would not be admissible at trial. However, see subsection (g)(4) of this rule as to limitations on the ways in which testimony may be presented. Certain rules relating to the form of testimony that

may be considered by the investigating officer appear in subsection (g) of this rule.

Mil. R. Evid. 412 evidence, including closed hearing testimony, must be protected pursuant to the Privacy Act of 1974, 5 U.S.C. § 552a. Evidence deemed admissible by the investigating officer should be made a part of the report of investigation. See subsection (j)(2)(C), *infra*. Evidence deemed inadmissible, and the testimony taken during the closed hearing, should not be included in the report of investigation and should be safeguarded. The investigating officer and counsel representing the United States are responsible for careful handling of any such evidence to prevent indiscriminate viewing or disclosure. Although R.C.M. 1103A does not apply, its requirements should be used as a model for safeguarding inadmissible evidence and closed hearing testimony. The convening authority and the appropriate judge advocate are permitted to review such safeguarded evidence and testimony. See R.C.M. 601(d)(1)."

(h) The Discussion immediately following R.C.M. 703(e)(2)(B) is amended to read as follows:

"A subpoena may not be used to compel a witness to appear at an examination or interview before trial, but a subpoena may be used to obtain witnesses for a deposition or a court of inquiry. In accordance with subsection (f)(4)(B) of this rule, a subpoena