



Texas Military Department

INSTRUCTION

Number 1030.06
JUN 23 2020

NGTX-GC

SUBJECT: Complaints Under Section 432.184 of the Texas Government Code

References: Texas Government Code, Section 432.184.

1. PURPOSE. This policy establishes Texas Military Department (TMD) policy on procedures for the preparation, submission, and disposition of complaints under Section 432.184 of the Texas Government Code.

2. APPLICABILITY AND SCOPE. This policy applies to all members of the Texas Army National Guard (TXARNG), the Texas Air National Guard (TXARNG), and the Texas State Guard (TXSG), to include Soldiers and Airmen serving on Full Time National Guard (FTNG) orders, Active Duty Operational Support (ADOS) orders, Active Guard Reserve (AGR) orders, or any other applicable orders in a Title 32 or State Active Duty (SAD) status.

3. POLICY.

a. Texas Government Code Section 184 (Section 184) complaints generally. TMD policy is to resolve complaints at the lowest level of command and to provide adequate administrative procedures for such resolution. Section 184 provides one method of complaint resolution. Section 184 complaints should be infrequent and made only when no other method of administrative remedy is available to the service member. A complaint is generally not appropriate under this instruction if other procedures exist providing a service member notice of an action and a right to rebut (with or without a hearing).

(1) In this instruction, the service member making the complaint is the complainant, and the commanding officer against whom the service member is complaining is the respondent.

(2) A service member has a statutory right to submit a complaint under Section 184. Commanders will not restrict the submission of such complaints or retaliate against a service member for submitting a complaint.

(3) This instruction does not authorize complainants to participate in any ensuing process or procedures related to the complaint. The complainant may be asked to testify, provide additional information, or otherwise assist in resolving the complaint.

b. Process in general.

(1) Within 30 calendar days of discovering the wrong, the service member makes a written Initial Request for Redress directed to the service member's commanding officer who allegedly committed the wrong identifying the requested redress.

(2) The commanding officer responds to the service member by granting, granting in part, or denying the requested redress. Failure to make a timely response constitutes a denial of redress.

(3) The service member may then make a timely written Section 184 complaint to the respondent's commanding officer (hereinafter reviewing officer).

(4) The reviewing officer determines whether the complaint is sufficient or deficient under this instruction. Deficient complaints are returned to the complainant explaining the deficiency. The reviewing officer may waive the deficiency and treat the complaint as sufficient.

c. Initial Request for Redress. The service member must first attempt to resolve the alleged wrong with the service member's commanding officer. This first attempt is the Initial Request for Redress. The Initial Request for Redress is not a Section 184 complaint. Before submitting a Section 184 complaint, the Initial Request for Redress must:

(1) Be written and signed by the service member. An electronic message will satisfy this requirement.

(2) Identify the commanding officer whom the service member believes committed the wrong. The commanding officer must be in the complainant's chain-of-command.

(3) Identify the date and nature of the alleged wrong. A wrong is a commanding officer's discretionary act or omission made under color of military authority that adversely affects the complainant personally and that is:

(a) In violation of law or regulation;

(b) Beyond the legitimate authority of the commanding officer;

(c) Arbitrary, capricious, or an abuse of discretion; or

(d) Materially unfair.

(4) Identify the desired redress. Redress is an action by an officer in the complainant's chain-of-command to revoke an official action or to otherwise restore the complainant rights, privileges, property, or status as a result of a wrong.

(5) Be submitted through command channels to the commanding officer whom the service member believes committed the wrong within 30 calendar days of discovering the wrong.

d. Commanding officer's (Respondent's) response to the Initial Request for Redress.

(1) The Respondent provides complainant a written response to the Initial Request for Redress no later than 60 calendar days from receipt of the Initial Request for Redress. An electronic message satisfies this requirement. If extenuating circumstances exist preventing a response within 60 days, the Respondent provides an interim response estimating the time needed for the response.

(2) Final responses must address redress granted and denied.

(3) A service member who receives no response within 60 calendar days may treat the non-responsiveness as a denial of redress.

e. Section 184 complaint requirements.

(1) General. If the attempt to resolve a perceived wrong through an Initial Request for Redress is unsuccessful, the Service member may submit a Section 184 complaint. The principal responsibility for acting on a Section 184 complaint lies with the Reviewing Officer serving as the Commanding Officer over the respondent at the time of the alleged wrong.

(2) Form of the complaint. Except for requirements (e) and (i) below, the reviewing officer may waive all other requirements for good cause. A Section 184 complaint must:

(a) Be written and signed by the complainant. An electronic message satisfies this requirement.

(b) Be addressed to the reviewing officer who is the commanding officer over the respondent at the time of the alleged wrong.

(c) Identify the complainant's current military organization and address.

(d) Identify the complainant's military organization at the time of the alleged wrong.

(e) Identify the commanding officer whom the service member believes committed the wrong.

(f) Indicate the date of the Initial Request for Redress and the date of the Respondent's response.

(g) State the complaint is submitted under the provisions of Section 184 and this instruction.

(h) Describe the specific wrong forming the basis of the complaint.

(i) State the redress sought and the reasons the redress is appropriate.

(3) Attachments. Include as an attachment:

(a) The Initial Request for Redress, and the Respondent's response, if any.

(b) Supporting information or documents relevant to the complaint.

(4) Nature of respondent. The person identified as having committed the wrong must have been the commanding officer of the complainant at the time of the perceived wrong. The commanding officer must have been an officer in the complainant's chain-of-command.

(5) Nature of the wrong. The wrong identified must be a discretionary act or omission by the respondent that adversely affects the complainant personally and is:

(a) In violation of law or regulation;

(b) Beyond the legitimate authority of that commanding officer;

(c) Arbitrary, capricious, or an abuse of discretion; or

(d) Materially unfair.

(6) Timeliness in submitting a Section 184 complaint. Service members electing to submit a Section 184 complaint must, within 30 calendar days of being denied initial request for redress from Respondent, deliver the complaint to the reviewing officer. Complaints submitted through the United States Postal Service are considered submitted when the reviewing officer receives the complaint. The reviewing officer may waive untimeliness for good cause.

(7) Withdrawal. The complainant may withdraw the complaint at any time before final action. Withdrawal must be written and voluntary.

(8) Appropriate/Inappropriate subject matter for Section 184 complaints. The reviewing officer will determine whether the complaint is appropriate for resolution under Section 184. If deemed inappropriate, the examination and review is limited to determining whether other processes or procedures are adequate for complaint resolution. If the reviewing officer determines available complaint resolution processes or procedures are inadequate or unavailable, then the reviewing officer should conduct a full examination treating the complaint as appropriate for resolution under Section 184.

(9) Reviewing officer's report. The final report will include findings and the factual basis for each finding. The findings must address whether the act or omission complained of was:

- (a) In violation of law or regulation;
- (b) Beyond the legitimate authority of the respondent;
- (c) Arbitrary, capricious, or an abuse of discretion; and/or
- (d) Materially unfair.

(10) Reviewing officer's response to the complaint. The reviewing officer must notify the complainant of the outcome of the complaint. When the facts support the findings, the reviewing officer must take action to correct the wrong. This authority may not be delegated. The servicing judge advocate will conduct a legal review of the findings and the proposed action.

(11) Forward complaint to the Office of the General Counsel. Once the action is complete, the reviewing officer will forward the complete action to the Office of the General Counsel (NGTX-GC). The complaint packet will include:

- (a) The complaint and any supporting documentation, the Initial Request for Redress, and the commanding officer's response;
- (b) The results of the examination with any supporting documentation;
- (c) The reviewing officer's notice to the complainant;
- (d) The legal review; and
- (e) A memorandum indicating any other actions taken.

(f) Final action. Unless the reviewing officer is otherwise notified by NGTX-GC, the reviewing officer's action on the Section 184 complaint is considered final.

f. Legal Advice.

(1) Complainant. A member who desires to submit a Section 184 complaint may:

(a) Consult Trial Defense Services or Area Defense Counsel for advice and assistance in drafting the complaint. Such advice will include, but is not limited to, whether a Section 184 complaint is authorized and appropriate under this instruction. Representation by military lawyers is limited to consultation and advice.

(b) Consult or retain other legal counsel at no expense to the Government. Such counsel may attend any proceedings under this instruction open to members of the public, but may not participate in such proceedings.

(2) Respondent. A commanding officer who receives or is subject to a Section 184 complaint should consult their servicing judge advocate.

(3) Reviewing officer. Before taking action on the complaint, the reviewing officer will seek a legal review from his/her servicing judge advocate.

g. Inappropriate subject matter for Section 184 complaints.

(1) General. The procedures prescribed in this instruction are intended to ensure adequate official channels for redress where a Service member believes they have been wronged by their commanding officer, and there is no method or process to address the wrong. The Section 184 complaint process is not intended to substitute or duplicate other specific channels that ensure Service members are noticed and given an opportunity to respond, with or without a hearing. Generally, an action is inappropriate for resolution under Section 184 when:

(a) Review is provided specifically by the Texas Code of Military Justice (TCMJ), or the action is otherwise reviewable by a court authorized by the TCMJ, a military judge, or a military magistrate;

(b) The complaint is related to an action taken pursuant to the recommendation of a board authorized by regulation, and the complainant was afforded substantially the rights of a respondent (see AR 15-6); or

(c) Army, Air Force, or TMD instructions or regulations authorize an administrative appeal.

(2) Examples. Examples of actions not appropriate for Section 184 redress include:

(a) Courts-martial, nonjudicial punishment, confinement, and similar actions taken pursuant to the TCMJ;

(b) Officer or enlisted elimination actions;

- (c) Whistleblower reprisal allegations;
- (d) Withdrawals of flying status (see AR 600-105 and AFI 11-402);
- (e) Appeals from findings of pecuniary liability (see AR 37-104-4, AR 735-5 and AFMAN 230220);
- (f) Appeals from administrative reductions/demotions in enlisted grades (see AR 600-8-19 and AFI 36-2502);
- (g) Appeals from Officer Evaluation Reviews (OERs)/Officer Performance Reports (OPRs) or Enlisted Evaluation Reports (EER)/Enlisted Performance Reports (EPRs) (see AR 623-3 and AFI 36-2406);
- (h) Filing of adverse information (for example, administrative reprimand) in official personnel records (see AR 600-37 and AFI 36-2907); or
- (i) Where Army, Air Force or TMD regulations specifically authorize due process such as AGR curtailments (see NGTX 600-100) and Involuntary Separations/Discharges (see AR 135-178 and AFI 36-3209).

4. INFORMATION REQUIREMENTS. NA

5. RELEASABILITY. Unlimited.

6. EFFECTIVE DATE. This issuance is effective immediately and will expire two years from the date of publication unless sooner rescinded or superseded.

7. POINT OF CONTACT. Point of contact for this policy is the General Counsel at (512) 782-5057.


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