
 <b>Department of Corrections and Community Supervision</b>  <b>DIRECTIVE</b>	TITLE  <b>Privileged Correspondence</b>		NO. 4421
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REFERENCES (Include but are not limited to)	APPROVING AUTHORITY  		

## I. 721.1 PURPOSE

This directive contains and describes the policies and procedures governing privileged correspondence. *Privileged correspondence*, as defined below, is entitled to a greater degree of confidentiality during processing within the facility than that which is accorded general correspondence (see Part 720 of Title 7, “Incarcerated Individual Correspondence Program”).

## II. 721.2 DEFINITION

- A. Privileged correspondence is defined as correspondence addressed by an incarcerated individual to any of the following persons or entities at their official business address, or, except as noted in Section II-B below, received from such persons or entities:
1. *Governmental/Public Officials*: Any American Federal, State, or local government official, department or agency; any official of a Nation, State, or tribe of which an incarcerated individual is a citizen; or the Correctional Association of New York State;
  2. *Legal Services*: Any attorney, approved legal representative, representative employed or supervised by an attorney, or any legal services organization;
  3. *Medical Services*: Medical personnel such as physicians and dentists; or hospitals; or
  4. *Rape Crisis Program*: Any local, State, or National organization authorized to provide rape crisis services, victim advocacy services, and emotional support services, including but not limited to, organizations approved to provide such services in New York State by the Department of Health pursuant to Public Health Law §206(15).
- B. The following shall not be defined as *privileged correspondence*, but shall be processed as general incoming correspondence in accordance with Part 720 of Title 7, “Incarcerated Individual Correspondence Program:”
1. Mail that is not delivered in an envelope bearing the identity and official business return address of one of the above listed persons or entities;
  2. Mail received from a Board of Elections;
  3. Mail received from the Department of Motor Vehicles;
  4. Mail received from the State Education Department, excluding materials sent to incarcerated individuals marked “legal mail” by the New York State Library’s Prisoner Services Project;

5. Mail received from any county or local tax assessor or clerk, except for a clerk of a court (Note: notwithstanding that a county clerk may also be a clerk of a court, mail from a county clerk shall be processed as general incoming correspondence); and
  6. Mail received from the Secretary of State, Department of State, corporation division or uniform commercial code unit of any State.
- C. This directive does not, in itself, establish a confidential relationship between the sender and recipient of correspondence identified herein as privileged (e.g., a Central Office official in receipt of privileged mail may share that mail, and any response to it, as deemed appropriate). The privileges that apply to correspondence defined in this Section relate to processing controls, allowances of limited free postage, and advances of incarcerated individual funds for postage. These privileges are detailed in Section III below.

### III. 721.3 PROCEDURE

Note: Unless otherwise provided for in this directive, the general correspondence procedures set forth in Part 720, "Incarcerated Individual Correspondence Program," (such as the requirement to put return addresses on the front and back of outgoing envelopes) shall be followed.

#### A. Outgoing Privileged Correspondence

1. For the purpose of this directive, outgoing mail will not be considered to be privileged correspondence until it has been placed in the control of the facility administration for processing.
2. Outgoing privileged correspondence may be sealed by an incarcerated individual, and such correspondence shall not be opened, inspected, or read without express written authorization from the facility Superintendent as specified in Section III-C. Notwithstanding the foregoing or any other provisions of this directive, outgoing mail to the Secretary of State, Department of State, corporation division or uniform commercial code unit of any State shall be submitted by an incarcerated individual unsealed and is subject to inspection.
3. Postage for privileged correspondence:
  - a. Letters addressed to the Commissioner or other Central Office staff shall be mailed by the facility at no cost to an incarcerated individual. This service shall only apply to regular letters; special handling charges for services such as certified mail, return receipt, or express mail must be paid for by an incarcerated individual.
  - b. Each incarcerated individual will receive a weekly free postage allowance equivalent to five domestic first class one ounce letters to pay for first class postage on outgoing privileged correspondence.
    - (1) This allowance may not be used to pay for any special handling charges such as for certified, return receipt, express mail, etc., unless such mail services are required by statute, court rule, or court order.
    - (2) Any unused allowance will not be accumulated from week to week. Incarcerated individuals will have to pay for postage costs that exceed this weekly allowance.

- c. A postage-prepaid envelope received within correspondence from a court or an attorney which has been pre-addressed by the court or attorney may be received (subject to inspection by the security staff) and used by the incarcerated individual for the intended return correspondence.
- d. To ensure that indigent incarcerated individuals maintain their right of access to the courts, the facility shall approve an IAS 2708 advance request to pay for first class mail postage if the incarcerated individual has insufficient funds and if the following conditions are met:
  - (1) The mail is legal mail (e.g., it is addressed to a judge, clerk of court, attorney, or authorized legal representative; or is directly related to a potential or ongoing legal matter);
  - (2) Any balance of the incarcerated individual's free weekly postage allowance is applied to the legal mail postage costs; and
  - (3) The requested advance and the balance of unpaid previous advances for legal mail postage do not exceed \$20, except as may be approved under Section III-A-3-f, below.
- e. Advances for "special handling" (e.g., certified mail, return receipt, express mail, etc.) will not be approved, unless required by a statute, court rule, or court order.
- f. Exceeding the \$20 limit shall only be approved if an incarcerated individual can show by court rule, court order, a statute of limitations, or other legal deadline applicable to his or her individual circumstance that the legal mail must be sent prior to receipt of the next week's free postage allowance. The incarcerated individual must provide justification for such advance.
- g. No request for a legal mail advance will be denied by facility staff without prior consultation with the Department's Office of Counsel. Any question whether a particular item qualifies as "legal mail," or whether an advance is allowable, should be directed to such office.

B. Incoming Privileged Correspondence

1. *Confidentiality*: Incoming privileged correspondence shall not be opened outside the presence of the incarcerated individual to whom it is addressed, and shall not be read without express written authorization from the facility Superintendent (see Section III-C below).

A log entry should document any incoming privileged correspondence erroneously opened outside the presence of the incarcerated individual to whom it is addressed (see Section III-B-3 below). If appropriate, a photocopy of an erroneously opened envelope shall be included.

2. *Priority Handling*: Incoming privileged correspondence shall be given priority handling and shall be delivered in a consistent manner at a time when incarcerated individuals are available to receive it and which does not interfere with programming. If the incarcerated individual to whom privileged correspondence is addressed is not currently at the facility, the provisions of Part 722 of Title 7, "Forwarding Incarcerated Individual Mail," shall be followed.

3. *Privileged Mail Log:* A log shall be created to record receipt and delivery of incoming privileged mail. It shall identify the sender and include the incarcerated individual's name and number, the delivery date and time, the title of the delivery person, and note if the incarcerated individual refused to sign a receipt, refused delivery of the mail, or would not respond to delivery calls. If privileged mail is erroneously opened outside the presence of the incarcerated individual, that fact and any relevant explanation shall be noted in the log.
4. *Inspection*
  - a. Where x-ray capability exists, incoming privileged correspondence should be x-rayed prior to being opened.
  - b. Except as provided in Section III-C below, all incoming privileged correspondence shall be opened and inspected, in the presence of the incarcerated individual to whom it is addressed, for the presence of cash, checks, money orders, and contraband and to verify, as unobtrusively as possible, that the correspondence does not contain material that is not entitled to the privilege.
  - c. When, in the course of inspection, cash, checks, or money orders are found, they shall be removed and credited to the incarcerated individual's account.
  - d. When, in the course of inspection, contraband is found, it shall be removed and forwarded to the security office, with appropriate chain-of-custody documentation. When appropriate, the State Police shall be notified.
  - e. When, in the course of inspection, material is found that does not appear to be entitled to the privilege, all parts of the correspondence shall be forwarded directly to the Superintendent without further inspection, and a report from the person opening and inspecting shall detail the circumstances.
  - f. A postage-prepaid envelope received within correspondence from a court or an attorney, which has been pre-addressed by the court or attorney, may be received (subject to inspection by the security staff) and used by the incarcerated Individual for the intended return correspondence.
5. *Receipt*
  - a. The incarcerated individual to whom privileged correspondence is addressed shall sign a receipt for such correspondence. All receipts for incoming privileged correspondence shall be retained in an appropriate file.
  - b. If an incarcerated individual refuses to sign a receipt, the delivering employee shall so indicate on the receipt, note the date and time of the refusal to sign, and deliver the correspondence to the incarcerated individual.
6. *Refusal*
  - a. If an incarcerated individual refuses to accept the privileged correspondence when it is offered, the delivering employee shall note the refusal in the log and any known reason for non-acceptance. The privileged correspondence should be returned to the sender stamped "addressee refused to accept."
  - b. If the incarcerated individual refuses to respond to the privileged mail delivery call, a second attempt should be made to deliver the letter.

If the incarcerated individual again refuses to respond, note the date and time, and any known reason for not responding to privileged mail calls in the privileged mail log. The receipt with this information shall be retained in an appropriate file. The privileged correspondence should be returned to the sender stamped "addressee refused to accept."

7. *Returned to Sender.* Privileged correspondence originally sent out of the facility by an incarcerated individual, but subsequently returned to the incarcerated individual sender by the postal service, shall be processed as incoming privileged correspondence, in accordance with the procedures as set forth in Sections III-B-1 and 2, above.

C. Authorization to Read Privileged Mail

1. The Superintendent shall not authorize the reading of incoming or outgoing privileged correspondence, unless there is a reason to believe that the provisions of this or any directive or rule or regulation have been violated, that any applicable State or Federal law has been violated, or that the content of such correspondence threatens the safety, security, or good order of a facility or the safety or well-being of any person. Such authorization by the Superintendent shall be in writing and shall set forth facts forming the basis for the action.
2. The Superintendent is advised to consult with the Department's Office of Counsel before issuing such authorization. If the facility Superintendent authorizes the reading of privileged correspondence, it shall be read only by the Superintendent, a Deputy Superintendent, or Central Office staff.
3. If after reading the contents of privileged correspondence there is reason to believe that the provisions of this or any directive or rule or regulation have been violated, or that any State or Federal law has been violated, or that the content of such correspondence threatens the safety, security, or good order of a facility or the safety or well-being of any person, then the correspondence may be confiscated, and the incarcerated individual must be given written notice of the confiscation, unless doing so would be inconsistent with the need to safeguard an investigation. The notice must include the reason(s) for the confiscation, and it must inform the incarcerated individual of the right to appeal the confiscation to the Deputy Commissioner for Program Services. In the case of incoming correspondence, the correspondent must also be given a copy of such notice and accorded the right to appeal, unless doing so would be inconsistent with the need to safeguard an investigation. Reason to believe that privileged correspondence is being used to introduce contraband or other materials not entitled to the privilege shall be sufficient reason for confiscation.

This Section shall not be deemed to require the express written authorization of the Superintendent to inspect incoming privileged correspondence, in the presence of the incarcerated individual, to ensure that the materials contained in the correspondence are entitled to the privilege.