

FORT FAIRFIELD POLICE DEPARTMENT

Standard Operating Procedure

314 – PROTECTION OF PRIVILEGED COMMUNICATIONS AND MATERIALS

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Legacy SOPs Replaced	New Policy
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Policy Classification	Operational
Authority	Chief of Police
Version	1.0

I. PURPOSE

To establish procedures for the identification, protection, handling, review, seizure, storage, and disclosure of privileged communications and protected materials encountered during law enforcement operations.

II. POLICY

It is the policy of the agency to recognize and protect attorney-client privilege, privileged communications, confidential legal materials, and other legally protected information encountered during the performance of official duties.

Agency personnel shall comply with constitutional requirements, Maine law, court orders, evidentiary privilege rules, and agency policy when handling potentially privileged materials or communications. Officers shall take reasonable steps to avoid unnecessary intrusion into privileged communications and shall immediately notify supervisory personnel when privileged materials are discovered, seized, intercepted, or inadvertently viewed. Prosecutorial authorities will also be notified when the circumstances warrant, pursuant to statute and agency policy.

The agency recognizes that privileged communications may arise in physical, verbal, written, recorded, electronic, digital, or cloud-based formats. Officers shall use reasonable safeguards to preserve the integrity of investigations while protecting the constitutional and legal rights of those involved.

Nothing in this policy prohibits officers from taking lawful action necessary to protect life, preserve evidence, maintain institutional security, or comply with lawful court orders.

III. DEFINITIONS

Attorney-Client Privilege – The legal privilege protecting confidential communications between an attorney and client made for the purpose of obtaining or providing legal advice.

Confidential Communication – A communication intended to remain private and protected from disclosure to unauthorized people.

Electronic Communication – Any transfer of signs, signals, writing, images, sounds, data, or intelligence transmitted electronically, digitally, telephonically, or by computer network.

Filter Team / Taint Team – A designated group of investigators, attorneys, or other authorized personnel assigned to review potentially privileged materials in order to segregate protected information from investigative personnel.

Inadvertent Discovery – The unintentional discovery, viewing, seizure, interception, or review of potentially privileged materials or communications during lawful law enforcement activities.

Privileged Communication – Any communication protected from disclosure under constitutional provisions, statute, court rule, or recognized evidentiary privilege.

Protected Materials – Documents, recordings, communications, files, digital evidence, or other materials reasonably believed to contain privileged or confidential information protected by law.

Seized Materials – Any property, document, electronic device, communication, or evidence lawfully taken into custody by law enforcement personnel.

Work Product – Materials, notes, legal strategies, research, memoranda, or related materials prepared by or for legal counsel in anticipation of litigation or legal proceedings.

IV. LEGAL AUTHORITY

A. General Authority

Officers shall protect privileged communications and materials in accordance with:

- The United States Constitution;
- The Constitution of the State of Maine;
- Maine Rules of Evidence;
- Maine Rules of Unified Criminal Procedure;
- Applicable federal and state statutory authority;

- Court orders;
 - MCJA Board of Trustees standards; and
 - Agency policy.
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B. Constitutional Protections

Officers shall recognize that privileged communications and materials may implicate protections under the:

- Fourth Amendment;
- Fifth Amendment;
- Sixth Amendment; and
- Fourteenth Amendment

to the United States Constitution, as well as corresponding protections under the Constitution of the State of Maine.

C. Attorney-Client Privilege

Communications between attorneys and clients made for the purpose of obtaining or providing legal advice are generally protected from disclosure or review. Officers shall avoid unnecessary intrusion into such communications and shall follow supervisory and prosecutorial guidance when potentially privileged materials are encountered.

D. Court Orders and Warrants

Nothing in this policy prohibits officers from executing lawful search warrants, subpoenas, court orders, or other authorized legal process. Officers executing legal process involving potentially privileged materials shall use reasonable safeguards to minimize unnecessary review or disclosure of protected information.

V. OPERATIONS

A. General Responsibilities

Officers encountering potentially privileged communications or materials shall exercise reasonable care to preserve confidentiality and prevent unnecessary disclosure.

When officers reasonably believe materials may contain privileged information, they shall:

- Limit unnecessary review;
 - Notify a supervisor as soon as practical;
 - Preserve the integrity of the materials;
 - Avoid dissemination to unauthorized personnel; and
 - Follow prosecutorial or court-directed procedures.
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B. Searches and Seizures

Officers conducting searches, seizures, or evidence collection operations involving attorneys, law offices, legal materials, legal mail, electronic communications, or potentially privileged records shall coordinate with supervisory personnel and prosecutorial authorities.

When practical, operational planning for searches reasonably expected to involve privileged materials should include consultation with supervisory personnel and prosecutorial authorities before execution.

Officers shall use reasonable measures to minimize unnecessary exposure to privileged materials. Such measures may include:

- Segregation of materials;
- Sealing of evidence;
- Use of filter or taint team;
- Delayed review pending court authorization; or
- Other lawful protective measures.

Nothing in this policy prohibits officers from securing evidence necessary to prevent destruction, concealment, or loss of evidence when immediate action is required.

C. Digital Evidence

Potentially privileged digital evidence may include:

- Email communications;

- Text messages;
- Cloud-based records;
- Attorney files;
- Digital legal research;
- Electronic case files;
- Recorded phone calls;
- Voicemail recordings; or
- Other electronically stored information.

Officers handling digital evidence shall avoid unnecessary review of privileged content and shall comply with warrant limitations, court orders, and prosecutorial guidance regarding review procedures.

When feasible, digital evidence containing potentially privileged materials should be segregated pending review by authorized personnel or court-approved procedures. When authorized by law or court order, the use of specialized digital review protocols or court-approved filter procedures should be considered to minimize unnecessary exposure to privileged information.

**See Appendix C - DIGITAL EVIDENCE SEGREGATION WORKSHEET*

D. Jail and Detention Communications

Officers and detention personnel shall recognize that communication between attorneys and clients are generally protected even when occurring within correctional or detention settings.

Reasonable measures shall be taken to preserve confidentiality of protected attorney-client communications consistent with institutional safety, operational security, and lawful monitoring practices.

Recorded telephone systems, electronic messaging systems, video visitation systems, and mail handling procedures shall comply with applicable law, court orders, and agency policy.

E. Inadvertent Discovery of Privileged Materials

If officers inadvertently discover or review potentially privileged materials during lawful investigative activity, the officer shall:

- Cease unnecessary review of the materials;
- Notify supervisory personnel;

- Document the circumstances of discovery;
- Preserve the materials in their current condition;
- Notify a prosecutor; and
- Follow prosecutorial or court-directed procedures regarding further review.

Officers shall not intentionally exploit inadvertent exposure to privileged materials for investigative advantage.

Supervisory or command personnel may choose to remove from the underlying investigation officers who have been exposed to the substance of privileged communications or materials, if warranted by the circumstances.

**See Appendix B - PRIVILEGED MATERIALS HANDLING GUIDELINES*

F. Evidence Handling and Storage

Potentially privileged materials seized or retained by the agency shall be:

- Clearly identified when practical;
- Properly secured;
- Access restricted to authorized personnel; and
- Maintained in accordance with evidence handling procedures and court directives.

When ordered by a court or prosecutorial authority, privileged materials may be sealed, segregated, copied, returned, or otherwise handled consistent with legal requirements.

G. Public Information and Disclosure

Officers shall not publicly disclose privileged communications, protected legal materials, or confidential legal information except as authorized by law, court order, prosecutorial direction, or agency policy.

Requests for disclosure involving potentially privileged materials shall be referred to supervisory personnel and prosecutorial authorities.

H. Training

The agency shall provide training regarding:

- Attorney-client privilege;
- Protected communications;
- Digital evidence handling;
- Search warrant limitations;
- Constitutional protections;
- Evidence segregation procedures; and
- Applicable legal updates.

APPENDIX A

BOT & MLEAP STANDARDS CROSSWALK

Protection of Privileged Communications Policy

Authority

25 M.R.S. § 2803-B – Law Enforcement Policies

BOT 15-1 – Protection of Attorney/Client Privilege Policy

BOT 15-9 – Mandatory Policy Compliance

Addressed in: Sections I, II

Definitions

Authority

BOT 15 – Required Definitions

Addressed in: Section III

Constitutional and Legal Authority

Authority

United States Constitution – Fourth, Fifth, Sixth and Fourteenth Amendments

Constitution of the State of Maine

Maine Rules of Evidence

Maine Rules of Criminal Procedure

MLEAP 1.03 – Constitutional Requirements

Addressed in: Section IV

Attorney-Client Meetings and Privileged Communications

Authority

BOT 15-2 – In-Person Attorney-Client Meetings

BOT 15-5 – Recording Restrictions

Addressed in: Sections IV.C, V.D

Attorney-Client Telephone Communications

Authority

BOT 15-3 – Attorney-Client Telephone Communications

15 M.R.S. § 714

Addressed in: Section V.D

Confidential Legal Correspondence and Legal Materials

Authority

BOT 15-4 – Confidential Attorney-Client Legal Correspondence

BOT 15-6 – Search and Seizure of Legal Materials

MLEAP 4.02 – Search and Seizure

Addressed in: Sections IV.D, V.B

Digital Evidence and Privileged Electronic Materials

Authority

BOT 15-6 – Electronic Legal Records

MLEAP 5.07 – Digital Evidence Management

Addressed in: Section V.C

Inadvertent Discovery of Privileged Communications

Authority

BOT 15-7 – Inadvertent Review of Privileged Communications

15 M.R.S. § 714

Addressed in: Section V.E

Evidence Handling and Restricted Access

Authority

BOT 15-6 – Protection of Privileged Materials

BOT 15-7 – Preservation Following Inadvertent Access

MLEAP 5.02 – Evidence and Property Control

Addressed in: Section V.F

Public Information and Disclosure

Authority

BOT 15-6 – Protection from Unauthorized Disclosure

MLEAP 1.06 – Public Information and Records

Addressed in: Section V.G

Training

Authority

BOT 15-8 – Operational Compliance and Documentation

MLEAP 2.05 – Legal and Investigative Training

Addressed in: Section V.H

APPENDIX B

PRIVILEGED MATERIALS HANDLING GUIDELINES

When officers encounter potentially privileged materials or communications, personnel should consider:

- Whether the material appears related to legal representation;
- Whether the material appears legally confidential in nature;
- Whether review can be minimized or delayed;
- Whether supervisory or prosecutorial guidance is required;
- Whether segregation or sealing procedures are appropriate; and
- Whether court authorization is necessary before further review.

Examples of potentially privileged materials may include:

- Attorney correspondence;
- Legal pleadings;
- Defense strategy notes;
- Legal research materials;
- Attorney-client emails, phone calls or text messages;
- Marked legal files;
- Privileged jail communications; or
- Court-sealed documents.

APPENDIX C

DIGITAL EVIDENCE SEGREGATION WORKSHEET

- Case Number: _____
- Date / Time: _____
- Officer: _____
- Supervisor: _____

Device / Evidence Information

- Device Type: _____
- Owner / Possessor: _____
- Location Seized: _____
- Warrant / Court Order Reference: _____

Potentially Privileged Materials Identified

- ☐ Attorney Communications
- ☐ Legal Documents
- ☐ Email Communications
- ☐ Cloud Storage
- ☐ Phone Communications
- ☐ Work Product Materials
- ☐ Court-Sealed Materials
- ☐ Other: _____

Protective Measures Implemented

- ☐ Segregated
 - ☐ Sealed
 - ☐ Supervisor Notified
 - ☐ Prosecutor Notified
 - ☐ Filter / Taint Process Initiated
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- ☐ Court Guidance Requested
 - ☐ Access Restricted

Additional Notes: