

In the  
**Supreme Court of Ohio**

JERONE McDOUGALD,

Relator,

v.

LARRY GREENE,

Respondent.

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Case No. 2019-0880

Original Action in Mandamus

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**RESPONDENT LARRY GREENE’S MOTION FOR LEAVE TO FILE CORRECTED  
SUPPLMENTAL BRIEF**

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Ohio Attorney General

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PO Box 80033  
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*Relator, Pro Se*

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In the  
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**RESPONDENT’S MOTION FOR LEAVE TO FILE CORRECTED  
SUPPLEMENTAL BRIEF**

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Respondent Larry Greene (“Respondent”), by and through his legal counsel, respectfully requests leave of court to file a corrected supplemental brief that was filed with the Court on March 18, 2020. This Motion is supported by the attached Memorandum.

Respectfully submitted,

DAVE YOST  
Ohio Attorney General

*/s/ Tracy L. Bradford*  
TRACY L. BRADFORD (0058556)  
*Counsel of Record*  
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**Respondent’s Memorandum in Support**

**I. Background**

By entry dated February 12, 2020, this Court ordered the parties to brief the following issue: “When none of the statutory delivery methods are available to an inmate, does a kite constitute hand delivery?” Relator McDougald filed his responsive Supplemental Brief on March 3, 2020. Respondent Greene filed his Supplemental Brief on March 18, 2020, within the 15-day period provided by the Court.

In preparation for filing, Respondent’s legal counsel used the combination printer/copier/scanner [in the Corrections Litigation Unit] to print out and then scan the documents to herself for subsequent e-filing with the Court. Difficulties with the machine’s scanning mode ensued as it missed pages and scanned others out of order. Respondent’s legal counsel was finally able to scan all of the documents. However, Respondent’s counsel unknowingly filed the wrong set of scanned documents with the Court. The set scanned at 4:44 p.m. on March 18, 2020, was the last set of scanned documents and should have been a complete set. But it wasn’t. The set scanned at 4:41 p.m. on March 18, 2020, was the complete set.

Not realizing the error, Respondent's legal counsel filed the incorrect Supplemental Brief with the Court. Importantly, the incorrect Supplement Brief is missing pages 5, 6, 7 and 8, which are vital to Respondent's argument before this Court, as well as a full copy of Respondent Larry Greene's Affidavit, Policy 50-PAM-01 and Policy 75-MAL-01.

Respondent Greene is requesting leave of Court to file the *correct* Supplemental Brief, attached hereto as Exhibit "A" that includes the missing pages necessary for the Court to consider when issuing a decision on the merits of this case. The Court's briefing schedule issued on February 12, 2020 did not call for Relator to file a response to Respondent's Supplemental Brief. Therefore, Respondent asserts that Relator will not be prejudiced by the granting of this Motion.

Respectfully submitted,

DAVE YOST  
Ohio Attorney General

/s/ Tracy L. Bradford  
TRACY L. BRADFORD (0058556)  
*Counsel of Record*  
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*Counsel for Respondent*

#### **CERTIFICATE OF SERVICE**

I hereby certify that the foregoing *Respondent Larry Greene's Motion for Leave to File Corrected Supplemental Brief* has been filed and served upon Relator Jerome McDougald, #548-527, Toledo Correctional Institution, PO Box 80033, Toledo, OH 43608 via U.S. mail, postage prepaid, this 6<sup>th</sup> day of May, 2020.

/s/ Tracy L. Bradford  
TRACY L. BRADFORD (0058556)  
Counsel for Respondent

**Exhibit “A”**

**In the  
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**RESPONDENT’S SUPPLMENTAL BRIEF**

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Ohio Attorney General

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**RESPONDENT’S SUPPLEMENTAL BRIEF**

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Respondent Larry Greene (“Respondent”), by and through his legal counsel, respectfully files a Supplemental Brief per this Court’s Entry dated February 12, 2020. Relator filed his Supplemental Brief with the Court on March 3, 2020. Respondent’s Supplemental Brief is due within 15 days of Relator having filed his brief, per the Court’s Entry. Respondent’s Supplemental Brief is attached hereto.

Respectfully submitted,

DAVE YOST

Ohio Attorney General

/s/ Tracy L. Bradford

TRACY L. BRADFORD (0058556)

*Counsel of Record*

Assistant Attorney General

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*Counsel for Respondent*

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Respondent.	:	

**Respondent’s Supplemental Brief**

**I. Background**

Relator Jerone McDougald (Relator McDougald) filed this Mandamus action on June 28, 2019 alleging that Respondent Larry Greene (Respondent Greene), Assistant to the Warden at the Southern Ohio Correctional Facility (SOCF), failed to provide him with public records under R.C. 149.43(B) and (C)(2). Relator McDougald alleges that he requested records from Respondent Greene on the dates of December 5, 2018 and February 3, 2019.<sup>1</sup> In his verified Complaint, Relator McDougald states, “I *submitted* two public records requests...” and never does he mention how he submitted those two requests. (emphasis added, see Complaint, pg. 2, ¶ and McDougald Affidavit, ¶1).

Now Relator McDougald alleges in his unverified February 5, 2020, Motion to Amend Complaint, that he hand-delivered his two kites to Respondent Greene on two separate occasions

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<sup>1</sup> Per Relator’s request of December 5<sup>th</sup>, 2018, Respondent Greene provided Relator McDougald with the DAS General Schedule on July 22, 2019. As to the February 3, 2019, request, Respondent Greene provided Relator McDougald with the responsive records on October 31, 2019. The circumstances of each request and response is detailed in Respondent’s Brief submitted to the Court on November 4, 2019.

during which he alleges Respondent Greene was conducting unannounced communication rounds in Relator McDougald's J-1 cell block. (See Relator's "Motion for Leave to Amend Complaint and Brief"). Respondent Greene asserts that Relator McDougald has fabricated these allegations in his quest to receive an award of statutory damages. (Greene Affidavit, Exhibit "A", attached hereto and incorporated herein ).

By entry dated February 12, 2020, the Court ordered the parties to brief the following issue: "When none of the statutory delivery methods are available to an inmate, does a kite constitute hand delivery?" Relator McDougald filed his responsive Supplemental Brief on March 3, 2020. Respondent Greene now files his Supplemental Brief within the 15-day period provided by the Court.

Below, Respondent Greene responds to the question posed by the Court, in addition to addressing Relator's Motion to Amend Complaint.

## **II. Law and Argument.**

### **a. The Court has requested the parties to brief a hypothetical situation contrary to judicial standards.**

The manner in which the Court has framed its question requires the parties to, in essence, answer a hypothetical situation posed by the Court. Relator McDougald's Complaint in Mandamus, including his proposed motion to amend his Complaint, does not allege that statutory methods of delivery were unavailable to him in submission of his public records requests to Respondent Greene (Complaint). Never does he make that claim; therefore such facts are not in evidence before this Court.

In this Court's own words,

"We usually decline to rule on questions that are not necessary to a proper disposition of a case. This restriction exists because "[a] hallmark of judicial

restraint is to rule only on those cases that present an actual controversy. To do otherwise -- to simply answer a hypothetical question merely for the sake of answering it -- would make this court nothing more than an advisory board." *Ahmad v. AK Steel Corp.*, 119 Ohio St.3d 1210, 2008 Ohio 4082, 893 N.E.2d 1287, P 3 (O'Connor, J., concurring). See also *Fortner v. Thomas* (1970), 22 Ohio St.2d 13, 14, 51 O.O.2d 35, 257 N.E.2d 371 ("It has been long and well established that it is the duty of every judicial tribunal to decide actual controversies between parties legitimately affected by specific facts and [\*\*\*\*45] to render judgments which can be carried into effect").

*State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, 933 N.E.2d 753, ¶ 80.

However, respecting the Court's inquiry, Respondent Greene asserts that, 1) at least one statutory method of delivering a public records request is always available to an inmate (and was available to Relator McDougald), just as it is available to the public, which is to send public records requests by certified mail to the public office or person responsible for the records requested, and, 2) submission of a hand-written kite through the SOCF kite system does not constitute hand-delivery of a public records request under R.C. 149.43(C)(2) for purposes of awarding statutory damages.<sup>2</sup> (Greene Affidavit, Exhibit "A").

**b. The Court must apply the plain meaning of the statute.**

At the outset, Respondent reviews the plain meaning of the statute. In the absence of a statutory definition, a court relies on the "common, ordinary, and accepted meaning" of a word. *State v. Black*, 142 Ohio St.3d 332, 2015-Ohio-513, 30 N.E.3d 918, ¶ 39; R.C. 1.42. The ordinary meaning

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<sup>2</sup> If a requester transmits a *written request by hand delivery, electronic submission, or certified mail* to inspect or receive copies of any public record in a manner that fairly describes the public record or class of public records to the public office or person responsible for the requested public records, except as otherwise provided in this section, the requester shall be entitled to recover the amount of statutory damages set forth in this division if a court determines that the public office or the person responsible for public records failed to comply with an obligation in accordance with division (B) of this section. R.C. 149.23(C)(2).

of the words the General Assembly used at the time of enactment also guides the Court's determination of legislative intent. *See Volz v. Volz*, 167 Ohio St. 141, 146, 146 N.E.2d 734 (1957).

“A basic principle of statutory construction is that words in a statute should be interpreted based on their meaning at the time of enactment—to do otherwise would amount to judicial amendment outside of the legislative process.” *New Prime Inc. v. Oliveira*, 139 S.Ct. 532, 539, 202 L.Ed.2d 536 (2019). See also *Vossman v. AirNet Sys., Inc.*, Slip Opinion No. 2020-Ohio-872 (Ohio Supreme Court).

In order to be eligible for statutory damages, R.C. 149.43(C)(2) does not call for a pecking order regarding the three named delivery methods, nor does it require a requester or respondent to allege and prove that the requester undertook a process of elimination as to the same. Perhaps the real question, without any qualification as to the availability of other statutory methods of delivery, is whether the submission of a hand-written kite by an inmate requesting public records constitutes hand delivery under R.C. 149.43(C)(2). To construe the inquiry otherwise would require Respondent Greene, and this Court, to apply criteria that is not written into this statute.

**c. The statute is not ambiguous and makes no reference to kites.**

“If a statute is ambiguous,” we may consider factors such as “[t]he circumstances under which the statute was enacted” to determine legislative intent. (Emphasis added.) *Rockies Express, L.L.C. v. McClain*, 2020-Ohio-410, ¶ 14-16, R.C. 1.49(B). This Court has stated, however, that resort to extraneous sources of legislative intent is improper without an initial finding of ambiguity. *Jacobson v. Kaforey*, 149 Ohio St.3d 398, 2016-Ohio-8434, 75 N.E.3d 203, ¶ 8, quoting *Dunbar v. State*, 136 Ohio St.3d 181, 2013-Ohio-2163, 992 N.E.2d 1111, ¶ 16 (“Without ‘an initial finding’ of ambiguity, ‘inquiry into legislative intent, legislative history, public policy, the consequences of an interpretation, or any other factors identified in R.C. 1.49 is inappropriate.”). *Compare State v.*

*Sinito*, 43 Ohio St.2d 98, 100-102, 330 N.E.2d 896 (1975) (considering United States Supreme Court precedent and the historical circumstances of an enactment only after finding the statute unclear on its face). A statute is ambiguous only if its language is susceptible of more than one reasonable interpretation. *Dunbar* at ¶ 16.

Hand-delivery means “to take something to someone yourself or send it by courier (person who carries important messages or documents for someone else).”<sup>3</sup> Based on case law and the facts of this case, discussed *infra*, there is no ambiguity as to the meaning of hand-delivery in the context of R.C. 149.43(C)(2).

**d. Eligibility of statutory damages requires the Requester to prove by clear and convincing evidence that the request was delivered by one of the statutory methods identified in that code section.**

A claim that a public office has failed to comply with R.C. 149.43(B) is not ripe until a specific request has been made and denied. *Dillingham v. Butler Cty. Prosecutor’s Office*, 2018-Ohio-3654, Ohio Court of Claims, 2018 Ohio Misc. LEXIS 727, adopted by 2018-Ohio-4360, 2018 Ohio Misc. LEXIS 2090. Proving that a request was made, received, and denied is required in order to receive statutory damages.

In denying the claim the court found that Dillingham provided no affirmative evidence that his request was sent to, or received by, the Butler County Prosecutor’s Office. *Id.* 2 \*9. Neither the Complaint nor the requests lists the email address to which the request was allegedly sent, nor did the Complaint allege a date or time of sending, receipt of confirmation, copy of written response or any other indicia of delivery of the request. *Id.*

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<sup>3</sup> <https://dictionary.cambridge.org/us/dictionary/english/hand-deliver>. Last viewed 3/18/2020. As an example, “We targeted the company's managers and hand-delivered invitations to them.”

This Court has previously issued an opinion regarding the submission of a public records request by hand-delivery in the prison setting. See *State ex rel. Carr v. London Corr. Inst.*, 144 Ohio St.3d 211, 2015-Ohio-2363 (2015). In *Carr*, this Court began its analysis by stating that neither the statute nor case law indicated exactly what “hand delivery” means. *Id.* at pg. 217. In that case, Inmate Carr hand-delivered his public requests to a prison official, the Inspector of Institutional Services DeCarlo Blackwell, requesting that he give it to Vickey Justus, the warden’s administrative assistant whose duties included responding to inmate public records request. *Id.* at 212.

The Court found that Carr’s hand-delivery of his request directly to a prison official who was tasked with hand-delivering it directly to the person responsible for fulfilling the request, was hand-delivery under the statute, and thus Respondent under those circumstances was eligible to receive statutory damages. *Id.* at 218, ¶4.

*Carr* is certainly distinguishable from the present case. If someone hands a written request to someone who then hands it off to someone else who then hand-delivers it to someone at the public office, who then hands it to the person responsible for responding to the records request, is that hand-delivery? Respondent Greene emphatically asserts that it is not. See Respondent Greene’s Affidavit, Exhibit “A”, attached hereto as if fully rewritten herein, and James Whitman’s Affidavit, Exhibit “B”, attached hereto as in fully rewritten herein, explaining the kite process.

Most importantly, while *Carr* determined that his request had been hand-delivered to the person responsible for responding to his request, he did not use the prison kite system in making his public records request. Therefore, the facts did not require the Court to make any determination as to whether a kite qualifies as hand-delivery under the statute because Carr did not submit his request

by kite.<sup>4</sup> See also *State ex. rel. Penland v. Ohio Dept. of Rehab. & Corr.*, where the inmate alleges he sent a public records request by kite to the warden’s administrative assistant, Ms. Sehlmeier, who denied ever receiving the alleged kite. The Court determined that because no evidence suggested that Penland delivered his request to Ms. Sehlmeier by hand or by certified mail, the Court denied Penland’s request for statutory damages. *State ex rel. Penland v. Ohio Dept. of Rehab. & Corr.*, 2019-Ohio-4130, 2019 Ohio LEXIS 2063 \*\*, 158 Ohio St. 3d 15 | 139 N.E.3d 862.

This Court has also determined that statutory damages are available only to a requester who has proven by *clear and convincing evidence* that his written request for public records was delivered by hand or certified mail. (emphasis added). *State ex rel. Martin v. Greene*, 156 Ohio St. 482, 2019-Ohio-1827, 2019 Ohio LEXIS 966.(2016 H.B. 471). Because Martin did not produce evidence that his written kite request was delivered to Greene by hand or certified mail, his request for statutory damages was denied by this Court. *Id.*

**e. Submission of a public records request by kite is similar to sending a public records request by ordinary mail or inter-office mail and can be easily fabricate, contrary to the intent of the statute.**

A kite goes through multiple hands before it is delivered to the addressee, much like ordinary U.S. mail goes through multiple hands before it is delivered to an addressee. (Whitman Affidavit, Exhibit “B”, that fully explains the kite process, is attached hereto and incorporated as if fully rewritten herein). A piece of mail, whether sent internally or externally to an organization through the U.S. Postal Service, passes through the hands of multiple people, sometime through a countless

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<sup>4</sup> A kite is a means for inmates to contact staff members inside the institution. A kite is properly completed with an inmate’s name and number and placed inside a [locked] mailbox; upon receipt by the staff member, the kite is read, signed in red, and sent back to the inmate. The kite is not designed to be sent outside the facility. *State v. Elmost*, 2017-Ohio-1472 at ¶15, (Fifth District Court of Appeals, 16CA52).

number of hands, before it is ultimately received by the addressee. This process is far removed from hand-delivery as contemplated by the statute.

There is good reason that sending a public records request by ordinary mail is not a statutory method of delivery. Mail gets lost, it gets delivered to the wrong address, and the act of mailing can be easily fabricated (e.g., the check is in the mail?). By listing only hand-delivery, electronic transmission and certified mail as the only means of delivery that qualify for an award of statutory damages, the legislature desired to eliminate the possibility of fabrication. To do otherwise could clog the court system with demands for statutory damages and turn it into a gravy train for the untrustworthy. Just as in *Penland, supra*, where the facts allude to the inmate having fabricated his allegation that he sent respondent a kite requesting public records, this Court is without a mandate, or the authority, to widen, carve-out, or add methods of delivery not currently identified in the statute.

**f. The statutory methods of delivery all include elements of proof not present in other means of delivery, including kites.**

In recent years the state legislature added electronic submission as an additional method of statutory delivery to the already established methods of hand-delivery and certified mail. An important element in each of these three statutory methods of delivery, is that they can all be documented and verified. Certified mail is documented by a signed receipt that is sent back to the requestor with the date and signature of the person that accepted the certified mail. Certified mail can also be traced through the U.S. Postal service by its assigned unique certification/identification number.

An email includes the date and time it was sent and to whom. A sender can even program their system to require the return of a transmitted receipt that verifies it was received by the intended

recipient. A sender can also require a return read receipt that verifies when the recipient actually read the email.

A person who hand-delivers a public records request can testify or sign a notarized affidavit attesting to that fact, including to whom it was hand-delivered, and the date and time. The requester can also have the person that received the hand-delivered request to sign a receipt documenting the date of delivery and to whom accepted the delivery. Further, in a legal proceeding, the person that accepted receipt of the request can be summoned before a court and testify on the fact of delivery and receipt.

None of these methods of verification are present in a prison's internal kite system. The legislature excluded other common delivery methods, such as making a request verbally over the phone or in person, because these too can easily be fabricated.

**g. The statute does not make exceptions for differently situated individuals.**

The statute does not provide exceptions for groups of society that are not on equal footing. The requirements for the availability of statutory damages apply equally to every person making a request. Any disproportionate impact or hardship it may have on a particular facet or group of individuals is not something for this Court to remedy; rather such action must be taken by the Ohio Legislature, if it chooses to do so.

Life situations prevent many people from making public records requests by hand-delivery, including travel distance, medical conditions, and lack of transportation among them. Nor can many members of society afford the cost of sending a request by certified mail, and many people may not even know how to send certified mail. Still others may not have access to a means of transmitting a request electronically and may also lack the understanding of how to do so. There are no doubt situations where all three statutory methods of delivery are, for whatever reason, unavailable to

someone. The law does not provide exceptions for these individuals as to their standing and ability to receive statutory damages under R.C. 149.43(C)(2).

That doesn't mean requesting and receiving public records is beyond their reach. They all have the option of calling the public office to make their request, or by sending it by ordinary mail, or they can even request the records in person without submitting a written request. However, in the event the public office fails in its duty to provide the public records under any of these scenarios, receipt of statutory damages is not permitted under the statute.

**h. This Court has consistently ruled that statutory damages are only available when requests are submitted by one of the methods specifically identified in R.C. 149.43(C)(1) that was in effect at the time of the request.**

This Court has clearly and consistently ruled that delivery by any method not specifically listed in the statute prevents a requester from receiving statutory damages. *State ex rel. Mahajan v. State Med. Bod. Of Ohio*, 127 Ohio St. 3d 497, finding that Relator was not entitled to statutory damages because he did not transmit any of his written records request by hand-delivery or certified mail as required [he sent them by email]; see also *State ex rel. Miller v. Brady*, 123 Ohio St. 3d 255, 2009 Ohio 4942; see also *Difranco, supra*, (where Relator transmitted a request by email, which was not yet recognized as a delivery method under the statute, and he was denied statutory damages because his request was not hand-delivered or sent by certified mail.).

The statute is very clear. To be granted an award of statutory damages of up to \$1,000, two things must happen: 1) the court must determine that the public office or person responsible for public records has failed to comply with their obligation to promptly prepare or otherwise provide the requested public records pursuant to R.C. 149.43(B); and 2) the requestor must have made their request in writing that was transmitted by either hand delivery, electronic submission (e-mail) or by certified mail.

All other methods of requesting public records, such as verbal requests, whether made in person or over the phone, and requests sent by ordinary U.S. mail, or requests made by any other method not specifically identified in the statute, disqualify the requester from receiving statutory damages, even if the court determines that the public office or the person responsible for public records failed to comply with an obligation under division (B) of R.C. 149.43.

**i. Relator McDougald's allegation that he hand-delivered his records requests to Respondent Greene is patently false.**

Relator McDougald has motioned the Court to amend his Complaint and plead that he hand-delivered his two public records requests by kite to Respondent Greene while he was allegedly conducting unannounced communications rounds in his cell block, J-1. (Relator's Motion to Amend Complaint, pg. 1). These allegations are not true.

As to the actual facts, Respondent Greene did not conduct communication rounds on the dates of December 5, 2018 and February 3, 2019 as alleged by Relator McDougald. (See Exhibit "A", Respondent Greene's Affidavit that includes a copy of the Employee Visit Record (EVR)) for J-1 block.) EVR's are maintained by SOCF to document the dates and times SOCF staff visit or conduct other business in a cell block, and each cell block has its own EVR log. *Id.*

Under these facts, Relator McDougald is not entitled to statutory damages because his public records requests were clearly not hand-delivered to Respondent Greene, nor could they have been hand-delivered on the dates as alleged by Relator McDougald, nor were they submitted by electronic transmission or certified mail.

Relator does not plead in his Complaint, nor in his Motion to Amend Complaint, that statutory means of delivery were not, or are not, available to him. Never does he make that allegation. Rather, Relator McDougald alleges just the opposite. He's saying that he handwrote kites for each

of his two public records requests<sup>5</sup>, and that he hand-delivered each of these kites to Respondent Greene on dates that Respondent Greene was allegedly conducting unannounced communication's rounds in J-1 block where Relator McDougald was housed. These allegations by Relator McDougald are false as explained by Respondent Greene in his notarized affidavit. *Id.* Respondent Greene did not enter the J-1 Cell Block on December 5, 2018 nor on February 3, 2019. Further, Relator McDougald's request for Sgt. Barney's incident report was stamped as having been received by the warden's office on February 7, 2019, clear evidence that it was not hand-delivered on February 3, 2019. *Id.*

This situation amplifies the reasoning behind the statute to include only those methods of delivery that can be verified and not easily fabricated. Respondent Greene was not present in the J-1 Cell Block, where Relator McDougald was housed, on the dates in question.

**j. The law does not support permitting Relator to Amend his Complaint more than seven months after it was filed.**

On January 28, 2020, Relator McDougald filed a one-page motion with the Court to amend his Complaint to aver that his "public records requests kite (sic) was hand-delivered to Larry Greene during his inmate communication weekly rounds pursuant to ODRC Policy 50-PAM-02 on December 5, 2018 and February 3, 2019." (Relator's Motion to Amend, pg. 1). Relator McDougald's Motion to Amend was not verified by affidavit. Respondent objects to Relator's motion as being out of rule and not permitted under Civ. R. 15(A). Relator's Motion was not filed within twenty-eight days of Respondent's Answer having been filed, nor does he have Respondent

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<sup>5</sup> ODRC has specific forms for kites, see Respondent's Brief filed November 4, 2019. In addition, a kite is properly completed to include an inmate's name and number and placed inside a mailbox. Upon receipt by the staff member, the kite is read, signed in red, and sent back to the inmate with a response. *State v. Elmore*, 2017-Ohio-1472 at ¶ 15, 5th District Richland No. 16CA52.

Green's consent. While this Court has the discretion to permit Relator to amend his Complaint, Respondent Greene asserts that there is no justifiable reason to do so. Relator McDougald desires to amend his Complaint to include a claim that he hand-delivered his two public records requests by kite to Respondent Greene. *Id.* Relator should have included this claim in his original Complaint and he has not alleged any reasons that justify his not doing so. A party seeking leave to amend a complaint must at least demonstrate a prima-facie showing that it can marshal support for the new matter sought to be pleaded. *Martin v. Ohio Dept. of Rehab. & Corr.*, 140 Ohio App. 3d. 831, 2001-Ohio-2678. Relator McDougald cannot meet this threshold requirement which warrants the denial of his motion.

### **III. Conclusion**

For the reasons stated above, Respondent Greene requests that this Court deny Relator McDougald's Motion to Amend Complaint and that it determine that a kite does not constitute hand-delivery under R.C. 149.43(C)(2). However, in the event this Court finds in Relator's favor under R.C. 149.43(B), and pursuant to the analysis provided in this Supplement Brief, Relator McDougald is not eligible to receive an award of statutory damages.

Respectfully submitted,

DAVE YOST  
Ohio Attorney General

/s/ Tracy L. Bradford  
TRACY L. BRADFORD (0058556)  
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tracy.bradford@OhioAttorneyGeneral.gov  
*Counsel for Respondent*

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing *Respondent's Supplemental Brief* has been filed and served upon Relator Jerome McDougald, #548-527, Toledo Correctional Institution, PO Box 80033, Toledo, OH 43608 via U.S. mail, postage prepaid, this 18th day of March 2020.

/s/ Tracy L. Bradford  
TRACY L. BRADFORD (0058556)  
Counsel for Respondent

In the  
**Supreme Court of Ohio**

JERONE McDOUGALD,

Relator,

v.

LARRY GREENE,

Respondent.

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Case No. 2019-0880

Original Action in Mandamus

**EXHIBIT "A"**

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AFFIDAVIT OF LARRY GREENE

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I, Larry Greene, make this sworn affidavit under penalty of perjury under the laws of the United States of America and declare the foregoing statements set forth below are true and correct.

1. I am the Administrative Assistant for the Warden of the Southern Ohio Correctional Facility (SOCF), Ohio Department of Rehabilitation and Correction (ODRC). I have served in this position since approximately October, 1999.
2. I am over the age of 18 and competent to testify to the matters herein all of which I have personal knowledge.
3. As a part of my job duties, I perform general clerical duties for the Warden, including filing, coordinating, and maintaining records for the office. I act as the institutional Public Information Officer and respond to inmate public records requests in compliance with O.R.C. 149.43.
4. As part of my job duties, I sometimes enter cell blocks to speak with an inmate or to drop something off to an inmate. When an institutional staff member enters a cell block, (other than the on-shift correction officers for that block), they are required to sign-in on an Employee Visit Record (EVR), identified as DRC Form 6001. This form requires you to sign your name, identify the reason for your visit (and to whom), and the date and time-in and time-out of the visit.
5. I understand that inmate Jerone McDougald has claimed that on December 5, 2018 and on February 3, 2019, that he hand-delivered public records requests to me on each of those

days while I was supposedly conducting an unannounced communication round (UAR) in the J-1 cell block pursuant to ODRC Policy 50-PAM-02.

6. Inmate McDougald's claim is entirely false. First, in my position as administrative assistant to the warden, I am not required under Policy No. 50-PAM-02 to conduct UAR's. I may do so in limited circumstances, such as when I am designated as an Administrative Duty Officer, but I am not required to conduct weekly UAR's under Policy No. 50-PAM-02.
7. On December 5, 2018 and on February 3, 2019, I did not conduct UAR's nor did I enter the J-1 Cell Block to see or speak with inmate McDougald on those dates as he alleges. I have attached EVRs for those dates and can attest that they are true and accurate copies of the EVR's on file at SOCF. See attached as Exhibit 1.
8. Further, inmate McDougald's February 3, 2018, requests for an incident report filed by Brian Barney on December 20, 2018, is clearly stamped as having been received by the Warden's Office on February 7, 2019. It was received on February 7, 2018 via a kite he sent through the SOCF kite system.
9. The SOCF kite system requires that an inmate submit a hand-written kite on DRC Form 2005. This form requires that the inmate complete the top section and write the nature of their kite request on the other side. The inmate is then responsible for dropping the kite into a locked container located in the inmate's cell block that is used only for kite submissions.
10. In inmate McDougald's case, he is in restrictive housing and either a CO on duty would bring the kite drop-box to him for submission or the CO would take it from the inmate and the CO would drop it into the drop-box.
11. Inmates do not hand deliver kites to the institutional staff member or office/department for whom the kite is addressed. Inmates transmit kites in a manner similar to how someone mails a letter through the postal system. Once submitted in the locked kite drop-box, further transmission of the kite correspondence is accomplished through the hands of other institutional staff.
12. Kites are sorted by mail room staff as to the pertinent department, office or staff member to whom it is addressed, similar to how postal employees sort through mail by location of the address, which are then delivered by mailroom staff to the addressee.
13. ODRC has implemented a policy to document when kites are received and when they are answered. ODRC has implemented this policy because communication with inmates is a

high priority and it's important for us to ensure that institutional staff have responded to each kite sent by an inmate.

14. The warden's office received a kite from inmate McDougald him on December 7, 2018 for the DAS General Schedules and received a kite from him on February 7<sup>th</sup>, 2019, for the incident report filed by Sgt. Barney. These kites were received by the Warden's office through the kite delivery system.
15. Inmates at SOCF do not have access to an email system to transmit public records request to me. But they can send them through certified mail, which is available to all inmates, at the same rates charged by the U.S. Postal Service.
16. In previous filings with this Court, I provided the dates and manner in which I fulfilled each of inmate McDougald's requests that are the subject of this litigation.
17. The facts herein are true and I will testify to the same if called as a witness in this case.

FURTHER, AFFIANT SAYETH NAUGHT.

3-17-2020

Date

Larry Greene  
Larry Greene

STATE OF OHIO

COUNTY OF Scioto

:  
: SS  
:

Sworn to before me and subscribed in my presence this 17<sup>th</sup> day of March, 2020, in the County of

Scioto, in the city of Lucasville, in the state of Ohio.

Lisa E. Reuter

NOTARY PUBLIC

My Commission Expires: 04-30-2022



LISA E REUTER  
Notary Public  
In and for the State of Ohio  
My Commission Expires  
April 30, 2022



J-1 10-15-18 / 2-5-19

# EMPLOYEE VISIT RECORD



# \_\_\_\_\_ Pages



# Employee Visit Record

## INSTRUCTIONS

1. Insert month and day of visit
2. Sign name and title
3. Record the general nature of the visit, i.e., medical, library, religious, etc.
4. Record exact time in and out (indicate a.m. or p.m.)

## EMPLOYEE TO COMPLETE RECORD

Year \_\_\_\_\_

(1) Date		(2) Employee Signature	Title	(3) Reason for Visit	(4) Time	
mo.	day				in	out
1	27	<i>[Signature]</i>	Capt	WAR	<input checked="" type="checkbox"/> am <input type="checkbox"/> pm 9:46	<input type="checkbox"/> am <input type="checkbox"/> pm 9:11
1	27	Irvin M. Hawk	C/O	2nd Shift	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm 2:00	<input type="checkbox"/> am <input type="checkbox"/> pm 10:00
1	27	Macarold	RN	med pass / rounds	<input type="checkbox"/> am <input type="checkbox"/> pm 4:35	<input type="checkbox"/> am <input type="checkbox"/> pm
1	27	D Clark	Capt	WAR	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm 6:52	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm 6:54
1	27	C. Smith, B Gilliland	C/O's	3rd Shift	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm 10:00	<input type="checkbox"/> am <input type="checkbox"/> pm 6:00
1	28	D Clark	Capt	WAR	<input type="checkbox"/> am <input type="checkbox"/> pm 3:36	<input type="checkbox"/> am <input type="checkbox"/> pm 3:44
1	28	Bradley Dunk	Sgt	1st Shift	<input checked="" type="checkbox"/> am <input type="checkbox"/> pm 6:00	<input type="checkbox"/> am <input type="checkbox"/> pm 2:00
1	28	<i>[Signature]</i>	Capt	WAR	<input type="checkbox"/> am <input type="checkbox"/> pm 6:54	<input type="checkbox"/> am <input type="checkbox"/> pm 7:01
1	28	Anderson	nurse	meds	<input type="checkbox"/> am <input type="checkbox"/> pm 6:55	<input type="checkbox"/> am <input type="checkbox"/> pm 7:05
1	28	Behn	ADD	2ds	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm 1:00	<input type="checkbox"/> am <input type="checkbox"/> pm
1	28	Throckmorton	Sgt	Rds	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm 1:00	<input type="checkbox"/> am <input type="checkbox"/> pm
1	28	Irvin M. Hawk	C/O	2nd Shift	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm 2:00	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm 10:00

# INSTRUCTIONS

1. Insert month and day of visit
2. Sign name and title
3. Record the general nature of the visit, i.e., medical, library, religious, etc.
4. Record exact time in and out (indicate a.m. or p.m.)

## Employee Visit Record

### EMPLOYEE TO COMPLETE RECORD

Year  
2009

(1) Date		(2) Employee Signature	Title	(3) Reason for Visit	(4) Time	
mo.	day				in	out
1	28	<i>[Signature]</i>	nm	Med Rounds	<input checked="" type="checkbox"/> am <input type="checkbox"/> pm 2:30	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm 3:05
1	28	<i>[Signature]</i>	nm	R.D.S	<input type="checkbox"/> am <input type="checkbox"/> pm 2:50	<input type="checkbox"/> am <input type="checkbox"/> pm 3:05
1	28	<i>[Signature]</i>	nm	R.D.S	<input type="checkbox"/> am <input type="checkbox"/> pm 2:51	<input type="checkbox"/> am <input type="checkbox"/> pm 3:05
1	28	<i>[Signature]</i>	nm	WHR	<input type="checkbox"/> am <input type="checkbox"/> pm 5:49	<input type="checkbox"/> am <input type="checkbox"/> pm 5:59
1	28	<i>[Signature]</i>	nm	WHR	<input type="checkbox"/> am <input type="checkbox"/> pm 6:01	<input type="checkbox"/> am <input type="checkbox"/> pm 6:16
1	28	<i>[Signature]</i>	nm	WHR	<input type="checkbox"/> am <input type="checkbox"/> pm 7:40	<input type="checkbox"/> am <input type="checkbox"/> pm 7:45
1	28	<i>[Signature]</i>	nm	WHR	<input type="checkbox"/> am <input type="checkbox"/> pm 11:00	<input type="checkbox"/> am <input type="checkbox"/> pm 11:52
1	29	<i>[Signature]</i>	nm	WHR	<input type="checkbox"/> am <input type="checkbox"/> pm 1:51	<input type="checkbox"/> am <input type="checkbox"/> pm 1:52
1	29	<i>[Signature]</i>	nm	1st Shift	<input type="checkbox"/> am <input type="checkbox"/> pm 5:55	<input type="checkbox"/> am <input type="checkbox"/> pm 2:00
1	29	<i>[Signature]</i>	nm	WHR	<input type="checkbox"/> am <input type="checkbox"/> pm 7:10	<input type="checkbox"/> am <input type="checkbox"/> pm 7:18
1	29	<i>[Signature]</i>	nm	WHR	<input type="checkbox"/> am <input type="checkbox"/> pm 9:05	<input type="checkbox"/> am <input type="checkbox"/> pm 9:21
1	29	<i>[Signature]</i>	nm	Unit Rounds	<input type="checkbox"/> am <input type="checkbox"/> pm 11:05	<input type="checkbox"/> am <input type="checkbox"/> pm

# Employee Visit Record

## EMPLOYEE TO COMPLETE RECORD

Year  
**2019**

### INSTRUCTIONS

1. Insert month and day of visit
2. Sign name and title
3. Record the general nature of the visit, i.e., medical, library, religious, etc.
4. Record exact time in and out (Indicate a.m. or p.m.)

(1) Date		(2) Employee Signature	Title	(3) Reason for Visit	(4) Time	
mo.	day				in	out
1	29	Throckmorton	Sgt.	Fds	1105	pm
1	29	Irwin/Rigdon	C/O	2nd Shift	200	1000 am
1	29	Barny	Sgt	Round 3	212	230 am
1	29	DAARTEL	CAPT	UARM	210	220 am
1	29	OYER	LT	UARM	210	220 am
1	29	FENTONS	R	SPS REVIEW	510	525 am
1	29	M Smith	St.	UAK	5:50	pm
1	29	Gibbs/Whison	Col's	3rd shift	15	pm
1	30	Fazio	CPT	UAK	216	227 am
1	30	Samy Greene	W.A.	UAK	125	pm
1	30	Spiggs Bates	CO	1st Shift	555	200 am
1	30	Indenood	W/O	meets	700	200 am

# Employee Visit Record

EMPLOYEE TO COMPLETE RECORD

Year  
2019

- INSTRUCTIONS**
1. Insert month and day of visit
  2. Sign name and title
  3. Record the general nature of the visit, i.e., medical, library, religious, etc.
  4. Record exact time in and out (indicate a.m. or p.m.)

(1) Date		(2) Employee Signature	Title	(3) Reason for Visit	(4) Time	
mo.	day				in	out
1	30	<i>Cliff</i>	cap	work	<input checked="" type="checkbox"/> am <input type="checkbox"/> pm 8:30	<input checked="" type="checkbox"/> am <input type="checkbox"/> pm 8:35
1	30	<i>Reyes</i>	CPS	unit Records	<input type="checkbox"/> am <input type="checkbox"/> pm 1:25	<input type="checkbox"/> am <input type="checkbox"/> pm
1	30	<i>Irwin / M. Hawk</i>	C/O	2nd Shift	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm 2:00	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm 10:00
1	30	<i>Thackston</i>	Sgt.	Eds	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm 3:05	<input type="checkbox"/> am <input type="checkbox"/> pm
1	30	<i>Harro</i>	Capit	work	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm 5:55	<input type="checkbox"/> am <input type="checkbox"/> pm
1	30	<i>Moscard</i>	RAJ	med procedure	<input type="checkbox"/> am <input type="checkbox"/> pm 6:35	<input type="checkbox"/> am <input type="checkbox"/> pm 6:35
1	30	<i>Glick / Justice</i>	Ch's	3rd Shift	<input type="checkbox"/> am <input type="checkbox"/> pm 6:00	<input type="checkbox"/> am <input type="checkbox"/> pm 6:00
1	31	<i>Miller</i>	Capit	work	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm 3:00	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm 3:05
1	31	<i>Reyes</i>	WR	2nd Shift	<input type="checkbox"/> am <input type="checkbox"/> pm 5:27	<input type="checkbox"/> am <input type="checkbox"/> pm
1	31	<i>Spiggs Bates</i>	CO	1st Shift	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm 5:55	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm 8:00
1	31	<i>Lyndwood</i>	hussel	med	<input type="checkbox"/> am <input type="checkbox"/> pm 7:05	<input type="checkbox"/> am <input type="checkbox"/> pm 7:10
1	31	<i>Carter</i>	RRS	5 Black	<input type="checkbox"/> am <input type="checkbox"/> pm 7:50	<input type="checkbox"/> am <input type="checkbox"/> pm 8:00

# Employee Visit Record

EMPLOYEE TO COMPLETE RECORD

Year 2019

## INSTRUCTIONS

1. Insert month and day of visit
2. Sign name and title
3. Record the general nature of the visit, i.e., medical, library, religious, etc.
4. Record exact time in and out (indicate a.m. or p.m.)

(1) Date		(2) Employee Signature	Title	(3) Reason for Visit	(4) Time	
mo.	day				in	out
1	31	Howard, T.	Capt.	VAR	<input checked="" type="checkbox"/> am <input type="checkbox"/> pm 843	<input type="checkbox"/> am <input type="checkbox"/> pm
1	31	Humphrey	<del>Capt.</del> Lt.	VAR	<input checked="" type="checkbox"/> am <input type="checkbox"/> pm 843	<input type="checkbox"/> am <input type="checkbox"/> pm
1	31	R. Coors	Wagon	VAR	<input type="checkbox"/> am <input type="checkbox"/> pm 1000	<input type="checkbox"/> am <input type="checkbox"/> pm 1007
1	31	Brannigan	lpr	AMA	<input checked="" type="checkbox"/> am <input type="checkbox"/> pm 1113	<input checked="" type="checkbox"/> am <input type="checkbox"/> pm 1115
1	31	Shuckland	Lib Asst	Rolls	<input checked="" type="checkbox"/> am <input type="checkbox"/> pm 1200	<input type="checkbox"/> am <input type="checkbox"/> pm
1	31	Irwin / Mr Hawk	C/o	2nd Shift	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm 200	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm 1000
01	31	Sevatar	Deval	Deval	<input type="checkbox"/> am <input type="checkbox"/> pm 353	<input type="checkbox"/> am <input type="checkbox"/> pm
1	31	Price	Capt	Leave	<input type="checkbox"/> am <input type="checkbox"/> pm 550	<input type="checkbox"/> am <input type="checkbox"/> pm 613
1	31	Barnett B. L. Lard	CO	3rd shift	<input type="checkbox"/> am <input type="checkbox"/> pm 10	<input type="checkbox"/> am <input type="checkbox"/> pm
2	1	Price	Capt	Leave	<input checked="" type="checkbox"/> am <input type="checkbox"/> pm 226	<input type="checkbox"/> am <input type="checkbox"/> pm 234
2	1	Spriggs Bates	CO	1st Shift	<input checked="" type="checkbox"/> am <input type="checkbox"/> pm 555	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm 200
2	1	Condon	nurse	meets	<input type="checkbox"/> am <input type="checkbox"/> pm 655	<input type="checkbox"/> am <input type="checkbox"/> pm 705

# Employee Visit Record

Year  
2013

4. Record exact time in and out (indicate a.m. or p.m.)

22

# Employee Visit Record

EMPLOYEE TO COMPLETE RECORD

Year 2019

## INSTRUCTIONS

1. Insert month and day of visit
2. Sign name and title
3. Record the general nature of the visit, i.e., medical, library, religious, etc.
4. Record exact time in and out (indicate a.m. or p.m.)

(1) Date		(2) Employee Signature	Title	(3) Reason for Visit	(4) Time	
mo.	day				in	out
2	2	<i>[Signature]</i>	Mr	med rounds	<input checked="" type="checkbox"/> am <input type="checkbox"/> pm	4:13
2	2	<i>[Signature]</i>	CPT	WAR	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm	4:13
2	2	<i>[Signature]</i>	Clt's	3rd shift	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm	6
2	3	<i>[Signature]</i>	CPT	WAR	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm	12:00
2	3	<i>[Signature]</i>	C/o's	1st shift	<input checked="" type="checkbox"/> am <input type="checkbox"/> pm	6:00
2	3	<i>[Signature]</i>	Capt	Meals	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm	7:13
2	3	<i>[Signature]</i>	Capt	WAR	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm	9:01
2	3	<i>[Signature]</i>	C	Lab. S	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm	9:20
2	3	<i>[Signature]</i>	C/o	2nd Shift	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm	2:00
2	3	<i>[Signature]</i>	Mr	med pass/rounds	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm	6:44
2	3	<i>[Signature]</i>	Capt	WAR	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm	7:02
2	3	<i>[Signature]</i>	CO	3rd shift	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm	10:00

## INSTRUCTIONS

1. Insert month and day of visit
2. Sign name and title
3. Record the general nature of the visit, i.e., medical, library, religious, etc.
4. Record exact time in and out (Indicate a.m. or p.m.)

# Employee Visit Record

EMPLOYEE TO COMPLETE RECORD

Year 2018

(1) Date		(2) Employee Signature	Title	(3) Reason for Visit	(4) Time	
mo.	day				in	out
12	5	<i>[Signature]</i>	Capt.	vacat	<input checked="" type="checkbox"/> am <input type="checkbox"/> pm	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm
12	5	<i>M. [Signature]</i>	C/O's	3rd	<input type="checkbox"/> am <input type="checkbox"/> pm	<input type="checkbox"/> am <input type="checkbox"/> pm
12	6	<i>[Signature]</i>	Capt.	vacat	<input type="checkbox"/> am <input type="checkbox"/> pm	<input type="checkbox"/> am <input type="checkbox"/> pm
12	6	<i>Spiggs Bates</i>	CO	1st Shift	<input type="checkbox"/> am <input type="checkbox"/> pm	<input type="checkbox"/> am <input type="checkbox"/> pm
12	6	<i>[Signature]</i>	Major	mod	<input type="checkbox"/> am <input type="checkbox"/> pm	<input type="checkbox"/> am <input type="checkbox"/> pm
12	6	<i>[Signature]</i>	CAPT	VAC	<input type="checkbox"/> am <input type="checkbox"/> pm	<input type="checkbox"/> am <input type="checkbox"/> pm
12	6	<i>[Signature]</i>	Un	B.d.S	<input type="checkbox"/> am <input type="checkbox"/> pm	<input type="checkbox"/> am <input type="checkbox"/> pm
12	6	<i>B. Baum</i>	C Sgt	2nd S	<input checked="" type="checkbox"/> am <input type="checkbox"/> pm	<input type="checkbox"/> am <input type="checkbox"/> pm
12	6	<i>Carter</i>	ATS	MHR	<input type="checkbox"/> am <input type="checkbox"/> pm	<input type="checkbox"/> am <input type="checkbox"/> pm
12	6	<i>Irwin/M. Hawk</i>	C/O	2nd Shift	<input type="checkbox"/> am <input type="checkbox"/> pm	<input type="checkbox"/> am <input type="checkbox"/> pm
12	6	<i>[Signature]</i>	ma.	Public Personnel	<input type="checkbox"/> am <input type="checkbox"/> pm	<input type="checkbox"/> am <input type="checkbox"/> pm
12	6	<i>[Signature]</i>	ma.	MEP Personnel	<input type="checkbox"/> am <input type="checkbox"/> pm	<input type="checkbox"/> am <input type="checkbox"/> pm

## INSTRUCTIONS

1. Insert month and day of visit
2. Sign name and title
3. Record the general nature of the visit, i.e., medical, library, religious, etc.
4. Record exact time in and out (indicate a.m. or p.m.)

## Employee Visit Record

EMPLOYEE TO COMPLETE RECORD

Year  
2019

(1) Date		(2) Employee Signature	Title	(3) Reason for Visit	(4) Time	
mo.	day	in			out	
2	2	Park	m	med rounds	<input checked="" type="checkbox"/> am <input type="checkbox"/> pm 9:00	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm 4:15
2	2	E. J. H.	CPT	WAR Sh	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm 7:00	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm 3:00
2	2	G. H. H. / Miller	Clt's	3rd shift	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm 1:00	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm 6:00
2	3	E. J. H.	CPT	WAR Sh	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm 12:00	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm 1:00
2	3	Bradley/Dunlop	C/S	1st Shift	<input checked="" type="checkbox"/> am <input type="checkbox"/> pm 6:00	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm 2:00
2	3	G. H. H.	Capt	Meals	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm 7:00	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm 9:00
2	3	G. H. H.	Capt	WAR	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm 8:00	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm 9:00
2	3	G. H. H.	C	Rel.S	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm 9:00	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm 10:00
2	3	Irwin/M. Hawk	C/O	2nd Shift	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm 2:00	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm 10:00
2	3	Maunold	ran	med pass/rounds	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm 6:00	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm 6:45
2	3	D. Clark	Capt	WAR	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm 7:00	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm 1:00
2	3	Clifton/Nelson	CO	3rd shift	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm 10:00	<input type="checkbox"/> am <input checked="" type="checkbox"/> pm 6:00



In the  
Supreme Court of Ohio

JERONE McDOUGALD,	:	
	:	Case No. 2019-0880
Relator,	:	
	:	Original Action in Mandamus
v.	:	
	:	
LARRY GREENE,	:	
	:	
Respondent.	:	

EXHIBIT “B”

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AFFIDAVIT OF CAPTAIN JAMES WHITMAN

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I, James Whitman, make this sworn affidavit on the 17<sup>th</sup> day of March, 2020, under penalty of perjury under the laws of the United States of America and declare the foregoing statements set forth below are true and correct.

1. I have personal knowledge of the information set forth in this Affidavit, and I am competent to testify to the matters stated herein.
2. I have worked for the Ohio Department of Rehabilitation and Correction for 23 years and have worked at SOCF for 20 years. I am a Captain at SOCF.
3. As part of my duties as Captain, I oversee the mail operations at SOCF to ensure that ODRC policies and procedures regarding inmate mail are followed.
4. The inmate kite system is a method of communication between inmates and institutional staff pursuant to ODRC policy 50-PAM-02. A copy of the policy in affect during the period of December 5, 2018 through February 13, 2019 (the “McDougald Kites”) is attached to this Affidavit.
5. Inmates must use the kite form, identified as DRC 2005, to send a kite to an institutional staff member. This form includes printed directions as to how to use the kite system. Inmates complete the top part of the form and then write their inquiry on the backside of the form.

6. Inmates take their completed kite and drop it into a locked container designated for this use (Kite Drop-box). Each cell block has a Kite Drop-box. If an inmate is unable to leave their cell for some reason, such as medical condition or placement in restrictive housing, an on-duty Correction Officer will walk the Kite Drop-box to those inmates so they can drop it in the secured Kite Drop-box.
7. All Kite Drop-boxes are taken to the SOCF mailroom. A mailroom staff member opens the Kite Drop-boxes and sorts the kites as to the person/office/department to whom it is addressed. The kites are then delivered by a mailroom staff member to the person/office/department as addressed. We do not track the date of delivery to the addressee, much like a mailman does not track the delivery date of regular, ordinary mail to an addressee.
8. Pursuant to Policy No. 75-MAL-01, that was effective during the time period for the McDougald Kites, requires that all institutions provide certified mail services for inmates, at their cost. Return receipts are given to the inmate and are not maintained in the mailroom. We continue to make certified mail available to all inmates per the policy (see current version attached).
9. The facts herein are true and I will testify to the same if called as a witness in this case.

FURTHER, AFFIANT SAYETH NAUGHT.

Date 3/17/2020

  
James Whitman, Captain, SOCF

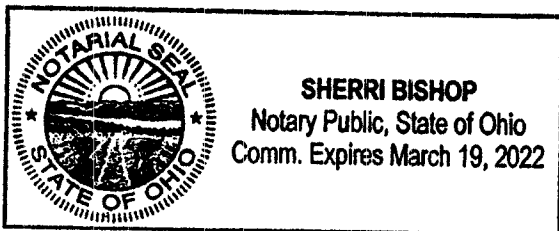
STATE OF OHIO

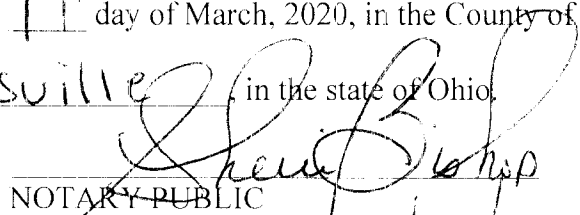
COUNTY OF

Scioto

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Sworn to before me and subscribed in my presence this 17th day of March, 2020, in the County of Scioto, in the city of Lucasville, in the state of Ohio.

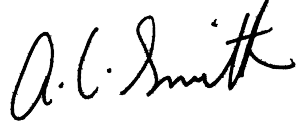


  
NOTARY PUBLIC

My Commission Expires: 3/19/22



Department of  
Rehabilitation & Correction

SUBJECT: <b>Inmate Communication/Weekly Rounds</b>	PAGE <u>1</u> OF <u>7</u>
	NUMBER: <b>50-PAM-02</b>
RULE/CODE REFERENCE:	SUPERSEDES: 50-PAM-02 dated 01/02/18
RELATED ACA STANDARDS: 4016, 4185	EFFECTIVE DATE: <b>October 7, 2019</b>
	APPROVED: 

## I. AUTHORITY

Ohio Revised Code 5120.01 authorizes the Director of the Department of Rehabilitation and Correction, as the executive head of the department, to direct the total operations and management of the department by establishing procedures as set forth in this policy.

## II. PURPOSE

The purpose of this policy is to establish uniform guidelines to ensure that institution department heads, supervisors, and administrative staff conduct weekly rounds of inmate living and activity areas.

## III. APPLICABILITY

This policy applies to all institutional and Franklin Medical Center (FMC) employees determined to be department heads, supervisors, and administrative staff as designated by the managing officer.

## IV. DEFINITIONS

**Administrative Staff** - An exempt employee who is determined by the managing officer to be administrative staff.

**Department Head** - An employee who supervises a department at the institution to include security shifts.

**Duty Officer** - Administrative staff who provide additional rounds beyond normal duty hours.

**Extended Restrictive Housing (ERH)** - A security classification level represented as “E” in the Departmental Offender Tracking System (DOTS). ERH is the most restrictive security level in the ODRC reserved for inmates who constitute the greatest threat to the safety and security of the community, staff, others, and/or the secure operations of a correctional facility.

**Inmate Activity Areas** - Work, education, recreation, program, and other areas in the institution where inmates can be contacted during day or evening hours.

**Inmate Living Area** - An area where inmates reside, including Transitional Program Unit (TPU). For purposes of this policy, the infirmary is not considered a living area.

**Limited Privilege Housing (LPH)** - Assignment of an inmate to a designated area for the purpose of reducing his/her privileges, controlling movement, and reducing his/her access to other inmates. An LPH inmate is considered General Population and shall have access to prison services, although that access can be reasonably limited as part of his/her privilege reduction. Designated out-of-cell time shall be more than two (2) hours daily.

**Restrictive Housing (RH)** - Housing that separates an inmate from the general population and restricts the inmate to his/her cell twenty-two (22) hours or more per day.

**Transitional Program Unit (TPU)** - A specialized housing unit requiring close supervision of inmates that are placed in Restrictive Housing (RH), Extended Restrictive Housing (ERH), or may be placed in Limited Privilege Housing (LPH).

**Weekly UAR** - An unannounced round conducted at least weekly by intermediate-level or higher-level supervisors to identify and deter sexual abuse and sexual harassment. Staff conducting the round is prohibited from alerting other staff members that the supervisory round is occurring, unless such announcement is related to the legitimate operational functions of the facility.

## V. POLICY

It is the policy of the Ohio Department of Rehabilitation and Correction (ODRC) to require the managing officer, deputy wardens, and duty officers to make unannounced visits to the institution's living and activity areas at least weekly to encourage informal contact with staff and inmates and to informally observe living and working conditions. In addition, each institution shall maintain a system of two-way communication between all levels of staff and inmates.

## VI. PROCEDURES

The managing officer shall assign department heads, supervisors, and administrative staff to specific inmate living and activity areas ensuring that all areas are visited on a weekly basis. The managing officer shall determine the rotation of areas in writing. Assigned staff shall visit living and activity areas weekly and cannot delegate this duty. The managing officer/designee, deputy wardens, and duty officers shall visit all living and activity areas at least weekly unless policy dictates more frequent visits.

### A. Specific Expectation of Administrative Staff

#### 1. Managing Officer and Deputy Wardens

- a. Living Units: Each housing unit, including the Transitional Program Unit (TPU), shall be visited by the managing officer or deputy warden weekly. Delegation of weekly living unit rounds shall only be assigned to the staff person acting in the managing officer's and/or deputy warden's official capacity during their absence.
- b. Activity Areas: Each activity area shall be visited by the managing officer/designee or deputy warden weekly. Weekly activity area rounds shall not be delegated to the staff

responsible for also completing their own weekly rounds of these areas (i.e., duty officer).

- c. The managing officer shall personally visit all inmate living and activity areas once per month.
- d. The managing officer shall make quarterly rounds to the Sally Port, Control Center and Perimeter Posts. This requirement shall not be delegated. Specific directives regarding these rounds are outlined in section VI.C.5 of this policy.

2. Deputy Wardens

- a. The responsible deputy warden shall make monthly rounds to the Sally Port, Control Center and Perimeter Posts. This requirement shall not be delegated. Specific directives regarding these rounds are outlined in section VI.C.5 of this policy.
- b. The responsible deputy warden shall visit Health Care Services at least once each week.
- c. The appropriate deputy warden is responsible for ensuring administrative staff visit their areas of responsibility a minimum of once per week in addition to weekly rounds assigned by the managing officer.

3. Security and Unit Management Chiefs

- a. The security chief shall make weekly rounds to the Sally Port, Control Center and Perimeter Posts. This requirement shall not be delegated unless his/her absence from the institution is more than three (3) days in a work week. Specific directives regarding these rounds are outlined in section VI.C.5 of this policy.
- b. The security chief is expected to visit the TPU/s a minimum of once per week. This requirement shall not be delegated unless he/she is absent from the institution the entire week.
- c. In accordance with ODRC Policy 310-SEC-31, Security Inspections and Challenges, a shift supervisor (i.e., captain and/or lieutenant) shall conduct unannounced rounds in each inmate occupied area at least once per shift. Unoccupied areas shall be visited at least one time each week per shift.
- d. The unit management chief (UMC) and security chief shall visit all inmate living areas, at a minimum, on a bi-weekly basis, including the TPU/s. This requirement shall not be delegated unless his/her absence from the institution is more than five (5) days in a bi-weekly period.

4. Institutional Inspectors

The institutional inspector shall conduct rounds in the dining room and kitchen on a weekly basis and sample/evaluate one (1) meal per week and at least one (1) of each meal

(i.e., breakfast, lunch, and dinner) per month. The meal evaluation shall be documented on the Daily Food Service Evaluation form (DRC4233) and shared with the duty officer if a poor evaluation is indicated.

## **B. Duty Officer**

The managing officer shall ensure the facility provides additional rounds and opportunities for both staff and inmate communication by requiring a duty officer, who shall serve as the managing officer's designee for weekly rounds throughout the facility. The administrative staff to be utilized are as follows: managing officer (optional), deputy wardens, security chief, unit management chief, managing officer's administrative assistant, business administrator, personnel director, investigator, inspector, labor relations officer, and operations compliance manager. The following minimum requirements shall be maintained:

1. The managing officer is responsible for establishing a schedule which ensures there is a duty officer at the facility from 4pm to 8pm every weekday and at least four (4) hours each weekend day (excluding holidays). The four (4) hours on Saturday and Sunday shall be during inmate activity, typically between 8am and 8pm. The method by which staff are assigned certain days is at the discretion of the managing officer.
2. During the duty officer's assigned hours, he/she shall leave his/her office area and visit areas of inmate activity. The duty officer shall interact with staff, volunteers, contractors, visitors, and inmates in these areas as well as observe the overall climate and operation of the facility, documenting any concerns or important notes to provide the managing officer. At a minimum, the duty officer shall visit the following areas: Visiting, Recreation, Dining Hall. He/she shall also visit any special events or activities in the facility. The managing officer may also identify "hot spots" in the facility and require duty officers to visit them.
3. The "content" of duty officer rounds will be documented on the Duty Officer Report (DRC2239) including start and end times, areas visited, observations and any concerns or recommendations. At the completion of duty officer rounds, the duty officer will submit the Duty Officer Report (DRC2239), as well as a copy of the Daily Food Service Evaluation (DRC4233E) to the managing officer. This system shall ensure appropriate referrals and follow-up take place for any issues/concerns identified by the duty officer. At the managing officer's discretion, the issues/concerns identified by the duty officer shall become part of the discussion at Executive Staff and Department Head meetings.
4. At the beginning of each meal, a sample tray shall be prepared and evaluated daily by the duty officer, shift supervisor, or designee. The duty officer shall record an evaluation of all three (3) meals per day on the Daily Food Service Evaluation (DRC4233E): one (1) by sampling a meal and the other two (2) meals through communication with the shift supervisor or designee that sampled the other meals based on feedback from staff monitoring inmate response to the meals served. If there was a menu substitution or the evaluation score is poor, a copy of the Daily Food Service Evaluation (DRC4233E) shall be forwarded to the regional food service contract monitor.

5. At the beginning of each meal, the duty officer, shift supervisor, or designee shall evaluate the dining facility for appearance and basic sanitation. The duty officer shall record an evaluation of all three (3) meal periods per day on the Daily Food Service Evaluation (DRC4233E): one (1) by evaluating a meal period and the other two (2) meal periods through communication with the shift supervisor or designee that evaluated the other meals. If there was a significant sanitation concern or the evaluation score is poor, a copy of the Daily Food Service Evaluation form (DRC4233) and Food Service Incident Report (DRC1000FS) shall be forwarded to the regional food service contract monitor.

### **C. Quality Rounds**

1. Rounds shall be conducted with the purpose of assessing the functioning of a specific area within the facility including any maintenance issue affecting the area/location. Rounds shall also serve as an effective mechanism for gauging the climate of the institution for both staff and inmates and for identification and deterrence of sexual abuse and sexual harassment. In doing so, staff conducting rounds shall talk with the staff assigned to the respective area and inquire about issues/concerns they may have; talking with inmates (or making oneself available to have dialogue); looking at sanitation issues; and examining operational issues (specific to the area).
2. Rounds in living areas shall include all the above, but shall also include visual inspection of cells/dorms, property levels and its relative level of organization (i.e., clutter or the absence thereof), the availability of kites, informal complaint resolutions (ICRs), and health service request (HSR) forms. TPU rounds shall include all of the above, but also include policy compliance and documentation on the Restrictive Housing Individual Record Sheet (DRC4118/4115) and other related forms such as Restrictive Housing Daily Activity Log (DRC4117/4114). TPU rounds shall include a visual inspection of every inmate in every cell. The same standard shall apply when making rounds in Residential Treatment Units (RTUs).
3. Assigned staff shall observe and speak to staff and inmates in the designated areas and follow up on any concerns that have been raised by directing their inquiry to the appropriate department or individual.
4. Staff shall not alert other staff members that supervisory rounds are occurring unless such announcement is related to the legitimate operational function of the facility.
5. Sally Port, Control Center, and Perimeter Post Specific Guidelines

When visiting these areas, the following systems/processes shall be reviewed:

- a. Observe a shift change while making a round in the Control Center looking at the key issuance process, picture ID verification, and perimeter zone checks;
- b. Examine equipment assigned to each area to ensure good working order;
- c. Review surveillance cameras located in each area;

- d. Review perimeter alarm documents for frequencies of zone activations and appropriate acknowledgement of staff assigned to the Control Center and Perimeter Post;
  - e. Discuss post specific information with assigned staff to ensure their working knowledge of the post;
  - f. Observe vehicle and/or pedestrian traffic being processed in and out of the Sally Port;
  - g. Observe a shift change with the Perimeter Post ensuring continuity of security while the change is taking place;
  - h. Review the post activity logbook covering the two (2) weeks prior to the inspection, and note the review in the log.
6. An Incident Report (DRC1000) shall be written, when warranted, if there are any irregularities, sanitation deficiencies, or violations of departmental or institutional policies and procedures. Additionally, any noted issues with surveillance cameras or other technology shall be documented for follow up and repair by filling out a Work Order Request (DMH0108).

#### **D. Documentation of Rounds**

- 1 Assigned staff shall sign in/sign out on the Employee Visit Record (DRC6011) when entering/exiting the designated areas and shall use red ink when signing.
2. All intermediate or higher level supervisors, to include managing officer, deputy wardens, duty officer, UMC, security chief, captains and lieutenants, who conduct unannounced rounds shall document "UAR" in the Reason for Visit column of the Employee Visit Log (DRC6011) in each area visited.
  - a. For Northeast Ohio Correctional Center (NEOCC) only, all intermediate or higher level supervisors, to include warden, assistant wardens, chief of unit management, chief of security, duty officers, facility duty officers (FDOs), captains and lieutenants who conduct unannounced rounds shall document "UAR" in the Reason for Visit column of the Employee Visit Log (DRC6011) in each area visited.
3. Any staff member designated to complete the managing officer's or deputy warden's weekly rounds as permitted in sections VI.A.1.a, VI.A.1.b, and/or VI.A.2 shall document "UAR" in the Reason for Visit column of the Employee Visit Log (DRC6011) in each area.

#### **E. Inmate Contacts**

The inmate kite system shall be utilized as the means of two-way communication between all levels of staff and inmates. All Kites (DRC2005) shall be answered within seven (7) calendar days and logged on the Kite Log (DRC2355). Institutional investigators shall be exempt from maintaining a Kite Log (DRC2355) due to the sensitive and confidential information they receive in kites (DRC2005). Responses shall be either written directly on the kite received or on the Kite Response form (DRC4180). In cases where electronic communication is possible, such as JPay

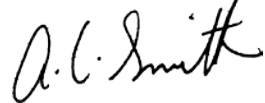
electronic mail, responses to inmate concerns may be posted or sent electronically. A written or electronic copy of the Kite Log (DRC2355) shall be maintained in the respective areas in accordance with the ODRC Record Retention Schedule.

**Related Department Forms:**

Incident Report	DRC1000
Kites	DRC2005
Duty Officer Report	DRC2239
Kite Log	DRC2355
Restrictive Housing Daily Activity Log	DRC4117/4114
Restrictive Housing Individual Record Sheet	DRC4118/4115
Kite Response	DRC4180
Daily Food Service Evaluation – Staff	DRC4233
Employee Visit Record	DRC6011
Work Order Request	DMH0108



Department of  
Rehabilitation & Correction

SUBJECT: <b>Inmate Mail</b>	PAGE <u>1</u> OF <u>5</u>
	NUMBER: <b>75-MAL-01</b>
RULE/CODE REFERENCE: 5120-9-17, 5120-9-18	SUPERSEDES: 75-MAL-01 dated 10/23/17
RELATED ACA STANDARDS: 4487, 4488, 44491 thru 4493, 4495, 4496;	EFFECTIVE DATE: <b>September 3, 2019</b>
	APPROVED: 

## I. AUTHORITY

Ohio Revised Code 5120.01 authorizes the Director of the Department of Rehabilitation and Correction, as the executive head of the department, to direct the total operations and management of the department by establishing procedures as set forth in this policy.

## II. PURPOSE

The purpose of this policy is to set forth policy and procedures which govern inmate mail services including mail inspections.

## III. APPLICABILITY

This policy applies to all inmates and staff of the Ohio Department of Rehabilitation and Correction (ODRC) and specifically mail clerk/screeners who process inmate mail and other staff who are responsible for reviewing or screening printed material intended for inmates.

## IV. DEFINITIONS

**E-Mail (electronic mail)** - Electronic correspondence through a kiosk or ODRC approved electronic communication devices. Electronic mail is offered to inmates as an additional means of communication and is a privilege that may be suspended indefinitely for violations of institutional rules. Electronic mail is not suitable for confidential legal communications.

**Legal Mail** - Mail addressed to an inmate clearly bearing the return address of an attorney-at-law, a public service law office, a law school legal clinic, court of law, or the Correctional Institution Inspection Committee (CIIC). It may be opened and inspected for contraband only in the presence of the inmate-addressee. Postcards from a court of law indicating fees and/or fines owed are not considered legal mail.

## **V. POLICY**

It is the policy of the Ohio Department of Rehabilitation and Correction (ODRC) to process inmate mail in an efficient, timely manner and to regulate inmate property in accordance with Administrative Regulations 5120-9-17, Incoming Mail, and 5120-9-18, Outgoing Mail.

## **VI. PROCEDURES**

### **A. General Procedures:**

#### **Regular Mail:**

1. Universal precautions, including minimum risk level personal protection equipment (PPE) as defined in ODRC policy 10-SAF-19, Fentanyl Exposure – Prevention and Response should be used when opening and processing incoming mail. Each institution shall have a written plan to address the proper handling of suspicious packages or envelopes to include isolation of the package and notification of appropriate staff and, if necessary, outside agencies. The written plan shall include steps for processing inmate mail, inmate legal mail and mail addressed to staff.
2. All incoming mail, except legal mail, shall be processed in an area located outside of the facility or in an area of the facility designated by the managing officer and approved by the appropriate regional director to minimize possible exposure. Each item shall be opened and processed under a ventless hood system designed to prevent the exposure of staff to potentially hazardous substances and contamination of the area.
3. Envelopes and/or packages suspected of containing contraband items shall be placed in an isolated area until such time as they can be opened by an ODRC staff member who has been trained to handle potentially hazardous materials.
4. Once the mail has been processed, it will be delivered inside the facility for distribution to the inmate.
5. All inmate mail, including electronic mail, other than Legal Mail, shall be opened, and may be read or copied in the institution mail room and inspected for the presence of cash, checks, money orders and/or other contraband. Any contraband received through the mail shall be documented on a Notice of an Unauthorized Item Received form (DRC4225) and disposed of in accordance with AR 5120-9-55, Contraband. All mail shall be removed from the envelope. The front of the envelope shall be copied in such a way as to preserve the return address and attached to the contents. The remainder of the envelope shall be discarded. Colored envelopes and/or colored mail contents, not to include greeting cards (see VI.B of this policy) are not permitted inside the institution. The front of the colored envelope and/or the colored contents shall be photocopied, and the copies delivered to the inmate. The colored envelope/contents shall be discarded.

6. All inmate regular mail may be read or copied in the institution mail office. The written portion of the mail shall then be promptly delivered to the inmate unless it is a threat to security. Inmates shall be notified when incoming or outgoing letters are withheld in part or in full. Inmates and senders shall be notified using a Notice of Withholding (DRC4149). The inmate and sender shall receive notification using a Decision on Withholding/Correspondence (DRC4148) once a decision is made. If an e-mail is withheld and/or blocked due to content, an automatic notification is sent to the sender/receiver of the e-mail and a separate Notice of Withholding (DRC4149) is not required.
7. Incoming and outgoing letters shall be held for no more than 48 hours and packages shall be held for no more than 72 hours, excluding weekends and holidays or emergency situations.
8. When the inmate bears the mailing cost, there is no limit on the volume of letters the inmate can send or receive or on the length, language, content, or source of mail or publications except when there is reasonable belief that limitation is necessary to protect public safety or institutional order and security. All institutions shall provide certified mail services for inmates. Inmates may request certified mail service provided they bear the full cost of postage, the cost of certification and the cost of return receipts, if requested. When the receipt is returned, it shall be given to the inmate and not maintained in the mailroom.
9. Postage and embossed envelopes shall be available for sale in the institution commissary and through DRC approved vendors. Envelopes ordered through an approved vendor will not count towards an inmate's package limits. Envelopes may not be mailed to inmates by individuals. Inmates may send one letter each month for which DRC will pay current first-class postage rates as established by the United States Postal Service (USPS) for a standard letter to maintain community ties. Any additional postage costs shall be paid by the inmate. Inmates will also receive eight free electronic mail stamps for outbound email only, to include videograms and attachments, each month. Unused stamps will not be carried over to the next month.

**Legal Mail:**

10. Legal mail containing a disc(s) that had not been pre-approved per Administrative Rule 5120-9-19, Printed Material, shall be treated as contraband by the institution mailroom. The managing officer/designee shall determine the disposition pursuant to Administrative Rules 5120-9-17 and 5120-9-55.
11. Inmates are permitted to send sealed letters to, and receive sealed letters from, a specified class of persons and organizations including, but not limited to, the following: courts, counsel, officials of the confining authority, state and local chief executive officers, administrators of grievance systems, the Correctional Institution Inspection Committee (CIIC), and members of the paroling authority. If confidentiality is required, such mail must be clearly addressed reflecting one of the above addresses and be marked as "Legal Mail."

12. Legal mail shall be opened and inspected for contraband only in the presence of the inmate addressee and in accordance with Administrative Rule 5120-9-18, Outgoing Mail.
13. Section VI.A.1 of this policy as it relates to copying colored letters and envelopes does not apply to Legal Mail. Legal Mail envelopes shall only be copied if there is a legitimate security concern and only copied in front of the inmate, if possible. The contents of Legal Mail should never be copied. If there is reason to copy the envelope, the original envelope shall be retained and attached to an Incident Report (DRC1000) which shall clearly state the security concern.
14. Legal Mail shall be logged on the Legal Mail Log (DRC2632) and delivered to the inmate addressee within 48 hours, excluding weekends and holidays or emergency situations.

B. 1<sup>st</sup> Class Mail Enclosures

Inmates may receive the following in a first-class letter:

- Five pages written/typed correspondence on plain white paper (no larger than 8 ½” x 11). Correspondence must be in blue or black ink only (no crayon or colored markers);
- Five photographs (no larger than 8 ½” x 11”), no nudes, no Polaroid;
- Five newspaper clippings (no larger than 8 ½” x 11”);
- Five pamphlets or brochures (simple, single page, no larger than 8 ½” x 11”); bi fold or tri fold;
- Five pages of blank stationary or copied material, no larger than 8 ½” x 11” (including materials copied from the internet);
- Color greeting cards are permitted if they are commercially manufactured and have not been tampered. Greeting cards must be single fold only (multi-fold, musical and/or “pop out” cards are prohibited);
- Postage stamps, laminated stickers, glue, glitter, lipstick or perfume, etc. are prohibited.

Such enclosures are subject to screening and possible exclusion from the institution under Administrative Rule 5120-9-19, Printed Material, and ODRC policy 75-MAL-02, Printed Material.

- C. Letters which are incorrectly addressed may be returned to the sender after a reasonable effort to ascertain the addressee has failed.
- D. First class letters, legal mail, and packages shall be forwarded in a timely manner to the inmate’s new address, if it is known, following an inmate’s transfer or release. The inmate forwarding address shall be recorded either in the cashier’s office or DOTS Portal, based on the offender’s date of release. Both areas should be consulted to verify the forwarding address. All forwarding items shall be logged on the Mail Forwarding Log (DRC2633). All packages shall be logged on the Inmate Package Log (DRC2631) on DOTS Portal. If this information is not available in either location, first class letters or packages shall be returned to sender as established in section VI.D of this policy.

- E. All other procedures for handling incoming and outgoing correspondence are contained in Administrative Regulations 5120-9-17, Incoming Mail, and 5120-9-18, Outgoing Mail.
- F. The mail department supervisor shall complete the Monthly Mail Report (DRC2316) and submit to the responsible deputy warden with a copy maintained at the institution.
- G. ODRC mailroom staff shall mail all inmates' outgoing mail only if it contains a completed federal tax return addressed to the Internal Revenue Service (IRS) to the following address: Internal Revenue Service, Blue Bag Program, Stop 975, 1040 Waverly Avenue, Holtsville, NY 11742. Mailroom staff shall also transmit the following data on the prison and on each prisoner associated with items mailed to the IRS: prison name and address; sending ODRC's staff name and telephone number; inmate's full name and inmate number; inmate's social security number; inmate's date of incarceration; and inmate's release date. The IRS will review the correspondence and take appropriate action. All other inmate's outgoing mail (excluding completed federal tax returns) addressed to the IRS should be mailed through the normal mailing process. Additional information on the Blue Bag Program is available via email: [prisoner\\_file@irs.gov](mailto:prisoner_file@irs.gov) using "BBP" on the subject line or by calling the Blue Bag Hotline: 631-654-6191.
- This procedure for the Blue Bag Program does not apply to incoming inmate mail from the IRS. The IRS requests ODRC to destroy IRS publications and blank IRS federal tax returns contained in incoming mail. ODRC policy 24-CAS-08, Inmate Refund Check, provides procedures for handling incoming mail from the IRS containing a federal refund check.
- H. A religious organization may send a religious medallion to an inmate subject to the possession limit, value limit, and certificate of ownership requirements of ODRC policy 61-PRP-01, Inmate Personal Property.

**Related Department Forms:**

Monthly Mail Report	DRC2316
Inmate Package Log	DRC2631
Legal Mail Log	DRC2632
Mail Forwarding Log	DRC2633
Decision of Withholding	DRC4148
Notice of Withholding	DRC4149
Notice of an Unauthorized Item Received	DRC4225