

OPERATIONAL BULLETIN: PRG-2014-07

TITLE: Examination of Solicitor/Client Privileged Materials

Date of Issue: 2014-02-19	Mode(s): All	Target Audience: National	Area of Interest: All
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Background:

- Solicitor/client privilege applies to any record of confidential communication between lawyers and clients where legal advice or assistance was sought, provided, or otherwise involved.
- The privilege includes information gathered to formulate legal advice, such as lawyer’s working papers, memos and files.
- This privilege belongs to clients, but lawyers are duty-bound to protect confidentiality, and must assert this privilege on the client’s behalf.

Details:

- The purpose of this Operational Bulletin is to remind Border Services Officers to treat documents, electronic or otherwise, which are protected by solicitor/client privilege with sensitivity.
- Currently the procedures for examination of solicitor/client privileged material are contained in the Citizenship and Immigration Enforcement Manual (ENF 12 Search, Seizure, Fingerprinting and Photographing), and in the CBSA Enforcement (EN) Manual (Part 4 Examination – Goods and Conveyances, Chapter 12 Postal Examination).
- Amendments to the CBSA EN Manual will be made to apply the postal examination policy to all modes.
- Starting immediately, procedures contained in the postal examination policy, outlined below, are to be applied to all modes, in both the traveller and commercial streams.

Policy Statement:

The instructions from the CBSA EN Manual, Part 4, Chapter 12, as modified below, are now applicable to all ports of entry when dealing with materials that clearly contain only documents and are marked "Solicitor/Client Privilege," or are addressed to/from a law firm, or a lawyer’s office, or where documents are carried by a lawyer or notary in physical or electronic format and solicitor/client privilege is claimed or asserted, as the documents are potentially privileged.

- Officers will not normally open these materials.
Note: This includes materials marked as "Solicitor/Client Privilege" or "documents" that meet the same criteria and will be treated as privileged.



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- Materials subject to solicitor-client privilege should be released unless there are reasonable grounds to suspect the letter or package contains more than documents subject to privilege. The item may then be opened to determine admissibility, tariff treatment or the presence of contraband, unreported goods or falsely reported goods.

Documents that are clearly not subject to solicitor/client privilege may be retained as evidence of a contravention (e.g., invoices for goods purchases). Where there is any suggestion or assertion that the documents are subject to privilege, and there are reasonable grounds to believe in the circumstances that those documents are or contain contraband, the documents or device on which the documents are stored should be sealed in an evidence bag without being examined or read and set aside for review by a court for confirmation of privilege.

Actions required by Border Services Officers:

- Immediately apply the procedures outlined above to all modes and streams.

Contact Information:

Any questions regarding this Operational Bulletin should be directed to the Traveller Border Programs Division by email at

Approved by: Alec Attfield, Director
Traveller Border Programs Division

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2014-02-13

Additional bulletins: