

MIM Distributors
PO Box 40799
San Francisco, CA 94140

September 1, 2018

Hampton Roads Regional Jail
Attn: Chief of Support Services
2690 Elmhurst Lane
Portsmouth, VA 23701

Re: **Appeal of Censorship of Publication
*Under Lock & Key***

To Whom It May Concern:

We have been advised that the two issues of *Under Lock & Key*, referenced above, have been censored by your facility. You have failed to provide notice to us as the sender/publisher. Further, the notice you have provided to Mr. XX is inadequate as a matter of law. Your facility is neither a state correctional facility nor an institution governed by the rules and regulations of the Virginia Department of Corrections, therefore you must make an individualized determination as to each publication based on your policies, pursuant to a clear and convincing standard, as required by the Virginia Administrative Code (the "Code").

Due process requires adequate notice of the reasons for censorship. Instructive is the District Court's reasoning set forth in *Prison Legal News v. Jones*, "Procurier demands that the publisher "be given a reasonable opportunity to protest" the censorship. *Id.* at 418. For an opportunity to be reasonable, the publisher must know of the grounds upon which the publication has been censored. See Henry J. Friendly, "Some Kind of Hearing", 123 U. Pa. L. Rev. 1267, 1280 (1975) (explaining that it is "fundamental" to due process that "notice be given . . . that . . . clearly inform[s] the individual of the proposed action and the grounds for it"). This knowledge component of due process does not turn on whether the publication is the first copy or a subsequent copy. What matters is the basis for censorship. If a subsequent impoundment decision is based on a different reason not previously shared with [the publisher or distributor], due process requires that [the publisher or distributor] be told of this new reason." 126 F. Supp. 3d 1233, 1258 (N.D. Fla. 2015).

As such, we object to your failure to provide adequate notice to us, the sender/publisher, of the censorship. You must provide a notice of censorship which

clearly states the objectionable material and reason for censorship within fifteen (15) days of receipt of this letter. We direct your attention to § 630 of the Code.

We further note that the jail standard, 6VAC15-4D-650, provides the sender "*shall be allowed the opportunity to appeal the seizure to the facility administrator or a designee empowered to reverse seizure.*" Courts in the United States have long held a First Amendment right exists to protect the right of correspondence with prisoners. As previously noted a publisher or distributor must be given a meaningful opportunity to challenge any censorship. The law is clear, you are required to notify the sender/publisher of any censorship which includes the specific and articulable reasons for censorship, so they may have the opportunity to appeal such censorship. Any failure to act within fifteen (15) days of the receipt of this letter may result in appropriate legal action being taken against the Hampton Roads Regional Jail.

You have also failed to provide a specific and articulable basis for censorship with reference to the specific pages of objectionable content. This is required by applicable federal case law.

Please govern yourself accordingly.

Sincerely,

MIM Distributors