

[REDACTED]

10 February 2023

Dear [REDACTED]

Notice of Decision

I refer to your Formal Access Application under the *Government Information (Public Access) Act 2009* (GIPA Act) that you lodged with the Department of Communities and Justice (the Department) which was accepted as valid on 15 December 2022.

Summary of your request

In your application, you requested access to the following information:

Statistics held by Corrective Services NSW regarding:

- a) *Numbers of people detained in Corrective Services NSW facilities who are recorded as having a disability as at the date of a decision on this request, and at 1 January for each year going back to 1 January 2017;*
- b) *Of the total number expressed at a) above, a breakdown of the numbers of participants with disabilities by category (eg, physical, psychosocial, neurological, etc), as categorised or assessed by Corrective Services NSW as at the date of a decision on this request, and at 1 January for each year going back to 1 January 2017;*
- c) *Numbers of people detained in Corrective Services NSW facilities who Corrective Services NSW is aware are participants in the NDIS as at the date of a decision on this request, and at 1 January for each year going back to 1 January 2017.*

Searches for information

Under section 53 of the GIPA Act, the Department must undertake reasonable searches as may be necessary to find any of the government information applied for that was held by the Department when the application was received, using the most efficient means reasonably available to the Department.

Please be advised that thorough searches have been conducted by the below business units to find any information that falls within the scope of your application:

- Statewide Disability Services
- Corrections Research, Evaluation & Statistics (CRES)

Decision

I am authorised by the principal officer, for the purposes of section 9(3) of the GIPA Act, to decide your access application.

I have decided:

1. Under section 75 of the GIPA Act, to create a new record to respond to your access application; and

2. Under section 58(1)(a) of the GIPA Act, to provide access to that information sought in your access application.

I note that the information requested in your access application is not information that is contained in a record that the Department already holds. However, I have taken into consideration section 75 of the GIPA Act, which provides that although there is no obligation to provide access to government information by way of creating a new record or document, an agency is not prevented from doing so.

Therefore, I have used my discretion on this occasion to create a new record pursuant to section 75 of the GIPA Act to respond to your access application. I have decided under section 58(1)(a) of the GIPA Act, to provide access to the information sought in your access application which is titled 'Attachment A'.

The public interest test

I have carefully considered your request in view of the objectives of the GIPA Act where you have a legally enforceable right to obtain information, unless there is an overriding public interest against disclosure of the subject information.

In deciding which information to withhold in full or in part, I was required to conduct a "public interest test" in accordance with the principles set out in section 13 of the GIPA Act, where the public interest considerations favouring disclosure of government information were weighed against those factors that do not favour disclosure. The following are a number of public interest factors I considered which favour disclosure of the information requested:

- Disclosure of the information could reasonably be expected to promote open discussion of public affairs, enhance Government accountability or contribute to positive and informed debate on issues of public importance.
- Disclosure of the information could reasonably be expected to inform the public about the operations of agencies and, in particular, their policies and practices for dealing with members of the public.
- Disclosure of the information could reasonably be expected to ensure effective oversight of the expenditure of public funds.
- Disclosure of the information could reasonably be expected to advance the fair treatment of individuals in accordance with the law in their dealings with agencies.
- Disclosure of the information could reasonably be expected to reveal the reason for a government decision and any background or contextual information that informed the decision.

The only public interest considerations against disclosure that can be considered are those in schedule 1 and section 14 of the GIPA Act. However, in this notice of decision, the Department has not identified any public interest considerations against disclosure of the information you have requested.

After reviewing the information and exercising the public interest test, I have decided to fully disclose the information that falls within the scope of your access application in accordance with section 58(1)(a) of the GIPA Act.

Disclosure log

I have assessed that the information released in response to your formal access application is information that may be of interest to other members of the public.

I note that in your application form you have consented to the details of your application being recorded in the disclosure log.

Therefore, the Department may decide to record certain details about your application in its 'disclosure log' (under sections 25 and 26 of the GIPA Act), which is available on the Department's website.

Request for a reduction of the processing charges

I refer to your request for a reduction of the processing charges pursuant to section 66 of the GIPA Act outlined in your application on 8 December 2022, on the basis that the information requested is of a special benefit to the public generally. This request was made prior to the Notice of Advanced Deposit dated 20 January 2023, which advised you that processing charges in the amount of \$450.00 was payable to process and finalise your access application.

As the GIPA Act does not include a definition of 'special benefit to the public generally', I have taken into account the principles of the GIPA Act to promote proactive release of information and guidelines provided by the NSW Civil and Administrative Tribunal and the Information Privacy Commissioner to determine your application.

I note that the threshold for what constitutes a special benefit is not high and as a general guide, information that better informs the public about government or concerns a public issue would be of a special benefit to special interest to the public generally. In *Shoebridge v Forestry Corporation* [2016] NSWCATAD 93, the Tribunal concluded at paragraph [23] that it was not necessary for a decision-maker to establish that the test required an extraordinary or exceptional benefit but:

Must decide whether he or she is satisfied that there is a benefit that is different from what is ordinary or usual to the general public and thus not merely the private interests of the applicant alone.

I acknowledge that [REDACTED]

[REDACTED] and I have considered the reasons you have provided to support your request; noting that the information sought under this application is to allow the public to scrutinise the relevant policies of the Department, to have confidence that the NSW Government is acting in an appropriate way to safeguard some of its most vulnerable people, and to allow for civil society to provide suggestions for reform where these can be identified or where improvements are needed.

I am of the view that the provision of the information requested will help inform the public about the appropriateness of Departmental policies around managing inmates in custody with complex disabilities and may assist with providing feedback and suggestions for reform to the Government about improving the welfare and rehabilitation of those inmates. For these reasons, I am satisfied that the information sought would confer a 'special benefit to the public generally'. Accordingly, I have decided to grant your request for a 50 percent fee reduction under section 66 of the GIPA Act.

I acknowledge your payment of the advanced deposit in the amount of \$225.00 on 17 August 2022. In light of the fee reduction, \$15.00 will be refunded to you, noting that your application fee of \$30.00 paid for the first two hours of processing time.

Review rights

If you disagree with any of the decisions in this notice that are reviewable, you may seek a review under Part 5 of the GIPA Act. Before you do so, I encourage you to contact me to discuss your concerns.

You have three review options:

- internal review by another officer of this agency, who is no less senior than me

- external review by the Information Commissioner, or
- external review by the NSW Civil and Administrative Tribunal (NCAT).

You have 20 working days from the date of this Notice to apply for an internal review.

If you would prefer to have the decision reviewed externally, you have 40 working days from the date of this Notice to apply for a review by the Information Commissioner or the NCAT.

Further information about your review rights can be located on the Information and Privacy Commission's website at <https://www.ipc.nsw.gov.au/fact-sheet-your-review-rights-under-gipa-act>.

If you have any questions about this notice or would like any further information, please email me at infoandprivacy@dcj.nsw.gov.au.

Yours sincerely

Doreen L

OGIP Officer

Open Government, Information and Privacy | Legal
Department of Communities and Justice

Attachment A

CORRECTIVE SERVICES NSW

CRES reference: Request ID 798

Table 1 below provides counts of inmates in NSW Correction Centres identified as having disabilities, categorised by the disability type.

Current figures are as at 17 Dec 2022

Table 2 gives a similar breakdown for inmates identified as being NDIS participants

	1/01/17	1/01/18	1/01/19	1/01/20	1/01/21	1/01/22	17/12/22
Acquired brain injury	332	358	387	469	484	534	547
Aged / Frail	49	41	36	38	30	33	35
Autistic / Autistic spectrum	14	15	31	41	49	52	46
Blind or Vision impaired	79	67	67	70	63	67	68
Communication/Speech difficulties	2	1	1	2	2	3	4
Deaf or Hearing impaired	104	108	111	119	127	125	126
Dementia	21	20	19	27	22	19	18
Equipment / Facility recommendations	28	29	22	21	26	29	28
IntellectualDisabilityOrLowCognitiveFunc	545	587	622	673	699	658	650
Mobility / Physical access	172	182	188	205	207	215	208
Psycho Social		2	7	39	83	163	225
Grand Total	1,346	1,410	1,491	1,704	1,792	1,898	1,955

Table 1: Numbers of Inmates with Disabilities

	1/01/17	1/01/18	1/01/19	1/01/20	1/01/21	1/01/22	17/12/22
Acquired brain injury	25	32	34	35	24	49	48
Autistic / Autistic spectrum	2	4	10	13	17	25	22
Blind or Vision impaired	4	1	3	2	2	3	1
Communication/Speech difficulties							1
Deaf or Hearing impaired		2	2	3	3	6	6
IntellectualDisabilityOrLowCognitiveFunc	95	110	133	161	166	184	170
Mobility / Physical access	12	12	11	11	13	14	15
Psycho Social		2	7	38	82	160	219
Grand Total	138	163	200	263	307	441	482

Table 2: Numbers of Inmates with Disabilities who are NDIS Participants