

2 September 2022

Our ref: GIPA22 [REDACTED]



Dear [REDACTED]

### **Formal Access Application - 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) on behalf of the [REDACTED] which was accepted as valid on 22 June 2022.

#### **Summary of your request**

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

- (1) From 26/6/2021 to present, the number of instances of the following:
  - a) Serious illness of an inmate.
  - b) Hospitalisation of an inmate.
  - c) Death of an inmate.
  - d) Self-harm of an inmate.
  - e) Suicide of an inmate.
  - f) Incidents categorised as a disturbance or riot.
  - g) Number of inmates who requested counselling or psychological support.
  - h) Number of inmates who received counselling or psychological support.
  
- (2) From 26/6/2021 to present, please provide that average number of days that inmates spent in isolation as a result of:
  - a) reception or transfer.
  - b) being classified as a close contact.
  - c) testing COVID-19 positive.
  - d) a whole-of-prison lock down.
  
- (3) Where inmates were in isolation in the circumstances set out in (2), please provide:
  - a) The average number of visits they received from a nurse.
  - b) The average number of visits they received from a doctor.
  - c) The average amount of time that they received outside of their cell each day.
  - d) The number of inmates who missed a court hearing.

## **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:

- Custodial Corrections;
- Coronial Investigations and External Oversight;
- Corrective Services Coronavirus Command Post Unit; and
- Corrective Services Psychology.

## **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 58(1)(b) of the GIPA Act that some of the information sought is not held by the Department.
2. Under section 58(1)(c) of the GIPA Act, that some information is already available to the Applicant.
3. Under section 75 of the GIPA Act, to create a new record to respond to your access application and under section 58(1)(a) of the GIPA Act, to provide access to that information sought in your access application.

## **Decision that information is not held by the Department**

The information requested under points 1(a), 1(b), 1(g), 1(h), 2 and 3 of your access application is not held by the Department.

As explained above, in processing your application, I have taken into account the obligations referred to in section 53 of the GIPA Act which states:

*“53 Searches for information held by agency*

*(1) The obligation of an agency to provide access to government information in response to an access application is limited to information held by the agency when the application is received.*

*(2) An agency must undertake such reasonable searches as may be necessary to find any of the government information applied for that was held by the agency when the application was received. The agency’s searches must be conducted using the most efficient means reasonably available to the agency.*

*(3) The obligation of an agency to undertake reasonable searches extends to searches using any resources reasonably available to the agency including resources that facilitate the retrieval of information stored electronically.*

*(4) An agency is not required to search for information in records held by the agency in an electronic backup system unless a record containing the information has been lost to the agency as a result of having been destroyed, transferred, or otherwise dealt with, in contravention of the State Records Act 1998 or contrary to the agency's established record management procedures.*

*(5) An agency is not required to undertake any search for information that would require an unreasonable and substantial diversion of the agency's resources."*

I can confirm that in relation to your request under points 1(a) and 1(b) of your access application, searches were conducted by our business unit Custodial Corrections who confirmed that this information was not held by the Department. On that basis, in accordance with section 58(1)(b) of the GIPA Act, I have decided that the information sought under points 1(a) and 1(b) of your access application is not held by the Department.

As advised on 1 August 2022, it is recommended that it may be more appropriate to make these enquiries with the Justice Health and Forensic Mental Health Network for government run correctional centres and the relevant health service providers for privately operated correctional centres.

In relation to your request under points 1(g) and 1(h) of your access application, a search request was originally sent to Custodial Corrections who advised that they did not hold the information requested. Our search request was then redirected to Corrective Services Psychology. Following extensive enquiries with Corrective Services Psychology, I can confirm that this information is not held by the Department. On that basis, in accordance with section 58(1)(b) of the GIPA Act, I have decided that the information sought under points 1(g) and 1(h) of your access application is not held by the Department.

In relation to your request under points 2 and 3 of your access application, searches were conducted by Custodial Corrections. The outcome of their searches was nil results on the basis that it was not possible to calculate and determine average figures given the constant movement of inmates between correctional centres every day. Furthermore, the Corrective Services NSW database, the Offender Integrated Management System (OIMS) does not differentiate between different categories of restricted movements and therefore it is not possible determine whether any restricted movements were caused as a result of the Covid-19 pandemic. On that basis, it is not possible for the Department to generate results and any attempt to do so would not generate any accurate or reliable results which would contain the information requested under points 2 and 3 of your application. For these reasons, in accordance with section 58(1)(b) of the GIPA Act, I have decided that the information sought under points 2 and 3 of your access application is not held by the Department.

### **Decision that information is already available to the Applicant**

In relation to your request under point 1(c) of your access application, specifically, the number of deaths of inmates, I liaised with Coronial Investigations and External

Oversight who advised that the information is already available to the general public on the Department's website and can be accessed here:

<https://correctiveservices.dcj.nsw.gov.au/csnsw-home/support/deaths-in-custody/published-statistics-and-research-reports-on-deaths-in-custody.html>.

Per section 58(1)(c) of the GIPA Act, the Department may decide that government information applied for in an access application is already available to the applicant, but only on one of the grounds set out in section 59(1) of the GIPA Act. When making such a decision, the Department is not required to provide access to the information that is already available to the applicant, but the Department must indicate why it believes the information is already available to the applicant and, if necessary, how the information can be accessed (see section 59(2) of the GIPA Act).

The grounds on which a decision that information is already available to an applicant include circumstances where the information is publicly available on a website (see section 59(1)(e) of the GIPA Act). I have decided on these grounds that the information requested is already available to the applicant because the information is publicly available on a website as provided above.

A decision that information is already available to the applicant is a reviewable decision under section 80(f) of the GIPA Act. Further information regarding your review rights are provided below in this notice.

### **Decision to provide access to some information**

In accordance with our obligations under section 53 of the GIPA Act, I liaised with Custodial Corrections in relation to your request under points 1(d) and 1(f) of your access application where they were able to conduct searches of the Corrective Services database, OIMS, and provide the information requested.

In relation to your request under points 1(e) of your access application, I liaised with Coronial Investigations and External Oversight where they were able to conduct searches of their internal records and provide the information requested.

I note that the information requested under points 1(d), 1(e) and 1(f) of your access application is not information that is contained in a record that the Department already holds. However, I have taken in 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 in 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 and have decided under section 58(1)(a) of the GIPA Act, to provide access to the information sought in your access application.

The information has been provided to you at the end of this notice and is titled 'Attachment A' and 'Attachment B'.

## **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 15 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.
- The information is personal information of the person to whom it is to be disclosed.
- Disclosure of the information could reasonably be expected to reveal or substantiate that an agency (or a member of an agency) has engaged in misconduct or negligent, improper or unlawful conduct.
- 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.
- Disclosure of the information could reasonably be expected to contribute to the administration of justice generally, including procedural fairness.

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 under points 1(d), 1(e) and 1(f) of the scope of your access application in accordance with section 58(1)(a) of the GIPA Act.

## **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 made on 9 August 2022 on the basis that the information requested is of a special benefit to the public generally. This request was made in response to the

Notice of Advanced Deposit dated 2 August 2022 which advised you that processing charges in the amount of \$195.00 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] that works towards law reform to address injustices and inequalities for the betterment of the community and I have considered the reasons you have provided to support your request; noting that the information sought under this application is to assess the response of Corrective Services NSW to the Covid-19 pandemic in correctional centres and to make recommendations to Corrective Services NSW on the way in which processes and conditions can be improved for inmates in custody.

I am of the view that the provision of the information requested will help inform the public about how inmates in custody may have been impacted by the Covid-19 pandemic and may assist with providing feedback to the Government about its response to the Covid-19 pandemic in correctional centres and how the response may have been improved for the welfare and safety of inmates in custody. For these reasons, I am satisfied that the information sought would confer a 'special benefit to the public generally' and 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 \$97.50 on 17 August 2022. In light of the fee reduction, no further processing charges are payable.

## **Review Rights**

If you are aggrieved by any of the reviewable decisions in this notice of decision, you may seek a review under Part 5 of the GIPA Act, by requesting any one of the following:

- An internal review that must be lodged with Open Government, Information and Privacy within 20 working days of this notice of decision. You must lodge your internal review at the address shown at the top of the first page and must be accompanied by the appropriate application fee of \$40.

- Alternatively, a request for an external review may be lodged with either the Information and Privacy Commission, or the NSW Civil and Administrative Tribunal. Please note that you must lodge your request for an external review within 8 weeks of this notice of decision.

If you have any questions or concerns in relation to this matter, please contact the department on telephone (02) 9716 2662.

Yours sincerely

*Jyotsna Singh*

Jyotsna Singh  
**OGIP Solicitor**  
**Open Government, Information and Privacy Unit**  
**Department of Communities and Justice**

## Attachment A

**(1) From 26/6/2021 to present, the number of instances of the following:**

...

**d) self-harm of an inmate**

...

**f) incidents categorized as a disturbance or riot.**

As requested, please see below the information in response to the above request:

- There were 1588 incidents of self-harm in the period 26/6/2021 to 22/06/2022.
- There were 13 incidents of disturbance in the period 26/6/2021 to 22/06/2022.



## Attachment B

(1) From 26/6/2021 to present, the number of instances of the following:

...

e) suicide of an inmate

As requested, please see below table in response to the above request:

Suicides - 26.6.21 to present		
Year	Inmate	Cause of Death
2021	Inmate 1	Suicide
2021	Inmate 2	Suicide
2021	Inmate 3	Suicide
2021	Inmate 4	Suicide
2022	Inmate 5	Suicide
2022	Inmate 6	Suicide
2022	Inmate 7	Suicide
2022	Inmate 8	Suicide