

3 February 2023

Our ref: GIPA22/ [REDACTED]

[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) pursuant to section 41 of the *Government Information (Public Access) Act 2009* (GIPA Act) on 20 December 2022. Your application was validated on 20 December 2022.

Summary of your request

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

In relation to Lithgow Correctional Centre:

- *Number of Use of Force (UOF) incidents at Lithgow Correctional Centre between 1 January 2014 to 1 January 2015 with a breakdown of numbers of UOF incidents per month*
- *Breakdown of the number of UOF incidents that the immediate action team (IAT) were involved between 1 January 2014 to 1 January 2015 with a breakdown of numbers per month by IAT*
- *The number of section 24's where a UOF was used on an inmate and they had to be transferred to hospital*

In relation to statewide correctional centres:

- *Number of UOF incidents statewide between 1 January 2014 to 1 January 2015 with a breakdown of numbers of UOF incidents per month*
- *Breakdown of the number of UOF incidents statewide that the IAT were involved between 1 January 2014 to 1 January 2015 with a breakdown of the numbers per month by IAT*

The number of section 24's where a UOF was used on an inmate and they had to be transferred to hospital

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

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by the Department when the application was received, using the most efficient means reasonably available to the Department.

In accordance with our obligations under section 53 of the GIPA Act, a search request was sent to Corrections Research Evaluation and Statistics (CRES) who conducted internal searches and were able to locate and provide the information requested in your access application.

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 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 in doing so.

Therefore, the Department has exercised its' 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 which is titled 'Attachment A'.

Use of Force Incidents by Type (Table 3) – Information not within Scope

Please be advised that information which does not fall within the scope of a GIPA request is usually removed under section 74 of the GIPA Act. However, under section 76 of the GIPA Act, an agency is authorised to provide access to government information in response to an access application that is in addition to the information applied for. In this instance, I have decided to exercise this discretion by providing the information contained in Table 3 of Attachment A.

Table 1 and Table 2 of Attachment A is information that falls within the scope of your request. While Table 3 does not fall within the scope of your request, it provides contextual information of the statistical information provided in Table 1 and Table 2 by providing a breakdown of use of force incidents by type of incidents across statewide correctional centres. This information will assist in providing context in relation to the circumstances of when use of force was implemented (i.e. attempted escape, self-harm, assault, fight etc).

Please also note, the statistical information provided in relation to section 24 orders does not differentiate between whether a use of force incident directly resulted in a section 24 order and whether it was an incident (i.e. attempted escape, self-harm, assault, fight etc) which was responded to by a use of force incident and resulted in a section 24 order. This is because, as shown in Table 3, use of force incidents occur in response to incidents

where harm to an inmate or another individual is occurring, has occurred or likely to occur and immediate action and response is required to prevent further harm.

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 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 and 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.

Processing charges

On 16 January 2023, a Notice of Advanced Deposit was sent to you which advised that processing charges were payable in the amount of \$75.00. On 19 January 2023, we received your payment of the advanced deposit in the amount of \$37.50. The balance of the processing charges in the amount of \$37.50 is now payable. Before we can release the information to you, we will require the balance to be paid.

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
Solicitor
Open Government, Information and Privacy Unit
Department of Communities and Justice

Attachment A

CORRECTIVE SERVICES NSW

Response date: 11/01/2023

CRES reference: D22_804

Table 1: Use of Force incidents at Lithgow Correctional Centre for period 01 January 2014 until 01 January 2015

Incident Date	Total	IAT	Section 24
Jan 2014	0	0	0
Feb 2014	0	0	0
Mar 2014	0	0	0
Apr 2014	2	2	0
May 2014	1	1	0
Jun 2014	2	1	0
Jul 2014	0	0	0
Aug 2014	0	0	0
Sep 2014	1	0	0
Oct 2014	0	0	0
Nov 2014	0	0	0
Dec 2014	2	1	1
Total	8	5	1

Table 2: Use of Force incidents for Statewide Correctional Centres for period 01 January 2014 until 01 January 2015

Incident Date	Total	IAT	Section 24
Jan 2014	16	4	0
Feb 2014	29	8	1
Mar 2014	18	5	0
Apr 2014	27	10	0
May 2014	22	7	1
Jun 2014	24	13	3
Jul 2014	19	9	0
Aug 2014	24	12	1
Sep 2014	21	10	0
Oct 2014	34	16	2
Nov 2014	36	19	2
Dec 2014	24	8	2
Total	294	121	12

Table 3: Use of Force incidents by type for period 01 January 2014 until 01 January 2015

Incident Type	Total	IAT	Section 24
Attempt Escape/Use of Force	2	0	1
Self-Harm Offender - Actual/Use of Force	66	23	7
Self-Harm Offender - Threat/Assessed/Use of Force	33	10	0
Assault Other Person/Use of Force	4	2	0
Assault Offender/Use of Force	33	16	1
Assault Staff/Use of Force	63	32	2
Fight/Use of Force	93	38	1
Total	294	121	12