



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:

“Date range: 26/06/2021 to Present:

- (1) A breakdown of the cell density for each correctional centre.
- (2) A comparison of the bed capacity vs beds filled for each prison for the months 26/6/21 to present.”

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; and
- Corrections Industry & Capacity.

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)(a) of the GIPA Act, to provide access to some information sought in your access application; and
2. Under section 58(1)(b) of the GIPA Act that some of the information sought is not held by the Department.

Decision to provide access to some information

In accordance with our obligations under section 53 of the GIPA Act, a search request was sent to Custodial Corrections who advised that they did not hold the information requested. A search request was then redirected to Corrections Industry & Capacity who conducted internal searches and were able to locate and provide the information requested under point 1 of your access application.

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 point 1 of the scope of your access application in accordance with section 58(1)(a) of the GIPA Act.

Decision that information is not held by the Department

The information requested under point 2 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.”

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 Corrections Industry and Capacity. Following extensive enquiries with Corrections Industry and Capacity, I was advised that with the constant movements of inmates every day and the capacities of bed allocation changing daily as a result of Covid-19, the Department did not hold any record which contained such information.

On that basis, in accordance with section 58(1)(b) of the GIPA Act, I have decided that the information sought under point 2 of your access application is not held by the Department.

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 \$120.00 were 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 and of a 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 the capacity of correctional centres and how inmates in custody may have been impacted during the Covid-19 pandemic which 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 to the processing charges under section 66 of the GIPA Act.

I acknowledge your payment of the advanced deposit in the amount of \$60.00 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

CORRECTIONAL CENTRES (38 total) Operational Capacity			
Amber Laurel Correctional Centre	INTAKE AND TRANSIT	MALE AND FEMALE	56
Bathurst Correctional Centre	MIN / MED / MAX	MALE AND FEMALE	850
Broken Hill Correctional Centre	MIN / MED	MALE AND FEMALE	93
Bolwara House	MINIMUM	FEMALE	16
Cessnock Correctional Centre	MINIMUM	MALE	675
Clarence Correctional Centre	MIN / MAX	MALE AND FEMALE	1,225
Compulsory Drug Treatment Centre	N/A	MALE AND FEMALE	70
Cooma Correctional Centre	MIN / MED	MALE	225
Dawn de Loas Correctional Centre	MINIMUM	MALE	146
Dillwynia Correctional Centre	MAXIMUM	FEMALE	531
Emu Plains Correctional Centre	MINIMUM	FEMALE	80
Geoffrey Pearce Correctional Centre	MINIMUM	MALE	354
Glen Innes Correctional Centre	MINIMUM	MALE	168
Goulburn Correctional Centre	MIN / MAX	MALE	462
High Risk Management Centre	MAXIMUM	MALE	128
Hunter Correctional Centre	MAXIMUM	MALE	400
John Morony Correctional Centre	MEDIUM	MALE	441
Junee Correctional Centre	MIN / MED / MAX	MALE	910
Kariong Correctional Centre	INTAKE AND TRANSIT	MALE	56
Kirkconnell Correctional Centre	MINIMUM	MALE	196
Lithgow Correctional Centre	MAXIMUM	MALE	367
Long Bay Hospital	MIN / MED / MAX	MALE AND FEMALE	407
Macquarie Correctional Centre	MAXIMUM	MALE	400
Mannus Correctional Centre	MINIMUM	MALE	164
Mary Wade Correctional Centre	MINIMUM	MALE	78
Metropolitan Special Programs Centre	MIN / MED / MAX	MALE	944
Mid North Coast Correctional Centre	MIN / MED / MAX	MALE AND FEMALE	1002
Metropolitan Remand and Reception Centre	MAXIMUM	MALE AND FEMALE	1539
Oberon Correctional Centre	MINIMUM	MALE	140
Parklea Correctional Centre	MIN / MAX	MALE	1350
Parramatta Transitional Centre	MINIMUM	FEMALE	21
Shortland Correctional Centre	MAXIMUM	MALE	616

Silverwater Womens Correctional Centre	MAXIMUM	FEMALE	212
South Coast Correctional Centre	MIN / MED / MAX	MALE	956
Special Purpose Centre	MAXIMUM	MALE AND FEMALE	60
St Heliers Correctional Centre	MINIMUM	MALE	286
Tamworth Correctional Centre	MIN / MAX	MALE	89
Wellington Correctional Centre	MIN / MED / MAX	MALE AND FEMALE	592