

[REDACTED]

By email: [REDACTED]

3 March 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.

On 27 February 2023, you consented to a due date of 3 March 2023 for your application.

Summary of your request

You requested access to the following information in accordance with your email of 27 February 2023:

Statistics held by Youth Justice NSW regarding:

- a) *Numbers of people detained in Youth Justice NSW facilities who are recorded as having a disability as 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 Youth Justice NSW as at 1 January for each year going back to 1 January 2017;*
- c) *Numbers of people detained in Youth Justice NSW facilities who Youth Justice NSW is aware are participants in the NDIS as 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:

- Research & Information, Youth Justice NSW

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 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.

Access to information in addition to the information applied for

Section 76 of the GIPA Act provides for the Department to provide access to information that is in addition to the information applied for, unless there is an overriding public interest against disclosure.

I am of the view that there are no overriding public interest against disclosure of the additional information. Therefore, I have decided to release Background information regarding the data management by Youth Justice NSW of young people with a disability in the justice system.

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 8 February 2023, which advised you that processing charges in the amount of \$210.00 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 young detainees with complex disabilities and may assist with providing feedback and suggestions for reform to the Government about improving the welfare and rehabilitation of those detainees. 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 \$105.00 on 23 February 2023. 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 R

OGIP Officer

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

ATTACHMENT A

Background

Youth Justice NSW (YJNSW) collects information on a young person's disability status for case management purposes, rather than for statistical reporting. Data in this area is recorded in the YJ Client Information Management System (CIMS) by operational staff such as; caseworkers and psychologists.

In recognition of the critical need to strengthen supports for young people with a disability, Youth Justice developed the Youth Justice Disability Action Plan 2021-2024. The plan identifies the existing gap in available data about young people with disability in the youth justice system.

Under the Disability Action Plan, Youth Justice is seeking to improve the quality and consistency of disability data by upgrading its CIMS to facilitate recording of disability data, including National Disability Insurance Scheme (NDIS) involvement and key NDIS contacts.

One such enhancement was an upgrade to CIMS, which occurred in the last quarter of 2021. This upgrade allows the collection of more detailed and accurate information relating to young peoples' disability, diagnosis and NDIS status. A key change that will enhance accuracy is that diagnoses (and disability type) can now only be entered by psychologists.

While the enhanced dataset has started to be captured, Youth Justice is still in the transition period with respect to building consistent practice to data input. Although we cannot ensure that the historical data is 100% reliable, this upgrade to CIMS will significantly improve the integrity of the data moving forward.

To further enhance the response to young people with a disability in the justice system, the NDIS and Youth Justice have entered into a data exchange agreement, to facilitate more effective service. This data exchange seeks to protect the health and welfare of young people with a disability by establishing the level of support they are currently receiving and ensuring that their disability needs are both known, and met, by Youth Justice. The exchange of data with the NDIS commenced in August 2020.

Until now, Youth Justice has relied on the Young People in Custody Health Survey (YPICHS) to inform its understanding of the prevalence of disability among the client cohort. The most recent YPICHS was completed in 2015, meaning the data is dated.

YPICHS was due to be repeated in 2021 but was delayed as a result of COVID-19 restrictions (noting that some cognition and communication assessments are not valid if done with face masks). Data collection for this survey is currently underway.

The following data was extracted from CIMS on 25 January 2023.

As this is a live data base, figures are subject to change.

a) Numbers of young people in Youth Justice NSW custody who are recorded as having a disability, as at 1 January for each year going back to 1 January 2017.

Date	Number of Young People in Custody who are recorded as having a Disability*
1/01/2017	75
1/01/2018	69
1/01/2019	63
1/01/2020	54
1/01/2021	52
1/01/2022	50
1/01/2023	48

* “recorded as having a disability” includes those having an active record of a self-reported disability and indications of possible disability, as well as diagnosed disability, as at reporting date.

b) A breakdown of the numbers of young people in Youth Justice NSW custody with disabilities by category (e.g. physical, psychosocial, neurological etc), as categorised or assessed by Youth Justice NSW, as at 1 January for each year going back to 1 January 2017.

Date	Acquired brain injury	Autism (including Asperger's syndrome and Pervasive Development Delay)	Hearing (sensory)	Intellectual (including Down syndrome)	Neurological (including epilepsy and Alzheimer's disease)	Physical	Psychiatric	Sensory	Specific learning / Attention Deficit Disorder (other than Intellectual)	Speech	Vision (sensory)
1/01/2017	2	3	1	29	1	3	16	0	34	2	0
1/01/2018	0	4	2	27	2	2	12	0	34	0	0
1/01/2019	1	7	1	16	0	1	15	0	30	1	0
1/01/2020	1	10	1	18	0	2	14	2	23	1	1
1/01/2021	1	7	0	19	6	1	17	2	23	2	0
1/01/2022	2	7	0	23	4	1	13	2	23	1	0
1/01/2023	1	1	0	33	2	2	12	5	11	0	0

Note: the daily total of figures provided in (b) will not equal the figures provided in (a).

Response (a) provides a count of each young people with a disability record, whereas response (b) provides a count of the number of young people with a disability record by disability type. Where a young person has more than one type of disability recorded, they will be counted in each category.

c) Numbers of young people in Youth Justice NSW custody who Youth Justice NSW is aware are participants in the NDIS as at 1 January for each year going back to 1 January 2017.

Date	Number (percentage) of Young People in Custody who YJNSW is aware are participants in the NDIS ¹
1/01/2017	0
1/01/2018	0
1/01/2019	1
1/01/2020	2
1/01/2021	5
1/01/2022	11
1/01/2023	13

Notes:

- i. 'participants in the NDIS' includes all young people with an active NDIS pathway and step recorded as at the reporting date. Pathway steps include active NDIS plan, inactive NDIS plan and access request ineligible.

Caveats

- The disability data provided may be self-reported and/or suspected, rather than verified and diagnosed.
- NDIS data matching did not commence until August 2020. As such figures prior to 1 January 2021 cannot be verified.
- Figures are not comparable across years due to recent system and procedural changes (including changes to disability type).