



Department of Communities and Justice | Legal
Level 4, Henry Deane Building
20 Lee Street, Sydney NSW 2000
GPO Box 6, Sydney NSW 2001 | DX 1227
Tel 02 8346 1526 | Fax 02 8346 1804
www.justice.nsw.gov.au

29 April 2021

Our Ref: [REDACTED]

[REDACTED]
By email only: [REDACTED]

NOTICE OF DECISION

Dear [REDACTED]

I refer to your application seeking access to government information under the *Government Information (Public Access) Act 2009 (GIPA Act)* from the Department of Communities and Justice (the Department). The application was received as valid by the Department on 30 March 2021.

Following scope negotiations, you seek access to the following information:

Information for the period 1/1/2019 to 17/3/2021:

The number of strip searches carried out on young people in youth detention centres in NSW.

- 1. The number of complaints received by the Conduct and Professional Standards Unit (CAPS) about strip searches, body searches and partially clothed searches carried out on young people in youth detention centres.*
- 2. The number of complaints received by the CAPS unit about inappropriate touching, sexual harassment and/or sexual abuse/behaviour by youth detention centre employees*
- 3. The number of investigations conducted by the CAPS unit about strip searches, body searches and partially clothed searches carried out on young people in youth detention centres.*
- 4. Information related to any reports, recommendations or considerations about the need for body scanners to reduce the volume of searches.*
- 5. The number of complaints received by the CAPS unit about the use of isolation/seclusion and/or separation practices on young people in detention centres in particular whether they were considered a form of punishment and whether there are any reports of related emotional distress.*

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.

In response to your application, the following business units within Youth Justice NSW were requested to undertake searches and extract relevant information:

- Conduct and Professional Standards Unit (CAPS); and
- Policy and Practice Directorate.

I consider that reasonable searches have been undertaken in response to your application in accordance with section 53 of the GIPA Act.

Decision

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

I have decided:

- Under sections 58(1)(a) and 75(1) of the GIPA Act, to provide access to a new record created by the Department; and
- No records are held for point 5 of your application (section 58(1)(b) of the GIPA Act).

Reasons for decision

An applicant has a legally enforceable right to access the information requested, unless there is an overriding public interest against disclosing the information (section 9(1) of the GIPA Act). The public interest balancing test for determining whether there is an overriding public interest against disclosure is set out in section 13 of the GIPA Act.

Section 75(1) of the GIPA Act provides that the Department is not prevented from providing access in response to an access application to government information held by the Department by making and providing access to a new record of that information.

Accordingly, the information you seek is information to which access is being provided by the making of a new record. This new record was created from information that was collated and extracted from the Conduct and Professional Standards Unit, YJNSW.

Public interest considerations in favour of disclosure

Under section 12(1) of the GIPA Act, there is a general public interest in favour of disclosing government information. Section 12(2) of the GIPA Act sets out some examples of other public interest considerations in favour of disclosure. However, I am not limited to those considerations in deciding your application.

I find the following considerations in favour of disclosure are relevant to your application:

- There is a general public interest in favour of the disclosure of government information;
- 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; and
- Disclosure of the information could reasonably be expected to inform the public about the operations of Youth Justice NSW.

Public interest considerations against disclosure

When applying the public interest test, the only public interest considerations against disclosure that I can take into account are those set out in the table to section 14 of the GIPA Act.

I have not identified any public interest considerations against disclosure as being relevant to your application.

Balancing the public interest considerations

I have considered the relevant public interest considerations in favour of and against disclosure of the information that you have requested.

Having weighed up the considerations in favour of release, and in the absence of any public interest considerations against disclosure, I have decided to release the information that you seek in full.

No records held for point 5

In relation to this part of your application, Youth Justice NSW have advised that it does not currently use Body Orifice Security Scanner (BOSS) or related technology for conducting searches on young people in youth detention.

Prior to making a decision regarding the use of BOSS by YJNSW, a feasibility study (including detailed costings, medical impacts, effectiveness) will need to be undertaken.

Processing charge

Section 64 of the GIPA Act provides that the Department may impose a processing charge for dealing with an access application at a rate of \$30 per hour for each hour of processing time for the application. The application fee of \$30 counts as a payment towards the first hour of any processing charge payable.

I have decided that no further processing charges apply for this application.

Disclosure log

If information that would be of interest to other members of the public is released in response to a formal access application, the Department must record certain details about the application in its 'disclosure log' (under sections 25 and 26 of the GIPA Act).

Please advise the Department within 20 days if you have any objections to the Department including the released information on the disclosure log.

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. To assist you, I have enclosed a fact sheet published by the Information and Privacy Commission (IPC), entitled Your review rights under the GIPA Act. You will also find some useful information and frequently asked questions on the IPC's website at www.ipc.nsw.gov.au. You can also contact the IPC on freecall1800 IPC NSW (1800 472 679).

Please contact our office by email at infoandprivacy@justice.nsw.gov.au should you have any questions concerning the contents of this letter.

Yours sincerely,

Michelle

Michelle C
Open Government, Information and Privacy, Legal
Department of Communities and Justice



Department of Communities and Justice | Legal
Level 4, Henry Deane Building
20 Lee Street, Sydney NSW 2000
GPO Box 6, Sydney NSW 2001 | DX 1227
Tel 02 8346 1526 | Fax 02 8346 1804
www.justice.nsw.gov.au

Youth Justice NSW – Information released under the GIPA Act to the [REDACTED]

Information for the period 1/1/2019 to 17/3/2021:

- 1. The number of strip searches carried out on young people in youth detention centres in NSW.**

Seven (7)

- 2. The number of complaints received by the Conduct and Professional Standards Unit (CAPS) about strip searches, body searches and partially clothed searches carried out on young people in youth detention centres.**

Two (2)

- 3. The number of complaints received by the CAPS unit about inappropriate touching, sexual harassment and/or sexual abuse/behaviour by youth detention centre employees**

Seven (7)

- 4. The number of investigations conducted by the CAPS unit about strip searches, body searches and partially clothed searches carried out on young people in youth detention centres.**

One (1)

- 5. Information related to any reports, recommendations or considerations about the need for body scanners to reduce the volume of searches.**

YJNSW does not currently use Body Orifice Security Scanner (BOSS) or related technology for conducting searches on young people in youth detention.

Prior to making a decision regarding the use of BOSS by YJNSW, a feasibility study (including detailed costings, medical impacts, effectiveness) will need to be undertaken.

- 6. The number of complaints received by the CAPS unit about the use of isolation/seclusion and/or separation practices on young people in detention centres in particular whether they were considered a form of punishment and whether there are any reports of related emotional distress.**

Nil (0)