



**Government Information (Public Access) Act 2009
Notice of decision**

Applicant: [REDACTED]
Decision maker: Adeline
Date of decision: 30 June 2023
Reference: GIPA23 [REDACTED]
Keywords: Government information – access to information – providing access by creating a new record - full release – processing charges

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Summary

1. [REDACTED] applied for access to information from the NSW Department of Communities and Justice (the Department) under the *Government Information (Public Access) Act 2009* (NSW) (GIPA Act).
2. I have decided to provide access to the information falling within the scope of the access application by making and providing access to a new record of that information.
3. Information on how to seek a review of my decision is set out in paragraphs 35 - 40.

Summary of access application

4. On 24 May 2023 the Applicant applied under the NSW GIPA Act to the Department for access to the following information:

Relevant Period means the period 1 January 2022 to 31 December 2022 (i.e., one calendar year, inclusive)

Request for Government Information

Please provide all Government Information concerning inmates who were held in a correctional centre which discloses for the whole of the Relevant Period:

1. With respect to directions that inmates be segregated pursuant to section 10(1) of the CAS Act:

- a. the number of periods of segregation that commenced; and*
- b. the average time inmates spent in segregation.*

2. With respect to directions that inmates be held in protective custody (both voluntary and involuntary) pursuant to sections 11(1) and/or 11(2) of the CAS Act:

- a. the number of periods of protective custody that commenced;*
and
- b. the average time inmates spent in protective custody.*

3. With respect to directions that inmates be held in confinement as a punishment under section 53(1)(c) of the CAS Act:

- a. the number of periods of confinement that commenced; and*
- b. the average time inmates spent in protective custody.*

4. With respect to separation under s 78A(1) and/or 78A(2) of the CAS Act:

- a. the number of periods of separation that commenced; and*
- b. the average time inmates spent in separation.*

5. How many of the inmates held in segregation, protective custody and/or confinement, and who were separated pursuant to sections 10(1), 11(1), 11(2), 78A(1), 78A(2) and/or 53(1)(c) of the CAS Act, identified as Aboriginal or Torres Strait Islander.

5. On 30 May 2023 the Department acknowledged the application as valid.
6. On 30 May 2023 the Applicant agreed to extend the decision period to 3 July 2023 pursuant to section 57(4) of the GIPA Act.

Decision

7. I am authorised by the principal officer, for the purposes of section 9(3) of the GIPA Act, to decide the access application.
8. I have decided, under section 58(1)(a) of the GIPA Act, to provide access to the information sought in the access application.
9. This decision is reviewable under section 80(d) of the GIPA Act.
10. Attached is a Schedule of Documents identifying the information falling within the scope of the access application and the decision made in relation to the information.
11. In this Notice of Decision, I will explain my reasons. To meet the requirements of section 61 of the GIPA Act, I need to explain:
 - a. the reasons for my decision and the findings on any important questions of fact underlying those reasons, and
 - b. the general nature and format of the records containing the information requested, with reference to the relevant public interest considerations against disclosure (see the attached Schedule of Documents).

Searches for information

12. Under the GIPA Act, the Department must conduct reasonable searches for the government information requested in the application.
13. Searches were made of the Department's records management systems by a business unit to find any information that falls within the scope of the application.
14. The Manager, Data & Statistics, Corrections Research Evaluation and Statistics advised that the information is not held in the format requested.
15. I am satisfied that reasonable searches for the information requested by the Applicant have been conducted.

Providing access by creating a new record

16. Pursuant to section 75(2)(a) and section 75(2)(c) of the GIPA Act, the Department is not required to make a new record of information held or produce a new record of information from information:

Providing access by creating new record

(2) An agency's obligation to provide access to government information in response to an access application does not require the agency to do any of the following:

(a) make a new record of information held by the agency,

...

(b) update or verify information held by the agency,

(c) create new information, or produce a new record of information, by deduction, inference or calculation from information held by the agency or by any other use or application of information held by the agency.
17. However, section 75(1) of the GIPA Act states:

(1) An agency is not prevented from providing access in response to an

access application to government information held by the agency by making and providing access to a new record of that information.

18. Accordingly, in response to the application the Department has extracted the requested information and created a new record of information as permitted by section 75(1) of the GIPA Act.
19. Access to the new record of information will be provided to the Applicant following payment of processing charges.

Reasons for decision

20. 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.
21. I applied the public interest test by:
 - a) identifying any public interest considerations in favour of disclosure;
 - b) identifying any relevant public interest considerations against disclosure;
 - c) attributing weight to each consideration for and against disclosure; and
 - d) deciding where the balance between them lies.

Public Interest considerations in favour of disclosure

22. Section 12(1) of the GIPA Act sets out a general public interest in favour of disclosing government information, which must always be weighed in the application of the public interest test. The Department may take into account any other considerations in favour of disclosure which may be relevant (s12(2) GIPA Act).
23. In my view the following public interest considerations in favour of disclosure apply when considering the documents in issue:
 - a) The statutory presumption in favour of the disclosure of government information;
 - b) The general right of the public to have access to government information held by agencies; and
 - c) Disclosure of the information could reasonably be expected to inform the public about the operations of Corrective Services NSW.

Public interest considerations against disclosure

24. 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.
25. I have considered the information requested and have not identified any public interest considerations against disclosure as being relevant to the application.

Balancing the public interest considerations

26. Having weighed up the considerations in favour of release, and in the absence of any public interest considerations against disclosure, I have decided to grant access to the information requested that is held by the Department.

Processing Charges and Form of Access

27. As the request seeks access to non-personal information, the Department imposes processing charges of \$30/hour pursuant to section 64(1) of the GIPA Act.
28. Attached is a Table of processing charges which indicates how processing charges have been calculated in relation to the application.
29. Please arrange for payment of the assessed processing charge and provide proof of payment (remittance advice) by email infoandprivacy@dcj.nsw.gov.au quoting reference GIPA23 [REDACTED]
30. The record of information will be released when payment of the processing charges is complete.
31. Access to the information is provided in the form of an electronic PDF copy.

Disclosure log

32. I have considered that the information released to the Applicant would be of interest to other members of the public. As such, the record of information is suitable for the Department's disclosure log (<https://www.dcj.nsw.gov.au/about-us/gipa/disclosure-log.html>):
33. The following details about the decision can be published on the disclosure log:
 - a) the date on which the application was decided (the date of this notice of decision),
 - b) a description of the information that has been released to the Applicant, and
 - c) how this information can be accessed.
34. Should no appeal be received, the above information will be added to the Department's disclosure log after completion of the 40-business day appeal period.

Review rights

35. If the Applicant disagrees with any of the decisions in this Notice that are reviewable, they may seek a review under Part 5 of the GIPA Act.
 36. The Applicant has 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).
 37. The Applicant has 20 working days from the date of this Notice to apply for an internal review.
 38. If the Applicant would prefer to have the decision reviewed externally, the Applicant has 40 working days from the date of this Notice to apply for a review by the Information Commissioner or the NCAT.
 39. To assist the Applicant, I have enclosed a fact sheet published by the Information and Privacy Commission (IPC), entitled *Your review rights under the GIPA Act*. The Applicant will also find some useful information and frequently asked questions on the IPC's website: www.ipc.nsw.gov.au
 40. The Applicant can contact the IPC on freecall 1800 IPC NSW (1800 472 679).
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Further information

41. If the Applicant has any questions about this Notice of Decision, please contact the Open Government, Information and Privacy unit by email infoandprivacy@dcj.nsw.gov.au or telephone 02 9765 4032.

Adeline

**A/Advisor, Information and Privacy
Open Government, Information and Privacy
Department of Communities and Justice**

Schedule of Documents

No.	Description of record that contains the information	Third Party Consultation Yes/No	Released or withheld	Relevant public interest consideration(s) against disclosure
1.	NSW inmate data for the period from 01/01/2022 to 31/12/2022	No	Released as permitted by section 75(1) of the GIPA Act.	Nil

Table of Processing Charges

Action	Time spent	Cost
Time spent registering, acknowledging and considering application, conducting searches for information falling within the terms of the request and preliminary review of the information	2 hours	\$60.00
Time spent joining and reviewing data	5 hours	\$150.00
Time spent preparing the notice of decision, including table of processing charges	1 hour	\$30.00
Sub total	8 hours	\$240.00
Application fee		-\$30.00
Total balance of processing charges remaining (to be paid)		\$210.00

CORRECTIVE SERVICES NSW

Response date: 8/06/2023

CRES reference: D23_1039

The following tables' data are collected for inmates in full time custody for the relevant Period 01/01/2022 - 31/12/2022

Table 1. With respect to directions that inmates be segregated pursuant to section 10(1) of the CAS Act

	Total	ATSI
a. the number of periods of segregation that commenced	3353	1698
b. the average time inmates spent in segregation (days)	21	n.a

Table 2. With respect to directions that inmates be held in protective custody (both voluntary and involuntary) pursuant to sections 11(1) and/or 11(2) of the CAS Act

	Total	ATSI
a. the number of periods of protective custody that commenced	8637	2540
b. the average time inmates spent in protective custody (days)	147	n.a

Table 3. With respect to directions that inmates be held in confinement as a punishment under section 53(1)(c) of the CAS Act:

	Total	ATSI
a. the number of periods of confinement that commenced	7087	3740
b. the average time inmates spent in protective custody (days)	5	n.a

Table 4. With respect to separation under s 78A(1) and/or 78A(2) of the CAS Act

	Total	ATSI
a. the number of periods of separation that commenced	2244	723
b. the average time inmates spent in separation (days)	12	n.a