

15 June 2023

Our ref: GIPA23/ [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 21 February 2023. Your application was validated on 21 February 2023.

Summary of your request

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

Please provide the following statistical information in relation to Youth Justice Detainees (those subject to control and those on remand) who were detained in a Detention Centre operated by Youth Justice NSW and/or Corrective Services NSW for the period 1 January 2018 to 31 December 2022 (inclusive):

1. *The number of occasions that a detainee was subject to an order of separation under section 16(3) of the Children (Detention Centres) Act 1987 (NSW) (CDC Act):*
 - a. *Less than 24 hours;*
 - b. *Between 24 hours to 14 days; and*
 - c. *15 or more days;*
2. *The number of occasions that a detainee was subject to an order of segregation under section 19 of the CDC Act:*
 - a. *Less than 24 hours;*
 - b. *Between 24 hours to 14 days; and*
 - c. *15 or more days;*
3. *The number of occasions that a detainee was subject to an order of confinement as a punishment for misbehaviour under section 21(1)(d) of the CDC Act:*
 - a. *Less than 24 hours;*
 - b. *Between 24 hours to 14 days; and*
 - c. *15 or more days;*
4. *The number of occasions that a detainee was subject to an order for separation under section 16(2) of the CDC Act because the detainee was prescribed one or more of the following classifications under regulation 7(1) of the Children (Detention Centres) Regulation 2015 (NSW):*
 - a. *ClassA1(o); and/or*

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- b. Class A1(b); and/or
 - c. Class A2; and/or
 - d. Class B1; and/or
 - e. Class B2; and/or
 - f. Class B3;
5. The number of orders made for separation under section 16(3) of the CDC Act and any reason(s) recorded at the relevant point in time for the making of each such order;
 6. How many detainees who were subject to an order of separation under section 16(3) of the CDC Act identified as:
 - a. Aboriginal or Torres Strait Islander; and/or
 - b. Female; and/or
 - c. LGBTQIA;
 7. How many Detainees who were subject to an order of segregation under section 19 of the CDC Act identified as:
 - a. Aboriginal or Torres Strait Islander; and/or
 - b. Female; and/or
 - c. LGBTQIA;
 8. How many Detainees who were subject to an order for confinement as punishment for misbehaviour under section 21(1)(d) of the CDC Act identified as:
 - a. Aboriginal or Torres Strait Islander; and/or
 - b. Female; and/or
 - c. LGBTQIA.

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.

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)(b) of the GIPA Act that some of the information sought is not held by the Department; and
2. Under section 75 of the GIPA Act, to create a new record to respond to your access application and under section 58(1)(a) of the GIPA Act, to provide access to that information sought in your access application.

Decision that information is not held by the Department

The information requested under points 6(c), 7(c) and 8(c) 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."

I can confirm that in relation to your request under points 6(c), 7(c) and 8(c) of your access application, a search request was sent to the Youth Justice Information and Exchange unit who advised that data relating to detainees' LGBTQIA status is not collected by the Department and therefore, the information is not held by the Department. On that basis, in accordance with section 58(1)(b) of the GIPA Act, I have decided that the information sought under points 6(c), 7(c) and 8(c) in your access application 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 the Youth Justice Information and Exchange unit who conducted internal searches and were able to locate and provide some of the information requested 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 in 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, 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 and have decided under section 58(1)(a) of the GIPA Act, to provide access to the information sought in your access application.

The information has been provided to you at the end of this notice and 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 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 5 April 2023, a Notice of Advanced Deposit was sent to you which advised that processing charges were payable in the amount of \$360.00. On 11 May 2023, we received your payment of the advanced deposit in the amount of \$180.00. The balance of the processing charges in the amount of \$180.00 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

Youth Justice NSW Response to GIPA23 [REDACTED]

Details of Request

The Open Government Information and Privacy (OGIP) Unit of the Department of Communities and Justice received the following access application under the Government Information (Public Access) Act 2009 (GIPA Act):

Applicant: [REDACTED]

Reference No: GIPA23 [REDACTED]

The Youth Justice NSW Research and Information Unit received this request on 23 May 2023.

The request was for the following statistical information in relation to Youth Justice Detainees (those subject to control and those on remand) who were detained in a Detention Centre operated by Youth Justice NSW and/or Corrective Services NSW for the period 1 January 2018 to 31 December 2022 (inclusive):

1. The number of occasions that a detainee was subject to an order of separation under section 16(3) of the Children (Detention Centres) Act 1987 (NSW) (CDC Act):
 1. Less than 24 hours;
 2. Between 24 hours to 14 days; and
 3. 15 or more days;
2. The number of occasions that a detainee was subject to an order of segregation under section 19 of the CDC Act:
 1. Less than 24 hours;
 2. Between 24 hours to 14 days; and
 3. 15 or more days;
3. The number of occasions that a detainee was subject to an order of confinement as a punishment for misbehaviour under section 21(1)(d) of the CDC Act:
 1. Less than 24 hours;
 2. Between 24 hours to 14 days; and
 3. 15 or more days;
4. The number of occasions that a detainee was subject to an order for separation under section 16(2) of the CDC Act because the detainee was prescribed one or more of the following classifications under regulation 7(1) of the Children (Detention Centres) Regulation 2015 (NSW):
 1. Class A1(o); and/or
 2. Class A1(b); and/or
 3. Class A2; and/or
 4. Class B1; and/or
 5. Class B2; and/or
 6. Class B3;
5. The number of orders made for separation under section 16(3) of the CDC Act and any reason(s) recorded at the relevant point in time for the making of each such order;

6. How many detainees who were subject to an order of separation under section 16(3) of the CDC Act identified as:
 1. Aboriginal or Torres Strait Islander; and/or
 2. Female; and/or
 3. LGBTQIA;
7. How many Detainees who were subject to an order of segregation under section 19 of the CDC Act identified as:
 1. Aboriginal or Torres Strait Islander; and/or
 2. Female; and/or
 3. LGBTQIA;
8. How many Detainees who were subject to an order for confinement as punishment for misbehaviour under section 21(1)(d) of the CDC Act identified as:
 1. Aboriginal or Torres Strait Islander; and/or
 2. Female; and/or
 3. LGBTQIA.

Response

The following data was extracted from the Youth Justice NSW Client Information Management System (CIMS) on 29 May 2023. As this is a live data base, figures are subject to change.

1. The number of occasions that a detainee was subject to an order of separation under section 16(3) of the Children (Detention Centres) Act 1987 (NSW) (CDC Act) during the period 1 January 2018 to 31 December 2022 (inclusive), by length of time.

Length of time	2018	2019	2020	2021	2022	1 January 2018 to 31 December 2022 (inclusive)
24 hours or less	1132	1069	1254	1371	1517	6343
Between 24 hours to 14 days	249	239	1109	1392	1837	4826
15 or more days	1	14	139	233	62	449
Total	1382	1322	2502	2996	3416	11618

Note: The increase in separation orders in 2020-2022 relates to COVID-19 isolation requirements. In response to the COVID 19 pandemic, YJNSW in partnership with NSW Health, established a policy whereby young people entering custody from the community would be placed in medical separation for a minimum of 14 days to reduce the introduction and spread of COVID 19 into our secure environments. Separation was also used to manage positive COVID 19 cases within detention centres, and to safely manage cohort groups of ‘close contact’ detainees.

2. The number of occasions that a detainee was subject to an order of segregation under section 19 of the CDC Act during the period 1 January 2018 to 31 December 2022 (inclusive), by length of time.

Length of time	2018	2019	2020	2021	2022	1 January 2018 to 31 December 2022 (inclusive)
24 hours or less	6778	6413	3088	2731	1497	20507
Between 24 hours to 14 days	118	124	102	121	134	599
15 or more days	23	32	12	11	15	93
Total	6919	6569	3202	2863	1646	21199

3. The number of occasions that a detainee was subject to an order of confinement as a punishment for misbehaviour under section 21(1)(d) of the CDC Act during the period 1 January 2018 to 31 December 2022 (inclusive), by length of time.

Length of time	2018	2019	2020	2021	2022	1 January 2018 to 31 December 2022 (inclusive)
24 hours or less	5537	5152	3681	3392	3201	20963
Between 24 hours to 14 days	0	0	0	0	0	0
15 or more days	0	0	0	0	0	0
Total	5537	5152	3681	3392	3201	20963

4. The number of occasions that a detainee was subject to an order for separation under section 16(2) of the CDC Act because the detainee was prescribed one or more of the following classifications under regulation 7(1) of the Children (Detention Centres) Regulation 2015 (NSW):

- a. ClassA1(o); and/or
- b. ClassA1(b); and/or
- c. Class A2; and/or
- d. Class B1; and/or
- e. Class B2; and/or
- f. Class B3;

during the period 1 January 2018 to 31 December 2022 (inclusive).

Classification *	2018	2019	2020	2021	2022	1 January 2018 to 31 December 2022 (inclusive)
ClassA1(o)	10	4	4	0	1	19
ClassA1(b)	119	105	64	44	33	365

Class A2	19	22	10	16	8	75
Class B1	0	8	4	6	5	23
Class B2	0	0	0	1	0	1
Class B3	0	1	0	1	0	2
Pending [^]	0	1	0	0	0	1
Total	148	141	82	68	47	486

* Note: Classification level is based on the classification that was recorded *prior* to the commencement of the separation order. The separation order may have been made as a result of a ‘pending’ change in classification, which had not yet been updated in the system.

[^] 1 young person received an order for separation on admission prior to classification result.

5. The number of orders made for separation under section 16(3) of the CDC Act and any reason(s) recorded at the relevant point in time for the making of each such order, during the period 1 January 2018 to 31 December 2022 (inclusive).

Reason for Separation	2018	2019	2020	2021	2022	1 January 2018 to 31 December 2022 (inclusive)
Age / Vulnerability	506	462	226	160	56	1410
Classification	148	141	82	68	47	486
Disturbance / disruption to unit routine	162	113	64	64	52	455
Gender	320	306	142	21	14	803
Incident / Event**	104	103	1565	2139	2546	6457
Industrial Action / Staff Shortage	10	49	4	5	21	89
Medical**	104	125	405	523	543	1700
Security and Safety Concern***	0	0	0	0	127	127
Unit or Area / Centre Search	28	23	14	16	10	91
Total	1382	1322	2502	2996	3416	11618

** Note: An increase in separation orders for ‘incident/event’ and ‘medical’ reason in 2020-2022 relates to COVID-19 isolation requirements during this time.

***Note: A new Separation reason was added to the Youth Justice Client Information Management System (CIMS) in 2022 to note when a young person has been placed on a High Risk Unit. Please note that these figures reflect the number of orders made for separation and not the unique number of young people subject to an order as some young people may be placed in the High Risk Unit on multiple occasions.

6. The number of detainees who were subject to an order of separation under section 16(3) of the Children (Detention Centres) Act 1987 (NSW) (CDC Act) during the period 1 January 2018 to 31 December 2022 (inclusive).

Demographic	2018	2019	2020	2021	2022	1 January 2018 to 31 December 2022 (inclusive)
Aboriginal or Torres Strait Islander	2729	2700	1866	2246	2885	12426
Female	418	462	593	766	633	2872
LGBTQIA	Not available	Not available	Not available	Not available	Not available	Not Available
Total	4592	4628	3767	4344	4955	22286

7. The number of detainees who were subject to an order of segregation under section 19 of the CDC Act during the period 1 January 2018 to 31 December 2022 (inclusive).

Demographic	2018	2019	2020	2021	2022	1 January 2018 to 31 December 2022 (inclusive)
Aboriginal or Torres Strait Islander	4748	4333	1964	1453	1257	13755
Female	795	944	669	367	250	3025
LGBTQIA	Not available	Not available	Not available	Not available	Not available	Not available
Total	6919	6569	3202	2863	1646	21199

8. The number of detainees who were subject to an order of confinement as a punishment for misbehaviour under section 21(1)(d) of the CDC Act during the period 1 January 2018 to 31 December 2022 (inclusive).

Demographic	2018	2019	2020	2021	2022	1 January 2018 to 31 December 2022 (inclusive)
Aboriginal or Torres Strait Islander	3419	2941	2115	2121	2246	12842
Female	679	695	302	354	151	2181
LGBTQIA	Not available	Not available	Not available	Not available	Not available	Not available
Total	5537	5152	3681	3392	3201	20963

Information provided by Youth Justice NSW, Research and Information Unit	
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Endorsed by	Janet Killgallon, A/Director Strategy & Engagement
Approved by	Candice Neilson, A/Executive Director, Youth Justice NSW