



14 November 2023

Our ref: GIPA2023/ [REDACTED]

By email to: [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 27 June 2023, where you requested access to the following information:

- *Firstly, I would like the raw statistics on the number of prisoners who apply to see a private practitioner under section 9.5 per year. Primarily, I would like the most recent year for which information is available, though information on as many years as possible is desirable.*
- *Secondly, I would like to know the amount of requests under section 9.5 that were approved per year. This number of approvals per year is the information that I am most interested in as part of this application.*
- *Thirdly, if information exists, I would like to know statistics on what type of private medical practitioner people were requesting/approved to see. I.e X% of requests were for specialized cancer treatment, Y% were for cosmetic tattoo removal etc etc.*
- *Fourthly, would like information on how much transport and escort cost, on average, per medical visit. I understand collating and averaging this data may be time consuming. Accordingly, to save time I will happily accept any information available, such as providing a single de-identified typical sample case of what this would cost a prisoner. I am not overly interested in what the fees were for the medical services the individual prisoners paid for, rather, only what CSNSW charged them for transport and escort to the medical appointments*
- *Lastly, I note according to the section 9.5 policy document, this policy replaced "section 7.7 of the superseded Operations Procedures Manual". May I please have a copy of section 7.7 of the previous policy?*

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:

- Under section 58(1)(a) of the GIPA Act, to provide access to some of the information sought in your access application, and

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- Under section 58(1)(d) of the GIPA Act to refuse to provide access to some of the information because there is an overriding public interest against disclosure.
- Under section 75 of the GIPA Act, to create a new record in response to some parts of your access application and in accordance with section 58(1)(a) of the GIPA Act, provide access to that information.

These are reviewable decisions under section 80 of the GIPA Act.

Where I have decided to refuse to provide access to information, I am required by section 61 of the GIPA Act to inform you of:

- a) The reasons for the decision to refuse to provide access,
- b) The findings on any material questions of fact underlying those reasons (including a reference to any sources of information on which those findings are based), and
- c) The general nature and format of the records held by the Department which contain the information to which access has been refused.

The above matters are set out in this Notice of Decision.

Please note that I was able to locate information within the scope of your request relating to Points 4 and 5. I have numbered the documents 1 to 5 inclusive.

Searches for Information

The Department is required by section 53(2) of the GIPA Act to undertake such reasonable searches as may be necessary to locate any government information sought in an access application.

Searches were conducted by the following business units:

- Corrections Research Evaluation and Statistics
- Security and Custody
- CSNSW Strategic Finance
- Open Government, Information and Privacy

The business units conducted searches for information within the scope of your request, based on information provided by you in your access application. Accordingly, I am satisfied that reasonable searches have been undertaken in relation to your application.

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."

In accordance with section 58(1)(b) of the GIPA Act, I have decided that the information you requested in relation to Points 1,2 and 3 of your request is not held by the Department.

I am of the view that the relevant business units has undertaken reasonable searches to locate the information requested in your application.

Providing access by creating a new record

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, in relation to Point 4 of your request, I have used my discretion on this occasion to create a new record pursuant to section 75 of the GIPA Act to respond to this specific aspect of your access application. This information has been provided to you and is on page 1 of the documents released to you.

Public Interest Considerations

The public interest considerations against disclosure that have been relied upon by the department are marked up in the enclosed documents. The relevant public interest consideration appear in the overlay text of the redactions.

In deciding which information to withhold in full or in part, I was required to conduct a "public interest test" 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 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.

Clause 1(f) - Prejudice the effective exercise by an agency of the agency's functions

To establish that clause 1(f) of the Table to section 14 of the GIPA Act applies, the relevant functions of the relevant agency must be identified, and it must be established how those functions would be prejudiced by the disclosure of the information. "Prejudice" is taken to have its ordinary meaning in this context, that is, "to cause detriment or disadvantage".

Corrective Services NSW (CSNSW) exercises a range of functions with respect to the administration of correctional centres pursuant to the *Crimes (Administration of Sentences) Act 1999* (CAS Act) and the *CSNSW Custodial Operations Policy and Procedures*. These functions include maintaining security, discipline and good order within the correctional centres it operates.

These functions are to be exercised in a way that:

- ensures offenders who are required to be held in custody are removed from the community and placed in a safe, secure and humane custodial environment (section 2A(1)(a) of the CAS Act), and
- ensures the safety of persons having the custody or supervision of offenders is not endangered (section 2A(1)(c) of the CAS Act).

Information that has been withheld from disclosure relates to particular security protocols implemented by CSNSW to ensure that the housing and management of inmates is appropriate and proportionate to the particular needs of individual inmates, and the broader security, discipline and good order of the facilities. The disclosure of this information to the world at large prejudices the integrity of these functions, as persons with knowledge of this information may use it to circumvent or otherwise compromise security measures implemented in the secure environment of correctional facilities.

Clause 2(g) - Prejudice the supervision of, or facilitate the escape of, any person in lawful custody

I have applied this consideration to documentation relating to the Section 7.7 of the Operations Procedures Manual. The functions of CSNSW include the transfer/escort of inmates to medical facilities, when required, with set restrictions and supervision processes in place.

Disclosure of some of the requested information is likely to reveal the strategies, safeguards and procedures that CSNSW employs to safely manage the transfer and/or escort of inmates to medical facilities. Access to some of the information located could enable current/future inmates to gain knowledge of the strategies and safeguards adopted by CSNSW, including the agency's management mechanisms when transferring/escorting inmates for medical treatment.

It is likely release of the information would prejudice the supervision of, or facilitate the escape of, any person in lawful custody as it would enable the strategies and safeguards in place to be analysed and exploited by current/future inmates. With this knowledge there would be a high likelihood of inmates altering their behaviour to exploit and circumvent these strategies and processes. The release of this information to you may jeopardise the safety of CSNSW Officers, medical/hospital staff and the community.

Accordingly, I am satisfied that it is likely that releasing some of the information in the Operations Procedures Manual would prejudice the security, the supervision of, or facilitate the escape of, any person in lawful custody as it reveals details on the management and processes used to supervise inmates and facilitate transfer and/or escort for required medical attention/treatment.

I have weighed this consideration particularly heavily, as the ability to ensure the security and supervision of inmates while being transferred is a core function of the department and any prejudice to this ability could result in serious harm to inmates and the community.

In relation to Point 5 of your request, I have decided to provide you with a copy of the information requested in your access application in accordance with section 58 of the GIPA Act, with the exception of a paragraph, which contains information that is subject to an overriding public interest consideration against disclosure under the GIPA Act.

Your 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 bottom 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

Sheena R

Sheena Raj
OGIP Advisor
Open Government, Information and Privacy Unit
Department of Communities and Justice

“The average amount paid by an inmate for special medical escort in the 2022/23 financial year was \$1,060.00. Please note, the stated average amount may vary each year depending on individual needs and circumstances.”



SECTION 7.7 INMATE ACCESS TO PRIVATE MEDICAL PRACTITIONERS

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7.7 INMATE ACCESS TO PRIVATE MEDICAL PRACTITIONERS

7.7.1 Summary Page

Summary

Policy Overview	<p>Inmates may utilise the services of a private medical practitioner of their choice provided Justice Health & Forensic Mental Health Network (JH&FMHN) personnel support the request; or advises an appointment; or if there is a court direction; or request from a legal representative for such an appointment. All expenses are to be met by the inmates concerned.</p> <p>Corrective Services NSW (CSNSW) is committed to the safe and effective management of inmates. Therefore, staff are to ensure that the appropriate measures and procedures associated with such conditional absences are implemented with due care.</p>
Purpose	<p>This policy has been developed to:</p> <ul style="list-style-type: none"> • outline the parameters within which an inmate may use the services of a medical practitioner of their own choice • establish standards to enable staff to safely monitor and control situations where inmates have access to private medical practitioners.
Scope	<p>This policy applies to all correctional centres and to all employees who work within these centres.</p>
Strategic Focus	<ul style="list-style-type: none"> • <i>State Priorities - NSW Making it Happen</i> • Department of Justice Strategic Plan • CSNSW Business Plan
Legislation	<ul style="list-style-type: none"> • <i>Crimes (Administration of Sentences) Act 1999</i> • <i>Crimes (Administration of Sentences) Regulation 2014</i>
Related Policies and Documents	<ul style="list-style-type: none"> • Justice Health & Forensic Mental Health Network policies and procedures • Operations Procedures Manual section 6 <i>Escorts</i>

Acronyms

CSNSW	Corrective Services New South Wales
GM	General Manager
JH&FMHN	Justice Health & Forensic Mental Health Network

Definitions

Authorised officer	The officer authorised by the General Manager to perform the functions set out in this part of the Operations Procedures Manual.
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7.7.2 Policy

Justice Health & Forensic Mental Health Network (JH&FMHN) will support an inmate's request for any medical procedure other than for the removal of tattoos and/or any other form of cosmetic surgery, provided the inmate meets all associated costs.

JH&FMHN may determine when an inmate requires medical treatment or assessment including cosmetic surgery (but not for the removal of tattoos), that cannot be provided through a public hospital system. In this case inmates will not meet the costs of the appointment or the associated escort costs.

Upon a court direction or a legal representative's request, the inmate will attend an appointment with the private medical practitioner for medical treatment or assessment, to enable the preparation of a medical report for production in court proceedings. In such cases, it may not be necessary to seek the support or endorsement of JH&FMHN nor will the inmate be expected to meet the costs of the appointment or any associated costs.

7.7.3 Procedures

The responsibilities of the General Manager (GM) (or the GMs authorised officer) are to:

- consider all requests from inmates to attend the surgery/practice of a private medical practitioner
- obtain any local intelligence holdings from the centre's Intelligence Officer
- submit a request for information to the Corrections Intelligence Group (CIG) for CIG intelligence holdings NOTE: Where a full CIG threat assessment is considered necessary, the GM (or GMs authorised officer) is to submit a request via the Assistant Commissioner, Security and Intelligence

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s.14, cl 1(f) s.14, cl 2(g)

- determine whether the attendance of the inmate at the nominated appointment poses any threat to security and/or the community
- if approved, issue an order under section 24 of the *Crimes (Administration of Sentences) Act 1999* and arrange for the inmate to be escorted to the appointment at the nominated time and date
- give directions that the inmate is not to be told in advance, by either JH&FMHN staff or CSNSW officers, of the date and time of the appointment
- advise the private medical practitioner not to provide details of such appointments, should they receive enquiries from friends or relatives.

Responsibilities of the escorting officers:

- before the escort, ensure that they have an order issued by the GM under section 24 *Crimes (Administration of Sentences) Act 1999*
- become acquainted with the security assessment report prepared by either the Security Operations Group or correctional centre staff
- an officer attached to the escort team is to enter the surgery/practice to review the area prior to escorting the inmate into the premises
- at the completion of the escort, provide a written report to the GM concerning any

incident that may have taken place during the escort.

7.7.4 Monitoring and Evaluation

GMs should consider all security aspects before recommending any request from inmates to utilise the services of private medical practitioners of personal choice.

Escorting officers should familiarise themselves with the nature of the escort, and have prepared themselves sufficiently prior to embarking on such an escort.

After an escort, officers are to check that all reports are completed and submitted to the GM.

7.7.5 Document History

Version	Date	Reference
1.1	November 2001	
1.2	February 2016	Update of format, position titles, reporting responsibilities.

Reviewed	2001	Next Review	2017
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