



18 June 2015

C71774

Sophie Buchanan  
FYI website  
[www.fyi.org.nz](http://www.fyi.org.nz)

Dear Ms Buchanan

Thank you for your email dated 21 May 2015, requesting information about transgender prisoners. Your request has been considered under the Official Information Act 1982 (OIA).

Public safety is the Department's number one priority. We improve public safety by ensuring sentence compliance, and working to reduce re-offending by providing offenders with rehabilitation programmes, education and employment training. We are committed to addressing the health needs of prisoners, as doing so enables them to more successfully participate in these activities.

You have made multiple requests and they will be addressed below.

*1 Does the DoC keep records of trans prisoners, their numbers, which prisons they are put into, and the reasoning behind where they are placed? If so please provide any statistics and/or other information which can be disclosed regarding current and former trans prisoners. If the DoC keeps no records on this, why not?*

The Government is very aware and sympathetic to the particular needs of transgender prisoners including the issues surrounding their placement and safety. I am pleased to advise that an amendment to the Corrections Regulations 2005 came into effect on 10 February 2014. The amendment puts in place new requirements for determining whether Transgender and Intersex prisoners should be accommodated in either a male or female prison. Amendments to regulation 190 of the Corrections Act 2005 have the following two elements.

Firstly, where a prisoner's birth certificate has been amended to record a sex different from that recorded at birth (this requires a Family Court order), the prisoner is entitled to be placed in accordance with the revised certificate.

Secondly, a transgender prisoner who has not had their birth certificate amended may nevertheless apply to the Chief Executive of the Department of Corrections for placement in accordance with their nominated gender. In considering such applications, the Chief Executive will consider a range of

factors relating to the prisoner's commitment to living as a member of their nominated gender, and the safety of that prisoner and other prisoners. Prisoners whose detention relates to a serious sexual offence against a person of their nominated gender, or who was released from a prison sentence for such an offence within the last seven years, will not be eligible to apply to the Chief Executive. Please see 'M.03.05.Form.01 Information for transgender and intersex prisoners' enclosed, for the information given to prisoners if required.

Unfortunately, we cannot readily extract statistics about numbers of current and former transgender prisoners from our electronic records, as this information is noted on individual prisoner records, which are de-activated when they are released from custody. In order to identify this type of specific information, we would be required to manually review a large number of files, including historical information for the large number of offenders who have been in custody but who are no longer with us. In addition, no time period was stipulated in your email, which makes your requests for information more extensive.

In accordance with the OIA, we have considered whether to affix a charge or extend the time limit for responding. However, given the scale of the request we do not consider that this would be an appropriate use of our publicly funded resources. Therefore, this part of your request is declined under section 18(f) of the OIA, as the information cannot be made available without substantial collation or research.

*2 Additionally, are there procedures or practices in place to ensure the safety and health of trans prisoners? Please disclose current practice around treatment and care of trans inmates. If there are no policies around this, why not?*

Regarding your request for information about "procedures or practices in place to ensure the safety and health of trans prisoners", we aim to run prisons that are safe for prisoners, staff, visitors and the general public. Our staff recognise the importance of knowing and understanding prisoners, and actively engage with them to reinforce positive behaviour. Staff anticipate and attempt to resolve problems through the active management of prisoners, and are trained in de-escalation techniques, interpersonal and tactical communication skills. The goal is always to manage a potentially volatile situation in a manner that minimises the likelihood of provoking an aggressive response.

Prisoners who are deemed to be at risk of violence are segregated from the mainstream prison population for their own safety and security. Prisoners can also ask to be placed on voluntary segregation if they feel they are at risk from other prisoners.

The Department has a statutory obligation under the Corrections Act 2004 to provide a health service to prisoners reasonably equivalent to that found in the community. This service is provided within prison health centres by over 170 full time equivalent registered nurses and is similar to that provided in general

practice in the community. Medical professionals such as general practitioners (known as medical officers in prison) and dentists are contracted to provide basic and necessary services.

In addition to providing prisoners with primary health care services when they present with an injury or medical condition, the Department ensures they can access secondary and tertiary services provided by District Health Boards on the same basis as people in the community.

The prison population is currently around 8,800 and over the course of the year approximately 20,000 prisoners will come and go through our prisons due to the short term nature of sentences and times spent on remand in custody. Every prisoner has a medical file, both electronic and hard copy. When they are released from custody the electronic file is de-activated and the information on services provided do not form part of our current database, as we noted earlier.

Regarding your request for information about “procedures or practices in place to ensure the safety and health of trans prisoners” every prisoner entering prison has their health needs assessed when they arrive and on-going care and treatment is given if required.

Unfortunately, we cannot readily extract the requested information from our electronic records about “treatment and care of trans inmates”, as this medical information is noted on individual prisoner records. As noted previously, in order to identify this type of specific information, we would be required to manually review a large number of files, including historical information for the large number of offenders who have been in custody but who are no longer with us.

In accordance with the OIA, we have considered whether to affix a charge or extend the time limit for responding. However, given the scale of the request we do not consider that this would be an appropriate use of our publicly funded resources. Therefore, this part of your request is declined under section 18(f) of the OIA, as the information cannot be made available without substantial collation or research.

*3 Finally, are records kept regarding the rates of assault, abuse (physical, sexual, emotional, mental), self-harm, suicide, mental illness, physiological illness, and death of trans prisoners? If so, please disclose that information, and the comparative rates of assault, abuse, self-harm, suicide, depression, illness, and death among cisgender prisoners. If the DoC does not keep these records, why not?*

Regarding your request for information about assault and abuse, the Department has a zero tolerance policy toward prisoner assaults on staff and other prisoners. Every assault incident that is identified, no matter how minor, is recorded and reported. All prisoners involved in an altercation are interviewed by prison staff, and prisoners may be charged with an internal misconduct charge if it is warranted.

Assault incidents are categorised as follows:

- **Serious assault** is an act of physical violence that involves one or more of the following: sexual assault of any form and degree; bodily harm requiring medical intervention (assessment including medical treatment) by medical staff followed by overnight hospitalisation in a medical facility or bodily harm requiring extended periods of on-going medical intervention
- **Non-serious assault** is an act of physical violence that resulted in physical injuries that may or may not have required medical attention, but not overnight hospitalisation or on-going medical treatment
- **Assault no injury** is an act of physical violence that did not result in physical injuries or require any form of medical treatment. This can include behaviour such as spitting or pushing past a Corrections Officer.

Note that alleged sexual assault can be of any form and degree such as inappropriate touching, sexual violation, or any physical assault of a sexual nature. Please note that sexual assaults are often self-reported and unverified. As such, reported statistics cannot be seen as an accurate representation of the number of such assaults that occur within prisons. The Department does not break down these incidents into categories of seriousness, and the victim is able to pursue further investigation and involve Police in the matter.

Unfortunately, the information that you request about comparative rates of assault and abuse etcetera on “trans prisoners” and “cisgender prisoners” does not currently exist in a form that can be readily supplied to you, and would instead require initiation of a project to extract, analyse and present the data in the form requested.

Therefore, this part of your request is declined under section 18(g) of the OIA, as the information requested is not held by the Department, and we have no grounds for believing that it is held by another agency or more closely connected with the functions of another agency.

Regarding your request for information about “self-harm...mental illness, [and] physiological illness...of trans prisoners”, the Department does not compile or collect this data specifically about transgender prisoners. Therefore, this part of your request is declined under section 18(e) of the OIA, as the document alleged to contain the information requested does not exist.

Nevertheless, the Department is aware of research that has found that mental health disorders and illnesses are up to five times more prevalent among prisoners than in the general population.

All prisoners aged over 18 are screened as part of the arrival process to assess if they have a mental health need. If they have a mild to moderate mental health need they can be referred to the prison doctor or receive a package of care, which may include cognitive behavioural therapy.

All prisoners with serious mental health needs are managed in partnership with the Regional Forensic Mental Health Services.

In acute cases prisoners may be transferred to a secure forensic mental health facility. These services are managed by District Health Boards.

Regarding your request for information about the “death of trans prisoners”, the Department reports deaths in custody in two categories:

- Apparent Unnatural Deaths – this can include death as a result of self harm, an accident, foul play, or a death where the cause is unable to be initially confirmed.
- Apparent Natural Deaths – The death while in custody of any prisoner, as a result of natural causes.

All deaths in custody are reported to the Police and are the subject of a Coronial Inquest and an investigation by an Inspector of Corrections. The Coroner ultimately determines the cause of a person’s death. Where a death in custody is suspicious, the Police can make the decision to investigate.

Deaths in custody are reported annually, and this information is publicly available in our annual reports on our website here:

<http://www.corrections.govt.nz/resources/annual-reports5.html>

Unfortunately, the Department does not compile or collect this data specifically about transgender prisoners in isolation of other deaths. Therefore, this part of your request is declined under section 18(e) of the OIA, as the document alleged to contain the information requested does not exist.

Regarding your queries about why the Department does not record specific information about transgender prisoners, it is important to note that we only obtain personal information to help meet our legal functions to improve public safety and reduce re-offending by 25 percent by 2017. The Department is committed to ensuring the privacy, security, and confidentiality of all the information we hold. We recognise that all personal information relates to real people and we expect our staff to take proper care of it. We are accountable for the collection, use, storage and distribution of information about individuals and organisations.

We ensure:

- privacy by collecting only the information we need and using it only for legitimate purposes
- security by keeping data safe from unauthorised access and use
- confidentiality by only releasing identified personal information where there is a lawful purpose.

I trust the information provided is of assistance. Should you have any concerns with this response, I would encourage you to raise these with the Department. Alternatively you are advised of your right to also raise any concerns with the Office of the Ombudsman. Contact details are: Office of the Ombudsman, PO Box 10152, Wellington 6143.

Yours sincerely

A handwritten signature in black ink, consisting of a large, stylized loop that resembles the letter 'J' or 'L'.

Jeremy Lightfoot  
National Commissioner

You have been placed in this prison as that was determined to be the appropriate placement for you. You can be relocated to a prison accommodating persons of the opposite sex if you provide a birth certificate that records that sex, or you have had your placement successfully reviewed.

### **Providing a birth certificate**

If you have a birth certificate with your sex recorded as male or female you are entitled, at any time, to be accommodated in a prison catering for prisoners of the same sex as that on your birth certificate. You simply need to produce your birth certificate to prison staff. You will then be accommodated according to the sex on your birth certificate.

If you have a birth certificate that records your sex as indeterminate or does not record a sex, you can still produce this to prison staff, and that will automatically result in the National Commissioner of the Department of Corrections reviewing your placement. In this circumstance, you can say where you would prefer to be placed and supply the National Commissioner with relevant information. If you are then unhappy with the National Commissioner's decision, you can apply to the Chief Executive of the Department of Corrections to have the matter reconsidered.

### **Can I apply to be relocated to a prison catering for persons of the opposite sex without producing a birth certificate?**

Any person in custody in a prison whether sentenced or not has the right to advise any prison staff member at any time that, because of your gender identity, you would like to be considered for placement in a prison catering for the opposite sex to the one you are currently accommodated in.

If you are unhappy with your placement, you can apply to the Chief Executive of the Department of Corrections for a review of the decision by filling in an "Application for review of prisoner's placement", unless:

- You are serving a sentence of imprisonment for a serious sexual offence against a person of your nominated sex; or
- You are remanded in custody charged with or awaiting sentence for a serious sexual offence against a person of your nominated sex; or
- You have served a sentence of imprisonment for a serious sexual offence against a person of your nominated sex, and your sentence ended 7 or less years ago.

A serious sexual offence is one that is punishable by a period of imprisonment of 7 years or more, but does not have to have resulted in a sentence of imprisonment of 7 years or more.

If you are unsure about whether you can apply to the Chief Executive of the Department of Corrections against the placement decision made, you should discuss your situation with any prison staff member or your lawyer and they will be able to advise you.

### **Obtaining information to support your application**

Confirming your nominated gender identity is essential to establish appropriate accommodation for you. In order to consider your application, staff in the prison may need to gather additional relevant information. This information will then be forwarded to the Chief Executive of the Department of Corrections to assist in making a decision.

This may mean that staff will have to talk to other people such as your general practitioner, other health professionals, your partner or other family members.

By signing the application and completing the supporting information, you are confirming that you agree to us contacting people who you have named and who can provide essential information about your nominated sex.

You can be assured that any such contact will be made by appropriate and qualified staff members, and the enquiries will be conducted with respect for your situation and your privacy.

### **Help with completing this application and the supporting information**

Any prison staff member or your lawyer can help you with completing this application and the supporting information. If you need help please ask.