

23 September 2015

C73446

Tim Lamusse
fyi-request-3075-d54af252@requests.fyi.org.nz

Dear Mr Lamusse

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

Corrections is aware of and sympathetic to the needs of transgender prisoners, including the issues surrounding their placement and safety. As you may be aware, 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 if they are eligible for consideration. 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.

A prisoner whose detention relates to a serious sexual offence against a person of their nominated gender, or 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 where required.

You have asked five questions relating to transgender prisoner transfers. I have addressed these below.

1. *How many requests for transfer from a men's and women's facilities or from women's to men's facilities have been made this year?*

The Department has received one application from a transgender prisoner for transfer in the 2015/16 financial year (year to date). This was processed and the prisoner was transferred to a female prison.

2. *Are there any currently pending transfer requests? How many pending transfer requests are there?*

There are no pending transfer requests for transgender prisoners.

3. *How many transfer requests have been accepted and how many have been rejected?*

The Department has received a total of six applications for transfer for transgender prisoners since the 2013/14 financial year. Five were approved and one application was withdrawn as the prisoner was not eligible to apply when further charges were laid.

4. *How long is the average waiting time for a transfer request?*

Legislation states that the applications should be acted on as soon as reasonably practicable, however the Department aims to process the applications within 10 days, on the basis that all required information is provided with the application.

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



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.