



14 August 2012

C58512

Joshua Grainger
fyi-request-216-34c90e50@requests.fyi.org.nz

Dear Mr Grainger

Official Information Act request

Thank you for your email of 7 May 2012 requesting information on unlawful detentions and wrongful releases in New Zealand prisons. We apologise for the delay in providing you with a response.

Prisoners are on occasion unlawfully detained past their correct Statutory Release Date (SRD) or released before their SRD due to administrative reasons. These can arise where judges or court staff have incorrectly recorded dates on the warrant which directs the detention of prisoners, or there has been a miscalculation by prison staff of "time served". This type of miscalculation often relates to periods of remand in prison prior to trial and sentence, where a prisoner is subsequently convicted on multiple charges.

While the number of errors are low, any error is disappointing and the public are right to be concerned that these errors can occur. The Department manages a large number of prisoners in custody every year and although the current prisoner population is around 8,500, last year we held over 21,000 individual prisoners in custody (including those on remand). We continually review our processes to reduce the opportunity for errors to occur.

You have requested under the Official Information Act 1982 (OIA) the following information:

- 1. The total number of wrongful releases across all prisons during the same target period that Serco was assessed against*

The target period that Serco was assessed against was 1 August 2011 to 29 February 2012. In this period, the total number of wrongful releases from the Department of Corrections' prisons was five. This equates to approximately 0.04% of the total number of prisoners held in custody during the seven month reporting period.

- 2. The total number of wrongful imprisonments across all prisons during the same target period that Serco was assessed against*

The total number of prisoners detained unlawfully by the Department of Corrections was six, this equates to approximately 0.05% of the total number of prisoners held in custody during the seven month reporting period.

3. *Any reports, correspondence, emails, papers, or other documents, or other information that relate to the one wrongful imprisonment and/or two wrongful releases that occurred at Serco prison or any following investigation.*

The following documentation is enclosed:

- Two Performance Notice Forms from Chief Executive Ray Smith to Serco regarding the wrongful release of a prisoner (PN003, PN005)
- Performance Notice Form from Chief Executive Ray Smith, regarding the unlawful detention of a prisoner (PN004).

You will note, however, that some information in these reports has been withheld under section 9(2)(a) of the OIA, to protect the privacy of natural persons. We do not consider any public interest aspects would outweigh the need to ensure personal privacy is not compromised.

4. *Any reports, correspondence, emails, papers, or other documents or information that related to the last wrongful release and wrongful imprisonment that occurred at a Department of Corrections ran prison or any following investigation.*

The documentation regarding the wrongful release and unlawful detention from a Department of Corrections' run prison is not able to be released, as the detailed information contained within the documents could, if released, adversely impact on the safe security of prisoners.

Having carefully considered your request, we consider it would be best addressed by providing you with a summary of the information, as described in section 16(1)(e) of the OIA.

Wrongful release - the last wrongful release was on 28 October 2011. The release occurred from Whanganui District Court following the prisoner's court appearance. On the day, the prisoner was appearing at the Court on a shoplifting charge that was dismissed by the Judge. The escorting Corrections Officers did not check the relevant documentation and were not aware the prisoner was serving a prison sentence for other charges and was required to return to the prison.

The prisoner was released from the court in error and the Police were notified immediately. The prisoner's outstanding charges were not for violent offences and the prisoner was returned to Prison three weeks later.

Such events are extremely rare but unfortunately in this case human error meant a prisoner was released. A disciplinary process was undertaken following the incident and appropriate action was taken.

Unlawful detention - the last unlawful detention was on 23 February 2012. On that date, a staff member identified an issue with the information that had been input into the database of prisoner information. The database indicated a release date of 8 January 2012 for the prisoner; however a release date had been entered by Court staff showing 10 March 2012.

Corrections staff checked and found a Court loaded Criminal Record Number (CRN) belonging to another prisoner. Further checks on the prisoner's warrants and Judge's sentencing notes showed that he had been re-sentenced on a number of charges, effectively bringing remand time from 2010 into calculation. A new calculation of this prisoner's sentence, found that he should have been released on 28 December 2011. On confirming the correct date, the prisoner was released that day.

If you have any further questions about the information provided, please contact Corporate Affairs at commdesk@corrections.govt.nz

If you are not satisfied with this response, you have the right to make a complaint to the Ombudsmen, under section 28(3) of the OIA. Contact details for the Office of the Ombudsmen are:

Office of the Ombudsmen
PO Box 10152
Wellington 6143

Yours sincerely

A handwritten signature in black ink, appearing to read 'JCB', with a horizontal line extending to the right.

Jeanette Burns
Acting General Manager
Prison Services



Prison Management Contract for Mt Eden Corrections Facility

Seroo New Zealand Limited
Level 10
90 Arthur Street
Sydney
NSW 2000
Australia

Attention: [REDACTED]
Delivery: By e-mail

PERFORMANCE NOTICE FORM

The following Performance Notice is given under clause 25.1 of the Prison Management Contract for Mt Eden Corrections Facility dated 1 February 2011 (Contract).

1. Performance Notice Number: PND003
2. Performance Notice Name: Breach of Contract – Compliance with Custodial Service Requirement – Unlawful Release of Prisoner [REDACTED]
3. Date: 17/01/2012

4. Details of Breach

a. Clause(s) breached:

- Clause 8.1;
- Schedule 2, Part A; Service Requirement 1.4; and
- Schedule 2, Part B; Performance Measure no. 5 (required level: Zero)

b. Events or circumstances which constitute breach:

On 14 September 2011, Prisoner [REDACTED] was released from detention at MECF where he was being held on an interim recall. The New Zealand Parole Board (NZPB) was due to hear the recall on 22 September 2011.

The Prisoner's statutory release date (SRD) was scheduled for 16/02/2012, yet as a result of keying errors in the Integrated Offender Management System (IOMS), the time the Prisoner spent in pre-sentence detention was registered as 336 days rather than the actual amount of 186 days. This resulted in IOMS calculating the SRD to be 18/09/2011 and the Contractor releasing the Prisoner unlawfully.

The contracted service requirement for the management of prisoner discharge (1.4 of Schedule 2, Part A) stipulates that the Contractor must "Check, verify and comply with the relevant warrant and any sentencing notes that apply to the Prisoner being released".

By conducting further enquiries (e.g. reviewing sentencing notes in the system detailing the 186 days spent in remand custody, or identifying the SRD on the Prisoner's previous release licence of 16/02/2012) as mandated by the Contract, the Contractor would have been alerted to the inaccuracy of the SRD in IOMS and averted unlawfully releasing the prisoner.

In accordance with clause 25.4 of the Contract, the Contractor will be deemed to have accepted the accuracy of this Performance Notice, unless the Contractor notifies the Crown to the contrary within 5 Working Days after receipt by the Contractor of this Performance Notice.



6. Specified time for resolution:

The Crown acknowledges that, as a result of the nature of this breach, a full remedy is not possible.

However, the Crown does require you follow the performance rectification process in accordance with clauses 25.2(a), (c), (d) and (e) by 19/1/2012.

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6. Specific deduction:

Yes -- the specific deduction of \$25,000 is involved.

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7. Final warning:

No

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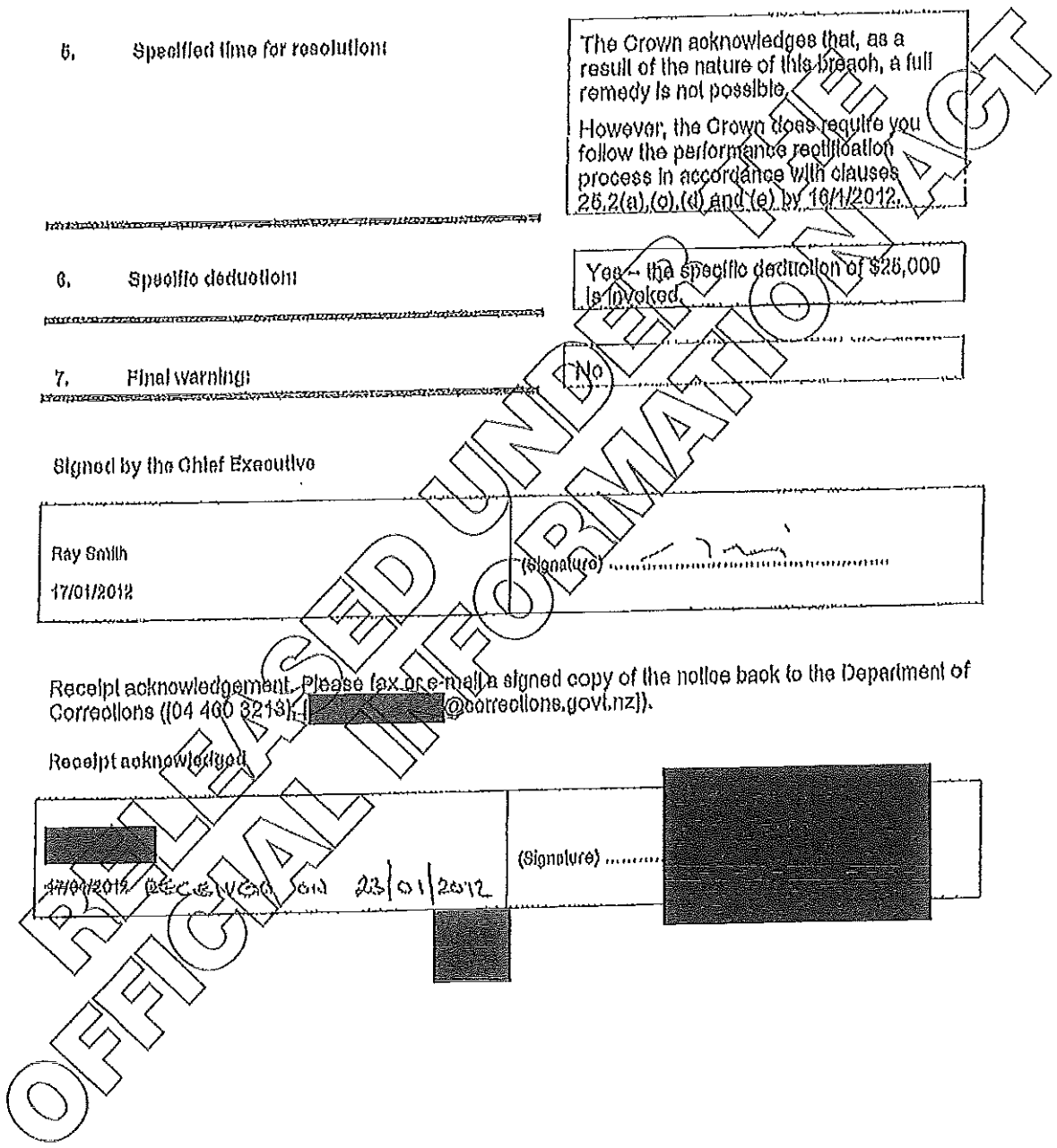
Signed by the Chief Executive

Ray Smith (Signature) 17/01/2012

Receipt acknowledgement. Please fax or e-mail a signed copy of the notice back to the Department of Corrections (04 400 3213) or [redacted]@corrections.govt.nz).

Receipt acknowledged

[redacted] (Signature) [redacted] 17/01/2012 RECEIVED via 23/01/2012





Prison Management Contract for Mt Eden Corrections Facility

Serco New Zealand Limited
Level 10
90 Arthur Street
Sydney
NSW 2060
Australia

Attention: [REDACTED]
Delivery: By e-mail

PERFORMANCE NOTICE FORM

The following Performance Notice is given under clause 26.1 of the Prison Management Contract for Mt Eden Corrections Facility dated 1 February 2011 (Contract).

1. Performance Notice Number:	PN004
2. Performance Notice Name:	Breach of Contract - Compliance with Custodial Service Requirement - Unlawful Detention of Prisoner [REDACTED]
3. Date:	17/01/2012
4. Details of Breach	

- a. Clause(s) breached:
- Clause 8.1;
 - Schedule 2, Part B; Performance Measure no. 2

b. Events or circumstances which constitute breach:

On 14 September 2011, Prisoner [REDACTED] was sentenced at Manukau District Court and received at MEOCF. Upon arrival at MEOCF, Prisoner [REDACTED] Judicial Proceedings Date (JPD) was changed from 0/0/2011 to 11/08/2011 by an unidentified Serco employee, thus calculating Mr [REDACTED] release date as 9 June 2012.

On 6 October, Justice [REDACTED] ordered Mr [REDACTED] release indicating that all the matters that he was sentenced to on 14 September were in fact related, and the JPD should have been 0/0/2011, as originally depicted in the Integrated Offender Management System (IOMS).

If the JPD had not been changed, Mr [REDACTED] would have been released on 14 September 2011 as the pre-sentence detention days (436) exceeded the length of the sentence.

Mr [REDACTED] was duly released on 6 October 2011 having been detained for 22 days longer than he should have been.

In accordance with clause 26.4 of the Contract, the Contractor will be deemed to have accepted the accuracy of this Performance Notice, unless the Contractor notifies the Crown to the contrary within 5 Working Days after receipt by the Contractor of this Performance Notice.



5. Specified time for resolution:

The Crown acknowledges that, as a result of the nature of this breach, a full remedy is not possible.
However, the Crown does require you follow the performance facilitation process in accordance with clauses 26.2(a),(c),(d) and (e) by 16/1/2012.

6. Specific deduction:

Yes - the specific deduction of \$26,000 is invoked.

7. Final warning:

No

Signed by the Chief Executive

Ray Smith
17/01/2012
(Signature)

Receipt acknowledgement. Please fax or e-mail a signed copy of the notice back to the Department of Corrections ((04 460 3213); [redacted]@corrections.govt.nz).

Receipt acknowledged

[redacted]
17/01/2012 RECEIVED BY 28/01/2012
(Signature)

Prison Management Contract for Mt Eden Corrections Facility

Seroo New Zealand Limited
Level 10
90 Arthur Street
Sydney
NSW 2060
Australia

Attention: [REDACTED]
Delivery: By e-mail

PERFORMANCE NOTICE FORM

The following Performance Notice is given under clause 28.1 of the Prison Management Contract for Mt Eden Corrections Facility dated 1 February 2011 (Contract).

1. Performance Notice Number:	PN006
2. Performance Notice Name:	Breach of Contract – Compliance with Custodial Service Requirement – Unlawful Release of Prisoner [REDACTED]
3. Date:	17/01/2012

4. Details of Breach:

a. Statute(s) breached:

- Clause 8.1;
- Schedule 2, Part A; Service Requirement 1.4;
- Schedule 2, Part B; Performance Measure no. 5 (required level: Zero)

b. Events or circumstances which constitute breach:

On 16 November 2011, Prisoner [REDACTED] was given a parole date of 12 December 2011 by the New Zealand Parole Board (NZPB).

Although there was no mention of the Prisoner's release in the Integrated Offender Management System (IOMS), on 7 December 2011 Manager Delegate Authority [REDACTED] of the Department of Corrections witnessed the Prisoner being released from custody.

MECF contacted Mr [REDACTED] who handed himself back into custody on 8 December 2011. MECF staff later acknowledged the unlawful release and duly registered the incident in IOMS.

The contracted service requirement for the management of prisoner discharge (1.4 of Schedule 2, Part A) stipulates that the Contractor must a) "ensure the Prisoner has served that Prisoner's sentence, as calculated by the Contractor"; and b) "confirm the Prisoner's release date in IOMS (or in accordance with a New Zealand Parole Board decision)".

Therefore the facts above indicate that a breach of 1.4 of Schedule 2, Part A of the contract between the Department of Corrections and Seroo has occurred.

In accordance with clause 28.4 of the Contract, the Contractor will be deemed to have accepted the accuracy of this Performance Notice, unless the Contractor notifies the Crown to the contrary within 5 Working Days after receipt by the Contractor of this Performance Notice.



6. Specified time for resolution:

The Crown acknowledges that, as a result of the nature of this breach, a full remedy is not possible.

However, the Crown does require you follow the performance rectification process in accordance with clauses 26.2(a), (c), (d), and (e) by 16/1/12.

6. Specific deduction:

Yes - the specific deduction of \$26,000 is invoked.

7. Final warning:

No

Signed by the Chief Executive

Ray Smith 17/01/2012	(Signature)
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Receipt acknowledgement. Please fax or e-mail a signed copy of the notice back to the Department of Corrections ((04) 460 3213; [redacted]@corrections.govt.nz).

Receipt acknowledged

[redacted]	(Signature) .. [redacted]
17/01/2012 RECEIVED AND 23/01/2012	[redacted]

PN003 – Unlawful Release of Prisoner [REDACTED]

Summary of Serco's response: Upon Prisoner [REDACTED] arrival at MECF on 26/8 after his interim recall, the adjustment (fixing the error in IOMS which based his SRD on a misplaced belief that he was in remand before sentencing when in fact he had been bailed) attached to his warrant was no longer present as it must have been attached to a warrant which subsequently expired. Serco requested his paper file from SHCF, but it was still on route from SHCF when he was released on 14 September (his SRD).

Recommended Department response: The details of this event were discussed with the Department's Prison Services Operations Team. An operational summary of the circumstances surrounding the breach is given below:

When prisoner [REDACTED] was received into MECF on the recall, a manual sentence calculation should have been conducted. Once completed, this should have been entered into IOMS under Offender notes, a check of the other notes would have shown there was a discrepancy in remand days. There are no notes within IOMS to show that a manual sentence calculation was completed by MECF staff, there are notes from the previous prisons identifying the correct sentence calculation. If MECF had done the calculation and note it would have alerted the Receiving Office staff to conduct a more thorough examination of the sentence.

Also a reference point would have been in prisoner [REDACTED] NZPB hearing outcome, where it states the conditions he released on and his sentence end date.

Also upon creating the release license a check should have been done against his old one to ensure correctness, this also would have shown a discrepancy which would have warranted further investigation.

As a result of these discussions, the Department wishes to uphold the Performance Notice and apply the specific deduction immediately. Given that a material Service Obligation within the contract was breached (SO 1.4) and the potential seriousness of a future process failure, and the inherent risk to the safety of the New Zealand public, the mitigating circumstances cited were not considered to be sufficient to relieve responsibility from the Contractor.

PN004 - Wrongful detention of Prisoner [REDACTED]

Summary of Serco's response: Prisoner [REDACTED] had been on remand for another offence (not the lead one) since June 2010, but judicial proceedings didn't start until August 2011. The SRD was changed to start from the Judicial Proceedings Date. The Crown, Defence and Court agreed that pre-sentence detention should be deducted from the sentence, but the Judge wouldn't overturn the decision. [REDACTED] Counsel made a habeus corpus application and he was subsequently released.

Recommended Department response: Serco complied with the direction given to them by the Department in retaining the Prisoner pending clarification of the Judicial Proceedings Date from the Court. Once the High Court accepted the Habeus Corpus application, the Prisoner was duly released. In light of these facts, PN004 will be discontinued and no penalty will be applied.

Speaking Notes

The Department did instruct Serco to retain the Prisoner pending a response from the Court. The Court did acknowledge that it may be a case of time served without clarifying the JPD. It wasn't until a higher court intervened upon submission of the Habeus Corpus that the matter received formal guidance.

Key statement is on pg 3 of Serco's response: [REDACTED] (counsel for Mr [REDACTED]) invited the Court to resentence the prisoner and take the lead offence as unlawful taking of the m/v but Judge [REDACTED] was hesitant to go down that track because he was unsure of his jurisdiction to do that when there was nothing that had been done incorrectly at sentencing.