



14 March 2017

C83701

Ti Lamusse  
[fyi-request-5407-bc8adfb8@requests.fyi.org.nz](mailto:fyi-request-5407-bc8adfb8@requests.fyi.org.nz)

Dear Ti Lamusse

Thank you for your email of 19 February 2017, requesting information about sexual behavior between prisoners. Your request has been considered under the Official Information Act 1982 (OIA).

Public safety and reducing re-offending are the ultimate goals for the Department of Corrections. In accordance with the Corrections Act 2004, we must make public safety paramount when managing offenders, and administer all sentences in a safe, secure, humane and effective manner. All prison facilities are operated in accordance with New Zealand legislation and based on other agreements, such as the United Nations Standard Minimum Rules for the Treatment of Prisoners.

You state that you received advice from a prisoner that the Department's policy is to separate two or more prisoners who are identified as engaging in sexual activity. Regarding this advice, you have asked:

- 1) *Is this the Department's policy in response to discovering consensual sexual activity between adult prisoners?*
- 2) *What is the Department of Corrections' policy to deal with consensual sexual activity between adult prisoners?*

The Department does not have specific policy guidelines regarding sexual behavior between prisoners. This part of your request is therefore declined under section 18(e) of the OIA, as the document alleged to contain the information requested does not exist. However, further relevant information is provided below, in response to questions three to nine.

- 3) *Can prisoners face disciplinary action for engaging in consensual sexual activity with another adult prisoner?*

No misconduct charge exists for 'engaging in consensual sexual activity with another adult prisoner'.

A full schedule of offences that can result in misconduct charges being laid against a prisoner is outlined in sections 128 to 130 of the Corrections Act. These sections are publicly available via the New Zealand Legislation website, and this part of your request is therefore declined under section 18(d) of the OIA, as the information requested is publicly available.

Please refer to the link below:

<http://www.legislation.govt.nz/act/public/2004/0050/latest/DLM294849.html>

You may wish to note that section 128(1)(a) of the Corrections Act outlines that a prisoner commits an offence against discipline if they disobey any lawful order of an officer or a staff member, or disobey or fail to comply with any regulation, including a rule of the prison made by the prison manager, pursuant to section 33 of the Corrections Act. At induction, a prisoner will sign to acknowledge their understanding of the rules of the prison. Rules can vary between prison sites, although it is common practice for prisoners to not be permitted in another prisoner's cell, when double bunking is not in place. A rule of this type is imposed having regard for prisoner and staff safety.

The internal misconduct system ensures that prisoners who are subject to disciplinary action have their charges heard by a hearing adjudicator or by a Visiting Justice in accordance with legislation.

If a prisoner is found guilty of non-compliance with the rules and regulations of the prison, they are disciplined in a fair, just and humane manner. If the prisoner pleads or is found guilty, the hearing adjudicator or Visiting Justice determines the appropriate sanction, which can include loss of privileges, forfeiture of earnings, or cell confinement. All alleged serious assaults against staff or prisoners are referred to the Police for investigation, and criminal charges may be laid against the perpetrators.

- 4) *How many prisoners have had internal charges of inappropriate conduct laid against them since February 2007?*
  - a) *Please break this down by year.*
  - b) *Please break this down by prison.*
  
- 5) *What does the Department of Corrections define as inappropriate conduct, for which a prisoner can be charged?*

No such misconduct charge exists, as outlined within sections 128 to 130 of the Corrections Act, specifically for 'inappropriate conduct'. This part of your request is therefore declined under section 18(e) of the OIA, as the document alleged to contain the information requested does not exist.

- 6) *How many prisoners have had internal charges of inappropriate sexual conduct laid against them since February 2007 (excluding sexual assault)?*
  - a) *Please break this down by year.*
  - b) *Please break this down by prison.*
  
- 7) *How many prisoners have had internal charges of inappropriate sexual conduct with another prisoner laid against since February 2007 (excluding sexual assault)?*
  - a) *Please break this down by year.*
  - b) *Please break this down by prison.*

As above, no such misconduct charge exists, as outlined within sections 128 to 130 of the Corrections Act, specifically for 'inappropriate sexual conduct' excluding sexual assault. This part of your request therefore is declined under section 18(e) of the OIA, as the document alleged to contain the information requested does not exist.

- 8) *When a Corrections staff member finds two or more adult prisoners engaging in consensual sexual activity, what is the expected response from that staff member?*
  
- 9) *When a Corrections staff member finds two or more adult prisoners engaging in consensual unprotected sexual activity, is that staff member expected to inform the prisoners about access to condoms?*

Although sexual behavior between prisoners is not encouraged, the Department supports prisoners to have access to prophylactics. This is a harm minimisation initiative and Health Services play a key role. Prophylactics are available to all prisoners at all prison sites, from the Prison Health Centre. These are provided at no cost to the prisoner, following an appointment with a registered nurse or doctor. Health Centres in prisons also offer screening for Sexually Transmitted Diseases (STDs) when offenders arrive in prison.

When appropriate, prisoners are informed that prophylactics are available from Health Services during their initial health assessment, and during any other relevant health consultations. Information about the availability of the products must be made visible in all Health Centres.

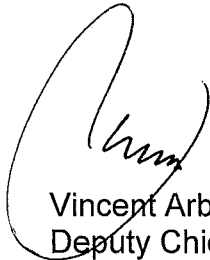
Each Health Centre decides how to make prophylactics easily accessible to prisoners. For example, informing prisoners that they are available from a nurse when the nurse is visiting the units. Health Services staff do not need to inform custodial staff that they have issued these items, however as with any health intervention it should be documented in the prisoner's electronic clinical record.

Prisoners are carefully assessed before being double bunked using a Shared Accommodation Cell Risk Assessment (SACRA). No prisoner who poses a detectable threat to another prisoner will be double bunked. The SACRA process is carried out by experienced custodial staff who review both prisoners' suitability before making a decision on placement.

In instances of non-consensual sexual behavior in prisons, any sexual assault is categorised as a serious assault. Sexual assault can be of any form and degree such as inappropriate touching, sexual violation, or any physical assault of a sexual nature. The Department does not break down these incidents into levels of seriousness and facilitates any victim access to further investigation by NZ Police.

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, appearing to read 'Vincent Arbuckle', is written over a large, light-colored circular scribble.

Vincent Arbuckle  
Deputy Chief Executive  
Corporate Services