

12 April 2021

C129626

s9(2)(a)

Tēnā koe s9(2)(a)

I refer to your email of 10 December 2020, requesting further information about the use of the cell buster by Corrections. Your request has been considered under the Official Information Act 1982 (OIA). I apologise for the delay in responding to your request.

You requested:

*The 'Use of Force' reports for all 27 incidents where the Cell Buster product has been used in New Zealand prisons since 2016.*

We are unable to provide the 27 incident reports involving the use of the Cell Buster, as they hold a large amount of personal information that could identify the individuals involved. In accordance with section 16 of the OIA, we are releasing the 27 incident reports in summary form to protect their privacy. Please find these attached as Appendix One.

Please note when referring to the appendix that in order to meet your request, important contextual information is not included, including the prisoner's history of self-harm, their previous history of using violence toward others, their age, health and personal circumstances and other critical information which is taken into account by staff when determining their tactical response to a situation. It is not possible to draw any accurate conclusions from the limited data supplied.

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 de-escalation and tactical communication. Our goal is always to resolve a potentially volatile situation without the need for force (which includes the use of pepper spray).

Pepper spray, including the 'cell buster' delivery method, can be the least harmful and safest way of responding to an incident, by temporarily incapacitating a prisoner, making it easier and safer to restrain and relocate them. The alternative would be for a team of staff to apply physical locks and holds to the prisoner's body in order to gain control of them and move them to a safe area. Depending on the level of resistance by the prisoner, this has a higher risk of injury both to them and staff.

Pepper spray, including the 'cell buster' delivery method, was implemented for use in prisons in 2012 as a tactical option for responding to incidents requiring the use of force where there is a risk to the safety of prisoners, staff and or property. The "cell buster" delivery method is only used in planned responses to incidents and requires the Prison Director's approval prior to use. A health staff member must also be available before the spray is deployed to assist with decontaminating the person afterwards.

In accordance with section 83 of the Corrections Act 2004, the use of force (including pepper spray) is limited to the minimum degree reasonable and necessary to resolve a situation as promptly and safely as possible. Every opportunity must be taken to de-escalate the situation, with force against a prisoner only being used as a last resort. The use of force must be necessary and proportionate to the circumstances.

*All emails, reports, correspondence, reviews and documents of any kind held by Corrections in relation to any health and safety issues associated with the use of Cell Buster between January 1, 2016 and the December 9, 2020.*

To identify information regarding each incident of 'cell buster' pepper spray use at all prisons, including all incident reports, all emails, reports, correspondence, reviews and documents from 1 January 2016 to 9 December 2020, would require manually searching information held by a large number of relevant staff members and extensive consultation within Corrections. Therefore, this part of your request, as currently framed, is declined under section 18(f) of the OIA, as the information cannot be made available without substantial collation or research.

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.

If you were able to limit the scope of your request to mitigate the reason for refusal, any information within scope would still need to be considered under the OIA. Specifically, it is likely some requested information would need to be withheld under section 6(c) of the OIA, which prohibits the release of information in cases where its release would prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial.

I trust the information provided is of assistance. Should you have any concerns with this response, I would encourage you to raise them with Corrections. 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.

Ngā mihi

A handwritten signature in blue ink, consisting of a series of connected loops and a long horizontal tail.

Rachel Leota  
National Commissioner