

20 October 2022

C157423

S 9(2)(a)

Tēnā koe S 9(2)(a)

Thank you for your email of 6 September 2022 to the Department of Corrections – Ara Poutama Aotearoa, requesting information about the recent Ombudsman report relating to Otago Corrections Facility (OCF), use of force events and property claims. Your request has been considered under the Official Information Act 1982 (OIA). For ease of response, each question is answered in turn below.

Our staff manage some of New Zealand’s most dangerous people in an extremely complex and challenging environment. While the prison population has dropped in recent years from a high of 10,820 in March 2018, to approximately 7,900 today, the makeup of the population has shown an increased concentration of more violent prisoners, including an increase in gang members.

Over 80% of the prison population have had convictions for violence in their offending histories. Additionally, 35% have a gang affiliation which is a known predictor of violence – this has more than doubled in the last ten years, with the proportion of prisoners with gang affiliations increasing from 15% in 2010.

Prisons can be volatile environments and many of the prisoners our staff work with can behave unpredictably and act without warning. We have a zero-tolerance policy toward violence of any kind and have a number of processes in place to safeguard the welfare of staff and people in prison.

Our staff recognise the importance of knowing and understanding people in prison, and actively engage with them to reinforce positive behaviour. Staff anticipate and attempt to resolve problems through the active management of people and are trained in de-escalation techniques, in addition to interpersonal and tactical communication skills. The goal is to continually manage a potentially volatile situation in a manner that minimises the likelihood of violent behaviour.

The reality is the threat of violence is something we cannot eliminate entirely, but we are constantly working to ensure our prisons provide the safest environment possible for staff and prisoners. We have invested significantly in training and tools to keep our staff safe.

This includes training in de-escalation techniques and interpersonal and tactical communication skills, through to stab resistant vests, body worn cameras, and pepper spray.

We implemented further initiatives to improve safety in prisons in 2020/21. This includes reinforcing the use of tactical communications, implementing rostering guidelines to ensure an appropriate mix of staff experience during shifts, improving how training data is recorded, and establishing staff safety plans.

Last year we worked with the Corrections Association of New Zealand (CANZ) and the Public Service Association (PSA) to develop the Violence and Aggression Joint Action Plan and all prison sites, including Otago Corrections Facility, now have an individual site safety plan to address violence and aggression. These plans are led by the Prison Director in consultation with local site union delegates.

You requested:

1) I would like to receive pictures of the inappropriate posters displayed in the OCF reception office, as referenced on page 20 of the Ombudsman's "Report on an unannounced inspection of Otago Corrections Facility under the Crimes of Torture Act 1989", released Aug 22 2022.

If images or copies of the posters are not available, please provide a written description of the posters

We employ around 10,000 staff in prisons and the community. The overwhelming majority of our people act with integrity, honesty and professionalism. Our clear expectation is that staff uphold the standards of behaviour as outlined in our Code of Conduct and comply with the law. We demand a high standard of conduct and integrity from all employees, and if any staff do not meet the standards required, we take action.

During the unannounced inspection completed by the Office of the Ombudsman, posters were observed in a staff area of the Receiving Office that the Inspectors deemed to be inappropriate. The Receiving Office is an open plan area with the staff area behind the reception area. There are two doors between the two areas. As stated in the report the posters were raised with the Prison Director at the time of the inspection and they were removed.

There are no available photos or copies of these posters, however, I have been advised the content of these posters depicted light-hearted situations experienced by staff and were created as a source of amusement in the spirit of team camaraderie. None of the posters involved any reference to individual prisoners or situations pertaining to prisoner's personal circumstances.

An example of the type of posters created are:

- A staff member injured themselves while overseas for personal travel and a poster was made for amusement to highlight this; and

- Following a staff member blaming another for a minor mistake, a poster was created to make light of this situation with a cartoon depicting one staff member driving a bus into another staff member, a reference to the common saying “thrown under the bus”.

Please also provide copies of any written concerns or complaints regarding the posters, including correspondence on this matter

I am advised there have been no written concerns or complaints regarding the posters. Therefore, this part of your request is refused under section 18(e) of the OIA as the document you have requested does not exist or cannot be found. I am advised that had there been any complaints prior to the Ombudsman’s visit, these posters would have been removed earlier.

As per Section 18B we have considered whether consulting with you would enable the request to be made in a form that would remove the reason for the refusal. However, we do not consider that the request can be refined in this instance.

2) I would like to receive the number of use of force incidents for the 6-month periods between September 30 2020 and 1 April 2021; 1 April 2021; 30 September 2021; and 30 September 2021 and 1 April 2022

In accordance with section 83 of the Corrections Act 2004 (the Act), the use of physical force is limited to the minimum degree reasonable and necessary to resolve a situation as promptly and as safely as possible. It can only be used if there are reasonable grounds to believe the use of force is necessary. Examples of this include in self-defence, in the case of an escape, to prevent property damage, or in response to resistance to a lawful order.

Whenever practical before the use of force, approval from the Prison Director or an authorised manager must be given. Force is not used as a means of punishment and can only be used once prison staff have exhausted every effort to communicate with the person to diffuse a situation. The use of force is only considered when all other reasonable alternatives have been attempted or, in extreme circumstances, when all other reasonable alternatives are considered inappropriate due to the nature of the situation. Force must be discontinued at the first safe opportunity once control is regained.

Control and Restraint is the name of the intervention strategy used to bring a person under control. Control and Restraint involves the use of approved techniques and will only be utilised in situations consistent with the Act.

All custodial staff are trained in the use of physical holds to restrain people. Physical holds can only be used by staff members with adequate training in the use of that hold. All staff must undergo refresher courses at least every 12 months with each of these training sessions reinforcing legal requirements and principles underpinning the use of force.

Every opportunity must be taken to de-escalate the situation and only as a last resort should control and restraint techniques be used. The use of force will be proportionate to the circumstances and the degree of resistance given by the individual.

Prisons are a dynamic environment and many incidents that occur are spontaneous. These can happen when staff answer personal alarms, radio messages, or staff shouting for assistance. Types of spontaneous incidents include assaults (either on staff or prisoners) or escape attempts. Spontaneous use of force may be used by an officer where it is determined that it is necessary in the situation to not wait to have the Control and Restraint team deployed and it is evaluated to be the most appropriate tactical option.

The use of force can also include pepper spray. Pepper spray can be the least harmful way of responding as it temporarily incapacitates the prisoner, making it easier and safer to restrain and relocate them. Pepper spray will only be issued to an officer who has received adequate training in its use. Officers trained in the use of pepper spray must undergo refresher courses at least once a year.

The officer must use the pepper spray in a way that minimises pain or injury to the prisoner, so far as that is consistent with protecting prison security or the safety of any person. Once compliant, the person is relocated, decontaminated, and assessed by health staff for any unexpected reaction.

Pepper spray has proven to be an effective tactical tool to protect the safety of staff and prisoners. There is less risk of harm with pepper spray than with standard use of force procedures. Individually carried pepper spray (ICP) is used to de-escalate situations such as prisoners fighting in the yard and refusing to stop, prisoners refusing to return to their cells and displaying aggressive behaviour towards staff, and prisoners damaging property and using broken glass as a weapon.

Please see the below table for the number of incidents involving pepper spray at OCF broken down by financial year for the period 2019/20 to 2021/22.

	2019/20	2020/21	2021/22
Pepper Spray	3	-	-
Pepper Spray drawn, not used	32	26	32
Pepper Spray ICP	13	18	34
Pepper Spray Planned Use	-	-	2

Definitions:

- Pepper Spray – All incidents relating to pepper spray were previously recorded against this single category.
- Pepper Spray drawn, not used – Where pepper spray is drawn and presented at a person in prison, but not discharged.
- Pepper Spray ICP – Where individual carry pepper spray is used on a person in prison as a tactical option.
- Pepper Spray Planned Use – Where MK9 or Cell Buster pepper spray is used on a person in prison as a part of a planned use of force operation.

Please see the below table for the number of incidents involving the use of force (including use of pepper spray) at OCF broken down by financial year, from 2019/20 to 2021/22.

	2019/20	2020/21	2021/22
Control and Restraint team formed but not deployed	2	1	1
Control and Restraint	7	6	5
Non-threatening physical contact	11	35	31
Use of force – spontaneous	43	60	73

Definitions:

- Control and Restraint team formed but not deployed – Control and Restraint team assembled but no force was used.
- Control and Restraint – Control and Restraint team assembled, and force is used
- Non-threatening physical contact – non-threatening contact used on a prisoner by an officer – examples include assisting, ushering, guiding, steering, separating or holding apart.
- Use of force – spontaneous – spontaneous force is used on a person in prison by an officer(s) – examples including – taking to the ground, hold and restraint techniques, use of individual carry pepper spray.

Please break this data down by: unit where force was used, whether pepper spray was used, and whether camera footage was available, ethnicity, and whether the incident was reviewed within 15 days

To answer this question, we would need to manually review each use of force report which we consider would impair the effective administration of the prison.

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 refused under section 18(f) of the OIA, as the information cannot be made available without substantial collation or research.

As per Section 18B we have considered whether consulting with you would enable the request to be made in a form that would remove the reason for the refusal. However, we do not consider that the request can be refined in this instance.

Otago Corrections Facility also has a safer custody panel who monitor use of force incidents. Following each use of force incident, a review is initiated. This review process requires documentation to be completed, detailing the circumstances of its use. This then goes through a sign off process, ensuring each use of force is reviewed in terms of its justification for use and any remedial action required. Where a review finds alternative actions could have been used to de-escalate an incident, recommendations for refresher training in

Tactical Options will be mandatory for the staff involved. Lessons from reviews will be shared with the wider team.

Reviews were completed but not all were completed within 15 days, I have been advised however, over the past six months a new reporting process has been implemented and there is closer monitoring and improved timeliness.

3. please provide copies of the use of force incident reports from 30 September 2021 to 1 April 2022

To determine what would be considered a use of force incident report, it would require nearly 800 individual incident reports at OCF during that timeframe to be manually reviewed. This part of your request is therefore declined under 18(f) of the OIA, as the information cannot be made available without substantial collation or research.

As per Section 18B we have considered whether consulting the requestor would assist to make the request in a form that would remove the reason for the refusal. However, we do not consider that the request could be refined in this instance. We have also 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 limited publicly funded resources.

If you would like to refine your request, we could potentially provide summaries of these events, given the amount of personal information involved in them.

4) please indicate the number of people aged under 18 who have been housed in the ISU and the length of their stay since 1 Jan 2020

There has been one instance during the requested timeframe where a person under the age of 18 was housed in the Intervention and Support Unit (ISU). This person was housed in ISU for their own safety and wellbeing and was in the ISU for one night before being transferred to a different prison.

5) A copy of the current Otago Corrections Facility Gang Management Plan, and a copy of the prior document which it replaced

This was provided to you on 30 September 2022 (our reference C156626) in response to your previous request.

6) The number of property claims for the 6-month periods between September 30 2020 and 1 April 2021; 1 April 2021; 30 September 2021; and 30 September 2021 and 1 April 2022.

Please break this data down by the nature of the claim, with as much detail as possible, and the outcome of the claim.

Please provide a breakdown of all items disposed of during this process

Please find this information attached in Appendix One.

We are unable to release all of the details you have requested as we have determined that doing so would contravene those obligations under the OIA. Therefore, some of the information is refused under section 9(2)(a) of the OIA, to protect the privacy of natural persons, including that of deceased natural persons.

In accordance with section 9(1) of the OIA, we have also considered countervailing public interest relating to the release of the information, including public interest and accountability. We are satisfied that in this case, public interest considerations do not outweigh the withholding reasons outlined above.

Please note that this response may be published on Corrections' website. Typically, responses are published quarterly, or as otherwise determined. Your personal information including name and contact details will be removed for publication.

I trust the information provided is of assistance. I encourage you to raise any concerns about this response 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



Ben Clark
National Commissioner (Acting)