



The Ombudsman  
PO Box 10152,  
Wellington 6143  
[info@ombudsman.parliament.nz](mailto:info@ombudsman.parliament.nz)

PO BOX 5300  
WELLESLEY STREET  
AUCKLAND 1141  
[advocacy@amnesty.org.nz](mailto:advocacy@amnesty.org.nz)

16 July 2020

Dear Office of the Ombudsman,

## Complaint against a decision by the Department of Corrections to extend the timeframe for an Official Information Act request

### Complaint

1. This complaint is made by Annaliese Johnston on behalf of Amnesty International Aotearoa New Zealand (AIANZ).
2. This complaint relates to a decision by the Department of Corrections to extend the timeframe for an Official Information Act ("the Act") request by 40 working days under 15A(1)(b) of the Act. The correspondence notifying us of this extension is **enclosed**.

### Background to this complaint

3. Since 8 April 2020, AIANZ has been seeking information from the Minister of Corrections and the Department of Corrections regarding minimum human rights entitlements in New Zealand prisons, specifically relating to prison "lockdown" hours and opportunities for prisoners to have time outside of their cells.
4. These enquiries followed allegations of extended "lockdown" hours and alleged failures to meet minimum entitlements in New Zealand prisons, both during and prior to the COVID-19 restrictions in New Zealand. Below is a **timeline of correspondence** relating to this issue. The cells highlighted in yellow relate to the Official Information Act request which is the source of this complaint.

Date	Author	Recipient	Main content of Request/Response
8 April 2020	Meg de Ronde, Executive Director, AIANZ	Hon Kelvin Davis, Minister of Corrections	<i>"The use of lockdown hours longer than 22 hours in correctional facilities across New Zealand in the last 14 days; The use of lockdown hours longer than 22 hours without meaningful human contact in correctional facilities across New Zealand in the last 14 days; If this information is not available for all facilities by the deadline, a sample of some facilities' data on the above would be appreciated."</i>
23 April 2020	Open letter from Meg de Ronde, AIANZ on	Hon Kelvin Davis, Minister of Corrections	<i>"The release of official records of any prison lockdown hours longer than 22 hours in the last four weeks"</i>

	behalf of 1337 people		
28 May 2020	Hon Kelvin Davis, Minister of Corrections	Meg de Ronde, AIANZ	<p>Letter in response to above requests <b>[enclosed]</b>  <i>" I am advised that Corrections does not currently centrally collate information relating to individual prisoner unlock hours. Across New Zealand's 18 prisons, there are over 200 residential units, with each unit recording day to day decisions about prisoner activity individually. For this reason, neither Corrections nor my office holds the information you have requested, and your request is not one that I can fulfil at this time."</i></p> <p><i>"In seeking further assurance around this matter I asked Corrections to undertake a national review of their compliance with the minimum prisoner entitlement of one hour of daily exercise, covering the period 24 to 30 April 2020. This found that 96 percent of people in prison had received their minimum entitlement, and often more. In the other four percent of cases, documentation was able to be provided which shows the reason why the minimum entitlement was denied, and that these decisions are in line with Prison Operation Manual guidance"</i></p>
4 June 2020	Annaliese Johnston, Advocacy and Policy Manager, AIANZ	Office of Hon Kelvin Davis, Minister of Corrections	<p>Official Information Act Request via email <b>[enclosed]</b>:  <i>"Could we please have a copy of the (below) review referred to by the Minister in his 28 May letter to Meg de Ronde, including the documentation that shows why the minimum entitlement was denied?"</i></p> <p><i>"In seeking further assurance around this matter I asked Corrections to undertake a national review of their compliance with the minimum prisoner entitlement of one hour of daily exercise, covering the period 24 to 30 April 2020. This found that 96 percent of people in prison had received their minimum entitlement, and often more. In the other four percent of cases, documentation was able to be provided which shows the reason why the minimum entitlement was denied, and that these decisions are in line with Prison Operation Manual guidance"</i></p>
4 June 2020	Office of Hon Kelvin Davis, Minister of Corrections	Annaliese Johnston, AIANZ	<p>Acknowledgement for Amnesty OIA:  <i>"We have received your request today, 4 June 2020, and will endeavour to respond to your request as soon as possible and in any event no later than 2 July 2020, being 20 working days after the day your request was received. If we are unable to respond to your request by then, we will notify you of an extension of that timeframe"</i></p>
17 June 2020	Rob Pa'o, Private Secretary, Office of Minister of Corrections	Annaliese Johnston, AIANZ	<p>Email regarding Amnesty OIA:  <i>"In reviewing your request I have found that the information you have requested (the national review) has not been provided to the Minister's office and therefore cannot be provided to you under the OIA.</i></p> <p><i>As you may be aware, the Office of the Prime Minister has recently issued a directive that all advice received by</i></p>

			<p>Ministers related to COVID-19 be proactively released. A number of documents have been released to date, at <a href="http://www.uniteforrecovery.govt.nz/updates-and-resources/legislation-and-key-documents/proactive-release/">www.uniteforrecovery.govt.nz/updates-and-resources/legislation-and-key-documents/proactive-release/</a>. The briefing received regarding the national review, B4024 Minimum Entitlements - one hour of physical exercise, falls within the scope of this directive, and will soon be proactively released.</p> <p><b>Your request has now been transferred to the Department of Corrections for their investigation and response."</b></p>
22 June 2020	Annaliese Johnston, AIANZ	Rob Pa'o, Private Secretary, Office of Minister of Corrections	Phone conversation regarding the above response. The Minister's office clarifies with Annaliese Johnston that the Minister's office has a copy of the "briefing" on the review but not a copy of the review itself.
23 June 2020	Annaliese Johnston, AIANZ	Rob Pa'o, Private Secretary, Office of Minister of Corrections	<p>Email requesting a further OIA:</p> <p><i>" Any correspondence between the Minister of Corrections and the Department of Corrections regarding what assurances were sought from the Department of Corrections to ensure that human rights are upheld in prisons, including that prisoners receive their minimum entitlements throughout Alert Levels 4 and 3;</i></p> <p><i>The briefing provided to the Minister regarding the national review of Corrections' compliance with the minimum prisoner entitlement of one hour of daily exercise, covering the period 24 to 30 April 2020."</i></p>
13 July 2020	Department of Corrections	Annaliese Johnston, AIANZ	<p>Letter regarding Amnesty OIA of 4 June 2020:</p> <p><i>Thank you for your email of 7 May 2020 to the Minister of Corrections, Hon Kelvin Davis, requesting a copy of the review into lockdown hours in prisons. As you were advised on 17 June 2020, your request has been transferred to Corrections in accordance with section 14 of the Official Information Act 1982 (OIA). Corrections is considering your request under the OIA.</i></p> <p><i>"Corrections needs to extend the timeframe of our response to your request by 40 working days, pursuant to section 15A(1)(b) of the OIA, as consultations necessary to make a decision on the request are such that a proper response to the request cannot reasonably be made within the original time limit. Therefore, you can expect to receive a response to your request by 9 September 2020."</i></p>

**Grounds for complaint:**

5. AIANZ is lodging this complaint against the Department of Corrections regarding the 40 working days extension letter of **13 July 2020** as further detailed above. AIANZ further notes that the request for extension appears to contain incorrect information regarding the date of the original request.
6. As per the Ombudsman OIA guide for Ministers and Agencies, an extension must be for ‘a reasonable period of time having regard to the circumstances.’<sup>1</sup> AIANZ submits that this is not a reasonable period of time given the following circumstances:
  - a. This extension is within a broader context of the Minister of Corrections and the Department of Corrections failing to progressively to monitor and provide data regarding minimum human rights standards in prisons.
  - b. This review and related issues are of significant public interest, as demonstrated by the 1337 people who called for the release of official records of any prison lockdown hours longer than 22 hours in the last four weeks;
  - c. The Minister of Corrections gave assurances on 28 May 2020 that a completed review, commissioned by him as Minister of Corrections, had made certain findings regarding minimum entitlements in prisons during COVID-19. This review was complete at the time of these assurances. AIANZ submits that 40 working days is well beyond a reasonable extension as a timeframe for releasing a review that has been completed for over a month at the time of the extension notification.
  - d. New Zealand is due to have a General Election on 19 September 2020, 10 days after the due date of this extension. AIANZ submits that scheduling a response on this issue so close to an election could potentially undermine “effective participation in the making and administration of laws and policies” and does not “promote the accountability of Ministers of the Crown and officials.”

Please do not hesitate to get in touch with any further queries regarding this complaint.

Yours faithfully,

Annaliese Johnston



**Advocacy and Policy Manager  
Amnesty International Aotearoa New Zealand**

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<sup>1</sup> Office of the Ombudsman, *The OIA for Ministers and Agencies*, August 2019, p. 23 [www.ombudsman.parliament.nz/sites/default/files/2019-08/The%20OIA%20for%20agencies%20August%202019.pdf](http://www.ombudsman.parliament.nz/sites/default/files/2019-08/The%20OIA%20for%20agencies%20August%202019.pdf)