



30 August 2023

Tēnā koe

On 8 June 2023, you emailed the Ministry of Social Development (the Ministry) requesting, under the Official Information Act 1982 (the Act), the following information:

1. *This is a request for information pursuant to the Official Information Act.*
2. *At 7.12 and Appendix Two of the MSD Historic Claims Business Process and Guidance, direction is given on how to assess whether a claimant should be offered additional payment recognising that they may have faced an unlawful detention or confinement or been placed in a circumstance where the detention and/or confinement of that claimant was inappropriate. This policy framework is not meant to mirror legal liability.*
3. *Examples given in 7.12 of when this additional payment related to inappropriate detention may be offered to claimants is where they allege they were:*
 - a. *Detained in a secure unit within a residential facility;*
 - b. *Detained in a place or room (e.g. locked garden shed or bedroom) where this went beyond the exercise of normal and reasonable parental controls in terms of the nature, type, and duration; or*
 - c. *Detained in a place as part of community care settings where this was inappropriate or unreasonable (e.g. being sent to 'Alcatraz' as punishment while attending the Whakapakari programme on Great Barrier Island).*
4. *Further guidance and examples are given in Appendix Two about "normal and reasonable parental controls". Examples include:*

- a. *Being physically detained in a place or room, such as being locked in a garden shed or bedroom beyond what would be reasonable;*
 - b. *Being tied to a tree; or*
 - c. *Being held by someone in the "Michael Whiting hold", which involved staff holding a young person with his or her arms crossed in front of them and held by the staff member, while they are restrained between the staff member's knees, often for multiple hours.*
5. *In that context, we request, under the Official Information Act, the following information in respect of the Inappropriate Detention Framework:*
 - a. *Any and all documents, correspondence or other material, including drafts, offering guidance, examples and/or definitions of when someone would be exercising parental control, or any circumstances which would fall inside or outside the concept of parental control;*
 - b. *Any and all documents, correspondence or other material, including legal advice, emails and drafts, offering guidance, examples and/or definitions about the duration someone needs to be confined; and*
 - c. *Any and all documents, correspondence or other material, including legal advice, emails, and drafts, offering guidance, examples and/or definitions of how detention and/or confinement is phrased by claimants in order for the Historic Claims Team to include it as an allegation for the purposes of the Inappropriate Detention Framework.*
6. *In addition to, or in the absence of, such guidance, examples and/or definitions, please advise the basis on which MSD staff assess whether an allegation falls within the circumstances covered by the Inappropriate Detention Framework.*
7. *If you have any queries about this request, please contact the writer.*

We extended your request as consultations necessary to make a decision on your request were such that a proper response to the request could not be reasonably be made in the original time limit, with a new due date of 31 August 2023.

I have decided to grant your request by a way of summary under section 16(1)(e) of the Act. This has been done to ensure sufficient information is provided to address any transparency and accountability reasons favouring the release of the information, without impairing efficient administration.

To aid clarity, parts of your request will be responded to in turn.

5.a. Any and all documents, correspondence or other material, including drafts, offering guidance, examples and/or definitions of when someone would be exercising parental control, or any circumstances which would fall inside or outside the concept of parental control

During the policy development of the inappropriate detention framework the focus was on the broad settings that could potentially be unlawful. These resulted in the categories noted in 7.12 of the Historic Claims Business Process and Guidance, in particular being:

- detained in a secure unit within a residential facility;
- detained in a place or room (e.g. locked garden shed or bedroom) where this went beyond the exercise of normal and reasonable parental controls in terms of the nature, type and duration; or
- detained in a place as part of community care settings where this was inappropriate or unreasonable (e.g. being sent to 'Alcatraz' as punishment while attending the Whakapakari programme on Great Barrier Island).

It was recognised at this early stage, that what would be "normal and reasonable parental controls" would depend on the specific facts of an individual and their needs having regard to their age, maturity and care needs.

When the inappropriate detention framework was implemented in late 2021, as noted in the Ministry's letter of 2 February 2022 to [redacted] there was no written guidance on "normal and reasonable parental controls" but consideration would be given to what guidance (if any) may be appropriate as the team encountered relevant allegations. The letter provided some examples of situations that would and would not be considered reasonable parental control. For example, it was noted that a short placement in time-out is unlikely to reach the threshold, but that we agreed with [redacted] that locking a child in a garden shed or dog kennel would never be within the exercise of reasonable parental controls.

Since then, we have finalised definitions for the inappropriate detention framework that include a short section on detainment that went beyond the exercise of normal and reasonable parental controls. These definitions have been previously provided to [redacted] and are now in Appendix 2 of the

Historic Claims Business Process and Guidance (which has also been previously provided to).

In addition to the guidance in place, if staff are unsure about whether an allegation would be within the bounds of exercising reasonable parental control, then advice can be sought from Team Leaders or other senior staff. Often discussions will be held rather than advice being provided in writing. Legal advice for a specific claimant's situation may also be requested.

Examples that the Historic Claims team have encountered are noted below. Some of these you will be familiar with as they relate to some of your clients.

- Being made to sit in a big chair on multiple occasions by a staff member at a residence is not in the scope of the framework;
- Being restrained and dragged into a corner of the home after threatening to harm himself while they waited for the Police was within normal and reasonable parental controls;
- Being locked in a closet to sleep every night would go beyond normal and reasonable parental controls;
- Being locked in room in a cabin while on boat at a Non-Governmental Organisation programme was sufficient for the framework to apply as this went beyond normal and reasonable parental controls;
- Being made to stand in the backyard on one foot with his nose pressed to the corner of the fence for an entire day and sit in the hallway as a form of punishment for an entire day went beyond normal and reasonable parental controls.

In addition, there have been the below examples around the scope of the framework that we thought might be of assistance to you:

- Where other young people tied the young person to a ladder and there was no instruction by a staff member to do this, this was not within the scope of the framework;
- A young person being locked up when under the care of a parent does not fall within the scope of the framework.

5.b. Any and all documents, correspondence or other material, including legal advice, emails and drafts, offering guidance, examples and/or definitions about the duration someone needs to be confined;

As the assessment of "reasonable parental controls" will depend on the individual facts of the claim, there are no documents that set out definitions of duration. However, the Ministry's letter dated 2 February 2022 did note that a 10-minute placement in time-out is unlikely to reach the threshold. Also, in the examples noted above, some of these have timeframes in them.

5.c. Any and all documents, correspondence or other material, including legal advice, emails, and drafts, offering guidance, examples and/or definitions of how detention and/or confinement is phrased by claimants in order for the Historic Claims Team to include it as an allegation for the purposes of the Inappropriate Detention Framework.

There is no set way for a claimant to phrase detention or confinement in order for the Historic Claims team to consider including it as an allegation that is taken into account as part of the inappropriate detention framework. As noted in Ministry correspondence on 23 March 2022, what is important is that there must be an "allegation" raised of inappropriate detention or confinement and/or where the claimant was placed at a residence which had a secure unit and alleges that they were held in secure care on at least one occasion. It is not sufficient to merely recall being placed at a residence. This is also noted in the Historic Claims Business Process and Guidance.

The principles and purposes of the Official Information Act 1982 under which you made your request are:

- to create greater openness and transparency about the plans, work and activities of the Government,
- to increase the ability of the public to participate in the making and administration of our laws and policies and
- to lead to greater accountability in the conduct of public affairs.

This Ministry fully supports those principles and purposes. The Ministry therefore intends to make the information contained in this letter and any attached documents available to the wider public. The Ministry will do this by publishing this letter on the Ministry's website. Your personal details will be deleted, and the Ministry will not publish any information that would identify you as the person who requested the information.

If you wish to discuss this response with us, please feel free to contact OIA_Requests@msd.govt.nz.

If you are not satisfied with this response, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at www.ombudsman.parliament.nz or 0800 802 602.

Ngā mihi nui


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