

## Department of Corrections staff to follow legislative requirements when segregating inmate

<b>Legislation</b>	Ombudsmen Act 1975, Corrections Act 2004
<b>Ombudsman</b>	Peter Boshier
<b>Case number(s)</b>	404794 (previously unpublished)
<b>Date</b>	2018

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*Department of Corrections held prisoner in Management Unit without following required procedure—segregation legislation and regulations are clear and prescriptive*

Complainant concerned that prison staff held him in a Management Unit (MU) and therefore he was segregated from other prisoners, and staff had not followed the correct procedures. The Ombudsman noted that prison staff cannot segregate prisoners without reference to sections 57-60 of the Corrections Act 2004. Furthermore, in this case there appeared to have been little information provided to the inmate to justify the segregation (information is required to be given to an inmate in accordance with the regulations).

The Department has a 'duty of care' to keep prisoners safe from other prisoners. However, when holding an inmate in the MU for an extended period of time (as was the case in this instance), it appeared that staff were segregating the inmate without the proper authority.

The complainant also complained that staff had only relied on 'verbal feedback' when it subsequently initiated the Directed Protective Custody (DPC). While the Ombudsman accepted that 'verbal feedback' falls within the scope of M.01.03.01 (segregation can proceed on the basis of 'any other information considered relevant to the direction of segregation') and that there is no requirement for 'any other information' to be written down, the Ombudsman considered that a lack of written material can be problematic. In the absence of written material the records required for an inmate's file will be inadequate. There is also a requirement under section 17(1) of the Public Records Act 2005 to 'create and maintain full and accurate records of its affairs in accordance with normal, prudent business practice'.

While the outcome for the inmate may have not been changed (segregation would have continued whether the correct procedures were followed or not) the Ombudsman noted that the substantive issue considered in this complaint is not whether DPC directions should have been made (indeed, that is not an Ombudsman's role to determine) but whether in deciding to make the directions, staff followed the appropriate processes. In this case the Ombudsman found that prison staff did not follow the correct processes all of the time. These aspects of the prisoner's complaint were sustained.

The Department apologised to the inmate accordingly and provided the Ombudsman with an assurance that staff would receive further training in record management, particularly for the purpose of making a DPC direction.

*This case note is published under the authority of the [Ombudsmen Rules 1989](#). It sets out an Ombudsman's view on the facts of a particular case. It should not be taken as establishing any legal precedent that would bind an Ombudsman in future.*