

Department of Corrections not unreasonable to decline face to face interview between prisoner and journalist in particular case

Legislation	Ombudsmen Act 1975, Corrections Act 2004
Ombudsman	Leo Donnelly
Case number(s)	423792 (previously unpublished)
Date	2017

Prisoner requested face to face interview with journalist—request declined—Ombudsman noted journalist had offered to conduct interview by AVL, notwithstanding preference for face to face—Ombudsman concluded that on this basis Department had not acted unreasonably in this instance

Complainant believed the Department’s decision was contrary to law (a recent Court of Appeal decision left the way open for media interviews to be considered) - and unjust and unreasonable in terms of sections 6(1)(f)(ii) and 6(1)(g) of the Corrections Act 2004 (sentences and orders must not be administered more restrictively than is reasonably necessary to ensure maintenance of the law and safety of the public). The complainant claimed that the journalist had advised the Department of the complainant’s preference (face to face interview) and that an interview by Audio-Visual-Link (AVL) was not preferred. The complainant also claimed that the Department imposed the AVL condition, which was subsequently accepted ‘under duress’ because it seemed to have been the only way for the interview to be done and he believed there were no safety or security considerations that would have justified imposing the AVL condition.

The complainant further noted that the Department had breached his right to freedom of expression and that by only allowing the interview to go ahead under AVL conditions, the Department was seeking to lessen the impact of the interview.

The Ombudsman did not uphold this complaint, noting that the journalist had told the Department that she was agreeable to conducting an AVL interview (although her preference

was also for a face to face interview). However, in these circumstances, it was difficult for the Ombudsman to see how the Department acted unreasonably in giving effect to the journalist's request to go with the AVL interview. The Ombudsman also considered that in light of this fact, it was unnecessary to consider the complainant's submission about whether the AVL condition was agreed on the basis that it was reasonably necessary to maintain the security and order of the prison.

As the journalist had advised the Department in writing that she was agreeable to interviewing the complainant by AVL it could not be said that the Department had not agreed to an option offered by the applicant. The Ombudsman concluded that the decision to proceed with the AVL interview was not made under 'duress' and there was no basis for the Ombudsman to form the opinion that the Department acted unreasonably in agreeing to one of the interview options which the journalist had said would satisfy her application.

The Ombudsman noted that his opinion is specific to the particulars of the journalist's application and does not foreshadow the approach he might take in any future case as the details and circumstances of each application would be different.

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