



Confidential Information

Disclosure of Confidential Information

CI

Custodial Operations Practice Directive

Process Owner: Custodial Operations and Specialist Operations	Security Classification: Official/Public
--	---

Version: 6	Implementation date: 11/01/2024	Review date: 2024
-------------------	--	--------------------------

Scope
<ol style="list-style-type: none"> 1. Human Rights 2. Limitation of Human Rights 3. Collating Requests for Information 4. Access to Information by Queensland Corrective Services (QCS) Staff 5. Parole Board Queensland Decisions 6. External Services Confidentiality 7. Child Safety 8. Community Service Projects – Disclosure of Prisoner Information 9. External Non-Government Provider 10. Access to a Prisoner’s File 11. Religious Visitors
<ol style="list-style-type: none"> 13. Information Sharing 14. Australian Border Force 15. Domestic and Family Violence 16. Sensitive Law Enforcement Information 17. Queensland Health



Official/Public



Custodial Operations Practice Directive

1. Human Rights

It is unlawful for corrective services officers and QCS staff to act or make decisions in a way that is not compatible with human rights, or in making a decision, fail to give proper consideration to a human right relevant to the decision.

Giving proper consideration to human rights entails identifying human rights which may be relevant to a decision and considering whether the decision would be compatible with human rights.

A decision will be compatible with human rights when it does not limit a human right, or only limits a right to the extent that is reasonable and demonstrably justifiable.

Human rights which may be relevant include:

- a) recognition and equality before the law, including the right to equal and effective protection against discrimination;
- b) the right to protection from torture and cruel, inhuman or degrading treatment;
- c) freedom of thought, conscience, religion and belief;
- d) freedom of expression;
- e) freedom of association;
- f) the right to privacy and to reputation;
- g) protection of families as the fundamental group unit of society and the protection of children;
- h) cultural rights – generally and for Aboriginal peoples and Torres Strait Island peoples;
- i) humane treatment when deprived of liberty; and
- j) the right to access health services without discrimination.

2. Limitation of Human Rights

In determining whether a limitation may be reasonable and demonstrably justified, the following factors are relevant to consider:

- a. The nature of the human right – this involves looking at the purpose and underlying value of the human right. For example, the right to privacy and to reputation provides the right for a person not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with.
- b. The nature and purpose of the limitation – this involves considering the actual purpose or legitimate aim/reason for limiting the human right. This policy document supports the handling of confidential prisoner and offender information by QCS.
- c. The relationship between the limitation and its purpose – this involves considering the rational connection between the legitimate right, and whether this will actually help to achieve said purpose or legitimate aim. This policy document allows QCS staff to access or share prisoner information, which may otherwise be confidential, where it is necessary for the safety and security of the prisoner and other persons.
- d. Whether there are any less restrictive and reasonably available ways to achieve the purpose – this involves the necessity analysis where it is necessary to consider the purpose of the limitation and if it can be achieved in any other way. For example, should the access to information be allowed, is it necessary for the information to be accessed.
- e. The importance between the purpose for the limitation and preserving the human right – this involves a balancing exercise of the benefits obtained by the limitation vs the harm caused to the human right.

All corrective services staff must observe privacy and confidentiality principles and legislative requirements and read this section of the Custodial Operations Practice Directive (COPD).





Custodial Operations Practice Directive

Unauthorised disclosure of confidential information is an offence with a maximum penalty of 100 penalty units or two years imprisonment as outlined in section 341 (2) of the *Corrective Services Act 2006* (CSA).

Refer to the Administrative Form 160 Authority to Disclose, Release and Exchange Information (Custodial).

3. Collating Requests for Information

Where a request for information relates to aspects of a prisoner's engagement with QCS while they were accommodated at or supervised by another QCS location, the current managing location (correctional centre or Community Corrections) as recorded in the Integrated Offender Management System (IOMS) is responsible for the collation of all relevant requested information. The current managing location is to provide a response to all elements of the request, which may require the office to liaise with previous managing locations (correctional centres and/or Community Corrections) to obtain relevant information. This information may also be readily available on IOMS for officers to access and use for this purpose.

Requests for information regarding prisoners who are no longer accommodated with or supervised by QCS are to be emailed to [REDACTED]

3.1 Evidence Act Certificates for Sentence Management Services

For Sentence Management Services, where a request for information is received for statements produced by a computer (e.g. reports or documents generated from IOMS or Reporting Services) which are likely to be used as evidence in proceedings (e.g. the request is from the Office of the Director of Public Prosecutions or the Queensland Police Service), the responsible officer is required to:

- a) retrieve the information being requested;
- b) complete an Administrative Form 325 Section 95 Certificate for Queensland Corrective Services; and
- c) provide both the information and the completed Administrative Form 325 as a response to the request.

In accordance with section 95(3) and 95(7) of the *Evidence Act 1977*, the officer completing the Administrative Form 325 Section 95 Certificate for Queensland Corrective Services must be the person responsible for retrieving the information being provided.

The responsible officer for this process is the Manager, Sentence Management Services or above.

4. Access to Information by Queensland Corrective Services (QCS) Staff

Under the CSA, Inspectors and staff delegated by the Chief Executive to undertake investigations in relation to their role and functions, have the power to inspect and copy any document kept at a corrective services facility that is relevant to the performance of their work, other than a document to which legal professional privilege is attached (refer section 303(1)(d) of the CSA).

Official visitors may inspect and copy any document kept under the CSA that relates to the complaint the official visitor is investigating, other than a document to which legal professional privilege is attached (refer section 291(1)(c) of the CSA).





Custodial Operations Practice Directive

5. Parole Board Queensland Decisions

It is the responsibility of the Parole Board Queensland (PBQ) (including via the Parole Board Secretariat) to inform all relevant parties, inclusive of the prisoner, of the outcome of the PBQ decision.

Sentence Management Services are responsible for relaying PBQ outcomes within a correctional centre to prisoners and discussing any associated issues or concerns they may have. In the case of an adverse decision by the PBQ being delivered to a prisoner, officers should refer to the COPD At Risk Management: At Risk.

While information regarding PBQ decisions is contained in IOMS, the release of such information may lead to safety and security risks. The release of confidential information is to be in accordance with section 341 of the CSA.

6. External Services Confidentiality

Corrective services facilities will provide a facility induction to new service providers.

External service providers must observe the need to maintain confidentiality relating to:

- a) corrective services facilities;
- b) the operations of facilities; and
- c) personal prisoner information.

Refer section 341 of the CSA.

7. Child Safety

Refer Part 4 and sections 159Q, 159R, 186, 187 and 188 of the *Child Protection Act 1999* (CPA).

Section 159Q of the CPA provides protection from liability for notification of, or information given about, alleged harm or risk of harm. These sections apply if a person, acting honestly, notifies or gives information in compliance with Chapter 5A of the CPA. Sections 159MA-159NA allows the Chief Executive (or delegate) to share information with prescribed entities where there is a reasonable belief that a child has been, is being or is likely to be, harmed or that an unborn child may be at risk of harm after birth.

Subject to section 188 of the CPA, if an officer is in receipt of information related to a Child Safety Services matter, the officer must not disclose the information or document to anyone else (maximum penalty 100 penalty units or two years imprisonment).

8. Community Service Projects – Disclosure of Prisoner Information

Information relating to a prisoner's offence(s), criminal record or any other information, such as health related issues must not be released to sponsor organisations. An exception to this may be where the Chief Executive or delegate releases information in accordance with section 341 of the CSA.

9. External Non-Government Provider

In instances where external non-government providers are required to work directly with prisoners, they are to be provided with an appropriate area which ensures the confidentiality of the conversation and integrity of the service.





Custodial Operations Practice Directive

10. Access to a Prisoner's File

It may be necessary for a central office unit, for example, the Legal Strategy and Services Group or the Right to Information and Privacy Group, to access a prisoner's files. If it is not practicable for an officer from the requesting unit to attend the relevant corrective services facility, the unit may ask that the file be forwarded to the unit.

Upon request, the prisoner's file must be forwarded to the requesting unit and a temporary file must be created at the corrective services facility. The requesting unit must return the file as soon as practicable. The requesting unit must not remove original documents from the file and must return the file with documents in the same order as it was received.

Upon a file being returned to its original location, any original documents on the temporary file are to be amalgamated with the original file and the duplicate material destroyed.

Refer to COPD Confidential Information: File and Document Movement Excluding Medical Records, COPD Reception Processes: Admission and Assessments and Appendix R8 Management of the Temporary File.

11. Religious Visitors

Under no circumstances should a religious visitor review a prisoner's file or medical file. Religious Visitors are encouraged to speak to facility staff if they are unclear of an issue which is causing concern or distress to a prisoner.

PUBLIC VERSION

13. Information Sharing

QCS has the authority under section 341(3)(i) of the CSA to disclose confidential information relating to an offender to a corrective service of another State or foreign country if the information is relevant to support the supervision or management of the offender.





Custodial Operations Practice Directive

14. Australian Border Force

The Australian Border Force (ABF) may request that QCS provide relevant information about a prisoner. This information will be used by ABF to determine whether the prisoner may potentially become subject to deportation at the conclusion of their sentence.

The information or assessment should be provided in a timely manner and should be provided in a format which meets the requirements of the information requested.

Queensland Corrective Services is a participant in The Memorandum of Cooperation between The Department of Corrections of New Zealand and The Australian State Corrective Services Authorities Concerning the Sharing of Information about Deported Offenders (the MoC) which authorises governments to share information about Trans-Tasman deportations so that appropriate due diligence and risk management procedures can be put in place.

In instances where an exchange of information between approved correctional agencies for removed/deported persons is required, requests are to be emailed to

QCS Operational Support will provide any authorised and relevant information to the requesting party. Refer to the MoC and the Annex to the MoC.

15. Domestic and Family Violence

There are presently a range of Acts which authorise the disclosure of confidential information to various organisations under s341(3)(b) of the Act. When considering disclosure under this section it is important for the decision maker to be familiar with the law which a function is being discharged under or which authorises the release of information and ensure any statutory requirements have been met.

Some statutes may contain provisions that compel QCS to release confidential information in accordance with s341(3)(b) of the *Corrective Services Act 2006*.





Custodial Operations Practice Directive

For example, Section 169A – 169O or Part 5 of the *Domestic and Family Violence Act 2012* allows government entities and specialist domestic and family violence (DFV) service providers to give information to another government entity or specialist DFV service provider for assessing domestic violence threat or for responding to serious domestic violence threat. Therefore, disclosing confidential information for this purpose is authorised under s341(3)(b).

16. Sensitive Law Enforcement Information

Refer to section 340A of the CSA.

An informed person who has accessed sensitive law enforcement information under s340A(1) of the CSA must not disclose this information to another person or make a record of the information, unless the disclosure or record is:

- a) for the purpose for which the information was given to the chief executive; or
- b) with the approval of the law enforcement agency that provided the information; or
- c) if the use or disclosure of the information is likely to prevent a serious threat to a person's life, health or safety.

Unauthorised disclosure of sensitive law enforcement information is an offence with a maximum penalty of 100 penalty units or two years imprisonment as outlined in section 340A(2) of the CSA.

17. Queensland Health

Section 341(3)(a) of the CSA allows QCS employees to share information with Queensland Health (Q Health) for relevant purposes under the Act.

Q Health and QCS have an established Information Sharing Agreement and Operating Guidelines which enable Q Health and QCS to share information for shared clients without authorisation from the client. It is preferable to obtain the shared client's authorisation to disclose information to Q Health under section 341(3)(d) of the CSA, via completion of an Administrative Form 160 Authority to Disclose, Release and Exchange Information (Custodial) or other written instructions. A shared client's refusal to give authorisation for their private details to be shared with Q Health should be respected wherever possible.

Where a prisoner provides general consent or authorisation to share information with those involved in their treatment and care, authorisation does not need to be sought before every instance of information sharing.

The Information Sharing Agreement is to be used when a shared client's authorisation cannot be obtained or when the information is reasonably required to facilitate the safe, secure, and effective supervision and management of shared clients and provide client focused health services.

Where necessary, Q Health employees should be provided with information about a shared client to facilitate the delivery of their services and any potential risks to the shared client, themselves and other prisoners.

This may include information about a shared client who:

- a) exhibits suicidal or self-harming behaviour;
- b) causes a risk of harm to others, themselves or other risk related information;





Custodial Operations Practice Directive

- c) has an illness or medical condition;
- d) has relevant sentencing information (court dates, parole, release dates, new charges/convictions); or
- e) has a planned transfer to another facility.

Information can be shared orally, in writing, or in any other format. The Chief Superintendent of a corrective services facility is responsible for developing appropriate centre-based mechanisms for transferring relevant information when required and as soon as practicable.

Refer to sections 340 and 341 of the CSA, Information Sharing Agreement and Operating Guidelines for further information.

17.1 Documentation and record keeping

When QCS staff receive or share information under the Agreement they must ensure they document:

- the date and time information was received or shared;
- the name and title of the authorised employee that receives or shares the information;
- what information was received or shared; and
- that the information was received or shared under the Agreement.

PUBLIC VERSION

