October 21, 2016

Re: Your request for access to information under Part II of the Access to Information and Protection of Privacy Act [JPS/105/2016]

Dear [Name]

On August 16, 2016, the Department of Justice and Public Safety received your request for access to the following records:

"Any and all records, emails, documents or correspondence about contraband cell phones at correctional facilities across Newfoundland and Labrador, as well as any and all records, emails, documents or correspondence (both written and electronic) about an investigation into correctional officers providing cell phones to inmates at correctional facilities across Newfoundland and Labrador, between 2014 to present."

I am pleased to inform you that a decision has been made by the Deputy Minister for the Department of Justice and Public Safety to provide partial access to the requested information. Access to the remaining information has been refused in accordance with the following exceptions to disclosure, as specified in the Access to Information and Protection of Privacy Act, 2015:

5. (1) This Act applies to all records in the custody of or under the control of a public body but does not apply to
(k) a record relating to an investigation by the Royal Newfoundland Constabulary if all matters in respect of the investigation have not been completed;

31. (1) The head of a public body may refuse to disclose information to an applicant where the disclosure could reasonably be expected to
(n) adversely affect the detection, investigation, prevention or prosecution of an offence or the security of a centre of lawful detention;

40. (1) The head of a public body shall refuse to disclose personal information to an applicant where the disclosure would be an unreasonable invasion of a third party's personal privacy.
Please note that records responsive to your request concerning an investigation into correctional officers providing cell phones to inmates cannot be provided as these records were provided to the Royal Newfoundland Constabulary for further investigation.

Please be advised that you may appeal this decision and ask the Information and Privacy Commissioner to review the decision to provide partial access to the requested information, as set out in section 42 of the Act (a copy of this section of the Act has been enclosed for your reference). A request to the Commissioner must be made in writing within 15 business days of the date of this letter or within a longer period that may be allowed by the Commissioner. Your appeal should identify your concerns with the request and why you are submitting the appeal.

The appeal may be addressed to the Information and Privacy Commissioner as follows:

Office of the Information and Privacy Commissioner
2 Canada Drive
P. O. Box 13004, Stn. A
St. John's, NL A1B 3V8
Telephone: (709) 729-6309
Toll-Free: 1-877-729-6309
Facsimile: (709) 729-6500

You may also appeal directly to the Supreme Court Trial Division within 15 business days after you receive the decision of the public body, pursuant to section 52 of the Act (a copy of this section of the Act has been enclosed for your reference).

Please be advised that responsive records will be published following a 72 hour period after the response is sent electronically to you or five business days in the case where records are mailed to you. It is the goal to have the responsive records posted to the Completed Access to Information Requests website within one business day following the applicable period of time.

If you have any questions, please contact me by telephone at (709)729-7906 or by email at ncroke@gov.nl.ca.

Sincerely,

Neil Croke
ATIPP Coordinator
Access or correction complaint

42. (1) A person who makes a request under this Act for access to a record or for correction of personal information may file a complaint with the commissioner respecting a decision, act or failure to act of the head of the public body that relates to the request.

(2) A complaint under subsection (1) shall be filed in writing not later than 15 business days

(a) after the applicant is notified of the decision of the head of the public body, or the date of the act or failure to act; or

(b) after the date the head of the public body is considered to have refused the request under subsection 16 (2).

(3) A third party informed under section 19 of a decision of the head of a public body to grant access to a record or part of a record in response to a request may file a complaint with the commissioner respecting that decision.

(4) A complaint under subsection (3) shall be filed in writing not later than 15 business days after the third party is informed of the decision of the head of the public body.

(5) The commissioner may allow a longer time period for the filing of a complaint under this section.

(6) A person or third party who has appealed directly to the Trial Division under subsection 52 (1) or 53 (1) shall not file a complaint with the commissioner.

(7) The commissioner shall refuse to investigate a complaint where an appeal has been commenced in the Trial Division.

(8) A complaint shall not be filed under this section with respect to

(a) a request that is disregarded under section 21;

(b) a decision respecting an extension of time under section 23;

(c) a variation of a procedure under section 24; or

(d) an estimate of costs or a decision not to waive a cost under section 26.

(9) The commissioner shall provide a copy of the complaint to the head of the public body concerned.
Direct appeal to Trial Division by an applicant

52. (1) Where an applicant has made a request to a public body for access to a record or correction of personal information and has not filed a complaint with the commissioner under section 42, the applicant may appeal the decision, act or failure to act of the head of the public body that relates to the request directly to the Trial Division.

(2) An appeal shall be commenced under subsection (1) not later than 15 business days

(a) after the applicant is notified of the decision of the head of the public body, or the date of the act or failure to act; or

(b) after the date the head of the public body is considered to have refused the request under subsection 16 (2).

(3) Where an applicant has filed a complaint with the commissioner under section 42 and the commissioner has refused to investigate the complaint, the applicant may commence an appeal in the Trial Division of the decision, act or failure to act of the head of the public body that relates to the request for access to a record or for correction of personal information.

(4) An appeal shall be commenced under subsection (3) not later than 15 business days after the applicant is notified of the commissioner’s refusal under subsection 45 (2).
On February 2, 2016 a cellphone and charging cable was confiscated from [REDACTED] A review of the cameras resulted in inmate [REDACTED] being charged with a breach of Section 25(2)(e) of the Prison’s Regulations under the Prison’s Act for having in his possession an article not permitted by the Superintendent (i.e. Contraband Cellphone). As a result of this seizure, the cellphone was taken and analyzed. [REDACTED] As a result of this, inmate [REDACTED] is charged with a breach of section 25(2)(e) of the Prison’s Regulations under the Prison’s Act.

Sec. 31(1)(n), Sec. 40(1)
OFFICER'S STATEMENT

Inmate: [Redacted]

Institution: H.M.P.

Date & Time of Incident
Time: 1100
Year: 2016
Month: 02
Day: 05

Date & Time of Report
Time: 1140
Year: 2016
Month: 02
Day: 05

Subject
Contraband found in [Redacted]

Reporting Officer's Name & Rank (PRINT)
Correctional Officer C. Janes (#295)

Date:
( yy / mm / dd )

Revised 2008

Sir, I respectfully report for your information, on the above noted date and approximate time, while this writer was assigned to a shakedown on [Redacted] contraband was discovered which showed clear signs of having been tampered with.

The contraband in question included the following:

Sec. 31(1)(n), Sec. 40(1)

As a result of the contraband discovered in [Redacted] Inmate [Redacted] is hereby charged by the undersigned in violation of section 25.2 (e) of Prison Regulations. There is no further information to report at this time.

25.2(e) – A prisoner shall not give, receive, attempt to give or receive or have in his/her possession an article not permitted by the superintendent.

Reporting Officer's Signature: C/O Curtis Janes #295

Supervisor's Name (PRINT): ________________________________

Comments/Actions:

Supervisor's Signature: ________________________________

Date: ________________________________
INSTRUCTIONS FOR COMPLETION

Staff members involved in resolving a security related incident should provide a statement of their involvement by entering:

1. Institution Name
2. Date & Time of the Report
3. The Subject of the Report (i.e. disciplinary offence, observation report, intelligence report)
4. Reporting Official’s Name & Rank
5. Date & Time of the Incident

SPECIAL INSTRUCTIONS

When information or event come to the attention of a staff member which is considered important from a security intelligence perspective, that information should be conveyed to the Assistant Superintendent i/c of security following the same process as described for submitting a statement report.

Information of a potentially sensitive nature must be afforded appropriate security classification and handling.

DISTRIBUTION

a) When submitted as a statement, one copy only to be given to the immediate supervisor.

b) When submitted as an intelligence report, one copy only to be given to the Assistant Superintendent i/c of Security.

c) When submitted as an observation report, one copy to be filed on the inmates hard copy file and one copy to be forwarded to the Unit manager.

d) When submitted as an offence report, one copy only to be forwarded with all other offence documentation, to the Assistant Superintendent or designate.
NOTICE OF ALLEGATION

To: [Name of Inmate]

Date: 2016/02/05

Institution/ Unit: HMP

Section(s) of Prison Regulations: 25(2)(e)

Take Notice it is alleged that on the above stated date you committed a breach of the above stated Section of the Prison Regulations under the Prisons Act. You are required to appear before a Disciplinary Panel at a time and date to be determined.

Description of Allegation: Section with 25 (2)(e) give, received, attempted to give or receive, or have in your possession an article not permitted by the superintendent. IE you had a cell phone.

You have the following rights/entitlements:

(i) The right to due notice 6 (six) hours in advance of the hearing,
(ii) The right to have a full-time member of staff assist in preparing a defense,
(iii) The right to remain silent,
(iv) The right to cross-examine witnesses and present evidence on your behalf and to make a statement,
(v) The right to be present throughout the proceedings except during committee deliberations or when such presence would jeopardize institutional security,
(vi) The right to be informed in writing of the disposition,
(vii) The right to appeal the decision of the disciplinary panel

If found guilty of the offence, one or more of the following dispositions may be imposed:

- Forfeiture of earned remission
- Confinement in segregation
- Confinement in cell
- Loss of privileges
- Transfer to an alternate facility or unit
- Reprimand
- Suspension of any of the above dispositions

The witnesses who may be called to give evidence are as follows:

Name:

D. O'Brien #285

Rank (if applicable):

A/LT

Signature: [Signature]

Date: 2016/02/05

Time: 1245
Institution: HMP

Date & Time of Report:
Time: 1249
Year: 2016
Month: 02
Day: 05

Subject: Cell Phone

Reporting Officer's Name & Rank (PRINT):
A/Lt. D O'Brien #285

Date & Time of Incident:
Time: 1015
Year: 2016
Month: 02
Day: 05

Statement/Observation: Sir I respectfully report for you on the above date and time the following did happen, while conducting a shakedown of
I entered
and started to conduct a cell search.

I will be charging inmate with: Section with 25 (2)(e) give, received, attempted to give or receive, or have in your possession an article not permitted by the superintendent. IE you had a cell phone and a

Reporting Officer's Signature: A/Lt D O'Brien

Supervisor's Name (PRINT): Asst. C. Ryder

Comments/Actions: Proceed to disciplinary court

Supervisor's Signature: Asst. C. Ryder

Date: 2016/02/05

Revised 2016
NOTICE OF ALLEGATION

To: [Name of Inmate]  
Institution/ Unit: [HMP]  

Sec. 31(1)(n)  

Date: [2016/02/05]  

Institution/ Unit: [HMP]  

Section(s) of Prison Regulations: 25(2)(e)  

Take Notice it is alleged that on the above stated date you committed a breach of the above stated Section of the Prison Regulations under the Prisons Act. You are required to appear before a Disciplinary Panel at a time and date to be determined.  

Description of Allegation: Section with 25 (2)(e) give, received, attempted to give or receive, or have in your possession an article not permitted by the superintendent. IE you had a cell phone and a [redacted].  

You have the following rights/entitlements:  

(i) The right to due notice 6 (six) hours in advance of the hearing,  
(ii) The right to have a full-time member of staff assist in preparing a defense,  
(iii) The right to remain silent,  
(iv) The right to cross-examine witnesses and present evidence on your behalf and to make a statement,  
(v) The right to be present throughout the proceedings except during committee deliberations or when such presence would jeopardize institutional security,  
(vi) The right to be informed in writing of the disposition,  
(vii) The right to appeal the decision of the disciplinary panel  

If found guilty of the offence, one or more of the following dispositions may be imposed:  

➤ Forfeiture of earned remission  
➤ Confinement in segregation  
➤ Confinement in cell  
➤ Loss of privileges  
➤ Transfer to an alternate facility or unit  
➤ Reprimand  
➤ Suspension of any of the above dispositions  

The witnesses who may be called to give evidence are as follows:  

Name: [D. O'Brien #285]  

Rank (if applicable): [A/LT]  

Signature: [Signature]  

(Authorizing Authority)  

Date: [2016/02/05]  

Time: [1550]  

Revised 2008
Department of Justice
Corrections and Community Services
Institutional Services Branch

OFFICER'S STATEMENT

Note: Completion, Handling and Distribution Instructions on Reverse

Institution: HMP

Date & Time of Incident:
Time 1015
Year 2016
Month 02
Day 05

Subject: Cell Phone,

Reporting Officer's Name & Rank (PRINT):
A/Lt. D O'Brien #285

Date & Time of Report:
Time 1249
Year 2016
Month 02
Day 05

Statement/Observation: Sir I respectfully report for you on the above date and time the following did happen, while conducting a shakedown of I entered and started to conduct a cell search. When I

I will be charging inmate [redacted] with: Section with 25 (2)(e) give, received, attempted to give or receive, or have in your possession an article not permitted by the superintendent. IE you had a cell phone and a

Reporting Officer's Signature: A/Lt D.O'Brien

Supervisor's Name (PRINT): [redacted]

Comments/Actions: Proceed to disciplinary court

Supervisor's Signature: [redacted]

Date: 2016/02/05

( yy/mm/dd )

Revised 2008
Sir,

I respectfully report for your information that on February 6/14 at approximately 1400 hrs a cell phone was found in the during a shakedown. Captain F. Lee asked me to check and charger on Sec. 31(1)(n) I found a cell phone. All articles found in the were given to Captain F. Lee for evidence. Sec. 31(1)(n)

Reported Officer's Name & Rank (PRINT): CO. R. Day # 092

Comments/Actions:

Date: 14/02/06

Supervisor's Signature: ____________________________

Supervisor's Name (PRINT): ____________________________

Comments/Actions:

Date: ____________________________

Revised 2011