



Human Rights Defense Center

DEDICATED TO PROTECTING HUMAN RIGHTS

June 11, 2014

The Honorable Sheila Jackson Lee
U.S. House of Representatives
2160 Rayburn Building
Washington, DC 20515

Re: Private Prison Information Act of 2014

Dear Representative Jackson Lee,

We, the undersigned not-for-profit criminal justice, civil rights and public interest organizations, respectfully urge you to reintroduce the Private Prison Information Act during the 113th Congress. The bill, which would extend Freedom of Information Act (FOIA) reporting obligations to private corrections companies that contract with federal agencies—including the U.S. Bureau of Prisons, Immigration and Customs Enforcement (ICE) and the U.S. Marshals Service—is a critical first step in bringing transparency and accountability to the private prison industry. The bill also would extend FOIA reporting responsibilities to state and local corrections agencies that hold federal prisoners.

With respect to private prisons, we are deeply troubled by the secrecy with which the private corrections industry presently operates. Whereas the U.S. Bureau of Prisons (BOP) and state departments of corrections are subject to disclosure statutes under the Freedom of Information Act and state public records laws, respectively, private prison firms that contract with public agencies generally are not. This lack of public transparency is indefensible in light of the nearly \$9 billion in federal contracts that Corrections Corporation of America (CCA) and the GEO Group (GEO)—the two largest for-profit prison firms—have been awarded over the past decade.

If private prison companies like CCA and GEO would like to continue to enjoy taxpayer-funded federal contracts, then they must be required to adhere to the same disclosure laws applicable to their public counterparts, including FOIA.

Why should private prison contractors, which are paid exclusively with taxpayer funds, be any less accountable to the public than federal corrections agencies such as the Bureau of Prisons or ICE? We contend that because the private prison industry relies entirely on taxpayer support, and performs the inherently governmental function of incarceration—depriving people of their liberty—the public has a right to access information pertaining to its operations.

There is little evidence that taxpayers currently have access to the type of information that would allow them to evaluate the performance of private corrections firms in comparison to the public sector. Though the private prison industry routinely cites its record in terms of efficiency and safety relative to public agencies, it nonetheless refuses to disclose the very information required to substantiate its most basic claims of success. Disclosure statutes providing the public with access to information pertaining to the operations of private prisons is vital if reasonable comparisons are to be made between the private and public sectors.

The time to reintroduce and pass this bill is now. Privately-operated facilities holding federal prisoners have grown 600 percent faster than state-level contract facilities since 2010, and now represent the fastest-growing corrections sector. Moreover, business from federal agencies like the Bureau of Prisons, U.S. Marshals Service and ICE now accounts for a greater percentage of revenue among private prison companies than ever before. CCA and GEO Group both receive more than 40% of their gross revenue from the federal government.

In the past, critics of the Private Prison Information Act have argued that its passage would set a “dangerous precedent” with respect to FOIA overreach. In his 2007 testimony before the House Subcommittee on Crime, Terrorism and Homeland Security, Mike Flynn, the Director of Government Affairs for the Reason Foundation, testified that applying FOIA to private prison companies could open the “floodgates” to any other federal contractor and, by extension, their contractors and suppliers. “Thousands of individuals, small and large businesses, provide services to the government and products to the government at great efficiency for the taxpayers [and] all of that could be opened up to the FOIA process,” he claimed. He did not mention that Reason Foundation receives funding from private prison companies, including CCA and GEO, and ignored the fact that the Private Prison Information Act would apply solely to contract facilities that house federal prisoners – not to any other federal contractor.

We squarely reject such unfounded assumptions. The Private Prison Information Act would apply narrowly and judiciously. It is unlikely that the Private Prison Information Act, if enacted, would unwittingly extend FOIA provisions to other private companies because private prison firms perform a unique function relative to other private companies. To our knowledge, no other type of private industry is contracted exclusively by the public sector solely to perform an essential governmental function such as incarceration.

Further, revisions to the Private Prison Information Act since it was last introduced make it a more focused bill. The bill now only applies to “information pertaining to facility operations and prisoners/detainees,” which addresses concerns that private prison firms might be subject to FOIA requests concerning their corporate financial data or other records not directly related to their operation of correctional facilities. The bill includes definitions for “contract facility” and “federal prisoner,” and, as with previous versions of the legislation, all of the existing exceptions and exemptions available under FOIA would apply to contract facilities under the Private Prison Information Act.

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That private corrections firms are supported exclusively by government contracts and enjoy the benefits of operating within an artificial government contract-driven market makes them the perfect candidates for FOIA compliance. In most economic sectors there is a free market analogue for many kinds of services that governments typically provide. A field such as education, for example, has a robust market of existing non-profit and for-profit organizations and agencies willing to provide services to a market of potential buyers that includes both individuals and governments.

This is not the case with private corrections firms.

The private prison industry is fundamentally different in that no citizen can freely purchase incarceration services as a private individual. There is no natural market for incarceration services; the entire market would cease to exist without direct government intervention in the form of taxpayer-funded contracts to private companies that operate correctional facilities.

We, the undersigned, submit that because private prison firms are ultimately functionaries of the government, they must comply with the same FOIA requirements as their public counterparts. We therefore urge you to reintroduce the Private Prison Information Act this Congressional session and stand willing to support your efforts. Should this letter of support generate questions, please feel free to contact Christopher Petrella at 860-341-1684 or cpetrella@post.harvard.edu, or Alex Friedmann at 615-495-6568 or afriedmann@prisonlegalnews.org.

Respectfully,

California Correctional Peace Officers Association

Center for Constitutional Rights

Center for Media Justice

Center for Prison Education

Charles Ogletree, Harvard Law School (individually)

Ella Baker Center

Enlace

FedCURE

Florida Justice Institute

Florida Reentry Resources & Information (FreeRein)

Grassroots Leadership

Human Rights Defense Center
In the Public Interest
Justice Policy Institute
Justice Strategies
Maine Prisoner Advocacy Coalition
Media Alliance
National CURE
National Prison Divestment Campaign
Partnership for Safety and Justice
Prison Policy Initiative
Prison Reform Movement
Prison Watch Network
Private Corrections Institute
Private Corrections Working Group
Southern Center for Human Rights
Southern Poverty Law Center
Texas Civil Rights Project
Texas Jail Project
The Center for Church and Prison
The Fortune Society (David Rothenberg Center for Public Policy)
The Real Cost of Prisons Project
The Sentencing Project
The Workplace Project/Centro de Derechos Laborales
Urbana-Champaign Independent Media Center
Vermonters for Criminal Justice Reform
Voter's Legislative Transparency Project
YouthBuild USA, Inc.