

August 3, 2017

Re: Endorsement of the Private Prisons Information Act of 2017

Dear Senator:

The undersigned organizations committed to government openness and accountability, civil liberties, human rights, and civil rights, write to urge you to support legislation to apply the Freedom of Information Act (FOIA) to federally-funded private prison facilities. The Private Prison Information Act of 2017 ([S.1728](#)) would strengthen accountability and oversight by requiring non-Federal prison, correctional, and detention facilities holding Federal prisoners or detainees under a contract with the Federal Government to make the same information available to the public as is required of Federal prisons and correctional facilities by FOIA.

Private prison companies that receive federal funding provide the same service as government agencies, but, by asserting their status as private entities, claim that they are not subject to public records laws such as the FOIA. As a result, the public is largely in the dark with regard to the functioning of the many of this country's private prisons, and the industry operates with a lack of oversight and accountability mechanisms. This dynamic hinders the ability of the government and public to ensure private prison companies are living up to their contractual obligations and not wasting taxpayer dollars.

The Department of Justice Inspector General has found that federal prisons run by private companies are substantially less safe and secure than ones run by the Bureau of Prisons.<sup>1</sup> The heightened risks raise co th8763(o7(013(same)-2( )-3act)-2 u)-4( )6(risk)5(s)-4gTBT5ß5

seek the tougher penalties for nonviolent crimes,<sup>5</sup> will only increase this reliance on the private prison industry.

Despite the fact they are holding people in federal custody under federal law, non-federal entities are not subject to the federal FOIA. Private contractors abuse this loophole by marking field reports for internal use only and shielding from public scrutiny information on security breaches, overcrowding, and unaccountable spending.<sup>6</sup> Moreover, federal agencies that contract out for jail and prison beds often rely on FOIA Exemption 4 – the business trade secrets exemption – to avoid responding in full to FOIA requests pertaining to privately-run facilities.<sup>7</sup> This loophole leads to a lack of information needed to understand the cost of detention in private facilities and allow the public to understand the fiscal and human impact of privatized detention and incarceration.

The private prison loophole in the FOIA must be closed. The Private Prison Information Act of 2017 would lead to greater transparency that is essential to ensuring integrity and accountability would apply to privately run prisons.

The Private Prison Information Act of 2017 would accomplish the following:

- Create a mechanism by which federal contracting agencies can ensure that non-federal entities provide the information and access to records necessary for the government to respond to FOIA requests relating to prisons, jails, or detention facilities holding federal prisoners or detainees;

- Place the obligation to respond to FOIA requests relating to non-federal prisons, jails, or detention facilities holding federal prisoners or detainees on the federal contracting agencies, using existing FOIA procedures; and

- Continue to allow the government to protect confidential, privileged, and

Thank you for your attention to this matter. If you have any questions, please contact Lisa Rosenberg, Executive Director of OpenTheGovernment, at [lrosenberg@openthegovernment.org](mailto:lrosenberg@openthegovernment.org), or 202.332.6736.

Sincerely,

American Civil Liberties Union  
American Library Association  
American Society of News Editors  
Association of Alternative Newsmedia  
Backbone Campaign  
Campaign for Accountability  
Citizen for Responsibility and Ethics in Washington (CREW)  
Defending Rights & Dissent  
Demand Progress  
Detention Watch Network  
Free Liberal  
Government Accountability Project  
Government Information Watch  
Human Rights Watch  
In the Public Interest

Liberty Coalition  
MuckRock  
National Council of Churches  
National LGBTQ Task Force Action Fund  
National Security Archive  
New England First Amendment Coalition  
OpenTheGovernment  
People For the American Way  
Project On Government Oversight  
Public Citizen  
Reporters Committee for Freedom of the Press  
Taxpayers Protection Alliance  
FreedomWorks  
The Rutherford Institute