



Human Rights Defense Center

DEDICATED TO PROTECTING HUMAN RIGHTS

December 18, 2012

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

Re: Private Prison Information Act

Dear Representative Jackson Lee:

We, the undersigned not-for-profit criminal justice and public interest organizations, respectfully urge you to reintroduce the Private Prison Information Act (PPIA) 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, is a critical first step in bringing transparency and accountability to the private prison industry.

We are deeply troubled by the secrecy with which the private corrections industry presently operates. Whereas the Federal Bureau of Prisons (BOP) and state departments of corrections are subject to disclosure statutes under the Freedom of Information Act and state-level public records laws, some state courts have held that private prison firms that contract with public agencies generally are not. This lack of public transparency is indefensible in light of the nearly \$8 billion in federal contracts that Corrections Corporation of America (CCA) and the GEO Group (GEO)—the nation's two largest private prisons firms—have been awarded since 2007.

If private prison companies like CCA and GEO would like to continue to enjoy taxpayer-funded federal contracts, then they should be required to adhere to disclosure laws equivalent to those governing their public counterparts—including FOIA.

Though five separate iterations of the Private Prison Information Act have been introduced in Congress since 2005, each bill has died as a result of vigorous lobbying efforts on behalf of the private corrections industry. According to documentation maintained by the U.S. Senate's Lobbying Disclosure Electronic Filing System, Corrections Corporation of America has spent over \$7 million lobbying against the passage of various Private Prison Information Acts since 2005. They claim that the bill violates their "trade secret" FOIA exemption.

But why should private prison contractors, which are paid exclusively with taxpayer funds, be any less accountable to taxpayers than public corrections agencies such as the Bureau of Prisons? We contend that because the private prison industry relies entirely on taxpayer support, 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 on measures 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 federal facilities have grown 600 percent faster than state-level contract facilities since 2010, and now represent the single most quickly-growing corrections sector. Moreover, business from federal customers like the Bureau of Prisons, U.S. Marshals Service, and Immigration and Customs Enforcement now accounts for a greater percentage of revenue among private prison companies than ever before.

In the past, critics of the Private Prison Information Act have argued that its passage would set a “dangerous precedent” for 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.

We squarely reject these unfounded assumptions. The Private Prison Information Act should be applied 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 hold an exceptional market position relative to other private companies. To our knowledge, no other type of private industry is contracted by the public sector solely to perform an essential governmental function such as incarceration.

That private corrections firms are supported exclusively by public agencies 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 sell/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 operate correctional facilities.

We, the undersigned, argue that because private prison firms are ultimately functionaries of the state, they must come under the same FOIA requirements as their public counterparts. We therefore urge you to reintroduce the Private Prison Information Act this Congressional session and are willing to support your efforts. Should you have questions or require additional information, please feel free to contact either Christopher Petrella at 860-341-1684 or cpetrella@post.harvard.edu, or Human Rights Defense Center associate director Alex Friedmann at 615-495-6568 or afriedmann@prisonlegalnews.org.

Respectfully,

Center for Constitutional Rights

Center for Media Justice

Center for Prison Education

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 Immigrant Justice Center
Partnership for Safety and Justice
Prison Policy Initiative
Private Corrections Institute
Private Corrections Working Group
Southern Center for Human Rights
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Texas Jail Project
The Center for Church and Prison
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The Real Cost of Prisons Project
The Sentencing Project
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