July 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 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.[1] The heightened risks raise concerns given the growing reliance on private facilities. The Justice Department's Bureau of Justice Statistics estimates that 18 percent of federal prisoners are held in private prison facilities,[2] and an estimated sixty-five percent of all Immigration and Customs Enforcement (ICE) detainees are held in for-profit detention facilities.[3] The Justice Department's decision to again renew contracts with private companies,[4] in addition to the new guidelines instructing prosecutors to

[1] U.S. Department of Justice, Office of the Inspector General, *Review of the Federal Bureau of Prisons' Monitory of Contract Prisons*, August 2016: http://bit.ly/2aXwJS5.
[2] U.S. Department of Justice, Bureau of Justice Statistics, Prisoners in 2015, December 2016: http://bit.ly/2rfzJ6J.
[3] U.S. Department of Homeland Security Advisory Council, *Report of the Subcommittee on Privatized Immigration Detention Facilities*, December 1, 2016: http://bit.ly/2gK74OD.
[4] On February 23, 2017, Attorney General Jeff Sessions rescinded the Justice Department's August 2016 directive to the Bureau of Prisons to either reduce or decline to renew private-prison contracts.

seek the tougher penalties for nonviolent crimes,[5] 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.[6] 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.[7] 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 sensitive information from public disclosure under existing exemptions and exclusions.

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[5] On May 10, 2017, Attorney General Jeff Sessions announced a new charging and sentencing policy, ordering federal prosecutors to seek the toughest penalties possible for nonviolent defendants.

[6] *See* Department of Justice, Office of the Inspector General, Audit of the United States Marshals Service Contract No. DJJODT70002 with CoreCivic, Inc., to Operate the Leavenworth Detention Center Leavenworth, Kansas, April 2017: http://bit.ly/2rrcPXa.

[7] ICE withholds information, for example, that would clarify the cost of detention in private facilities, claiming the "confidential or privileged information" would cause substantial competitive harm to private contractors if released to the public. *See* Banking on Detention, Detention Watch Network & Center for Constitutional Rights, 2016 update: http://bit.ly/2rnMY2k.

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, 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
OpenTheGovernment
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