

Private Prison Information Act (PPIA): *Increasing Transparency at Federal Prisons and Detention Facilities*

Summary: The Private Prison Information Act (PPIA) would strengthen the effectiveness of the Freedom of Information Act (FOIA) by requiring federal government agencies to comply with FOIA requests relating to private prisons, jails, or detention facilities that detain or incarcerate people for the federal government, in the same way that those agencies must comply with such requests relating to federally run facilities.

Rationale: The federal government is increasingly relying on private companies to supplement its detention and incarceration capacity. Today, over 20 percent of federal prison, jail, and detention beds are located in privately run facilities. Although ICE has access to tens of thousands of beds, it is reported that over eighty percent of the beds *in use* are at private detention centers although ICE has not released full statistics since 2016.¹

The federal government relies on local and state governments to provide tens of thousands of additional beds for federal prisoners and detainees. President Biden's recent Executive Order directing the Department of Justice to halt the use of private prisons does not apply to immigration detention where the vast majority of detainees are held.² In addition, FOIA requirements should apply to facilities housing federal prisoners during the implementation of the EO, which could take years, and in the case that a future administration should reverse course.

Agency	Total beds	Private beds	Percentage
BOP ³	130,497	9,524	7 percent
USMS ⁴	42,952	9,754	22 percent
ICE* ⁵	41,000	26,650	65 percent
Total	214,449	45,928	21.4 percent

Since its enactment more than forty years ago, the Freedom of Information Act has increased governmental transparency by improving access to government records for the media and the general public. Expanded transparency is integral to governmental accountability and is especially vital when the government spends taxpayer dollars contracting out public services that raise potential risks to individual liberty and safety. By asserting their status as private entities, private prison companies exempt themselves from the FOIA. Consequently, records that could help inform the public about the performance of these entities, such as incident reports, information on spending and misuse of federal funds, and communications between prison officials, are withheld from the public. The equivalent records for federally run facilities are subject to FOIA.

This legislation would create a critically important mechanism by which federal agencies can ensure that non-federal entities provide the information necessary for the government to respond to FOIA requests relating to prison and detention facilities, while still allowing the government to protect confidential, privileged, and sensitive information from public disclosure under existing exemptions and exclusions to FOIA.

For more information, please contact Freddy Martinez at Open the Government (fmartinez@openthegovernment.org).

¹ American Civil Liberties Union, Human Rights Watch, National Immigrant Justice Center. *Justice-Free Zones: U.S. Immigration Detention Under the Trump Administration*.

https://www.hrw.org/sites/default/files/supporting_resources/justice_free_zones_immigrant_detention.pdf

² Exec. Order 14006 (Jan 26, 2021). <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/executive-order-reforming-our-incarceration-system-to-eliminate-the-use-of-privately-operated-criminal-detention-facilities/>

³ U.S. Federal Bureau of Prisons, *Statistics*, (last updated August 5th, 2021).

⁴ U.S. Marshals Service, *Fact Sheet: Prisoner Operations, 2021*, (reflecting FY 2021 data).

⁵ These are estimated figures, based on the U.S. Department of Homeland Security Advisory Council, *Report of the Subcommittee on Privatized Immigration Detention Facilities*, Dec. 1, 2016.

* Note: ICE does not routinely release the total number of private beds it has access to, it only published the number of beds in use.