

Senator Ben Cardin
509 Hart Senate Office Building
Washington, DC 20510

June 12, 2015

Dear Senator Cardin:

We, the undersigned 20 organizations committed to transparency and open government, write to thank you for your concern with the effectiveness of the Freedom of Information Act (FOIA) as it pertains to non-federal entities that contract with the federal government to hold federal detainees or prisoners.

Almost 20 percent of detainees and prisoners in the federal system are held in private jails or prisons. Tens of thousands more are held in jails or prisons run by local jurisdictions. Despite the fact they are holding people in federal custody under color of federal law, these non-federal entities are not subject to the federal FOIA, and the 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.

This loophole in the FOIA must be closed. Transparency is essential to ensuring integrity and accountability in the operation of our governing institutions, including perhaps most importantly when those institutions are responsible for the care and safety of individuals stripped of their liberty for any length of time. We urge you to introduce legislation that would require federal government agencies to comply with FOIA requests relating to non-federal 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.

Such legislation should 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.

We appreciate your leadership on this important issue. Please contact Ruthie Epstein at the American Civil Liberties Union (repstein@aclu.org) or Patrice McDermott at OpenTheGovernment.org (pmcdermott@openthegovernment.org) with any questions.

Sincerely,

American Civil Liberties Union
American Library Association (ALA)
Bill of Rights Defense Committee
Campaign for Accountability
Center for Media and Democracy
Citizens for Responsibility and Ethics in Washington (CREW)
Defending Dissent Foundation
Liberty Coalition
National Security Archive
National Latino Farmers and Ranchers Trade Association
New England First Amendment Coalition
OpenTheGovernment.org
People for the American Way
Project Censored/Media Freedom Foundation
Project On Government Oversight (POGO)
Rural Coalition/Coalición Rural
R Street
Society of Professional Journalists
Student Press Law Center
Sunlight Foundation