

Response to the Justice Committee's Call for Evidence on Post Legislative Scrutiny of the Freedom of Information Act

The Prison Reform Trust is an independent charity working for a fair and decent prison system. We aim to improve prison regimes and conditions, defend and promote prisoners' human rights, address the needs of prisoners' families, and promote alternatives to custody. Our activities include applied research, advice and information, education, parliamentary lobbying and the provision of the secretariat to the All Party Parliamentary Penal Affairs Group.

The Prison Reform Trust is pleased to have the opportunity to respond to the Justice Select Committees call for written evidence on the post-legislative scrutiny of the Freedom of Information Act.

The Freedom of Information Act has become a vital tool in information disclosure about prison, the most hidden of our public services. The Ministry of Justice website shows that recently, information has been disclosed regarding questions of significant public interest including:

- Visiting speakers/dignitaries and the reason for their visit to prison
- Number of legal claims by prisoners and compensation paid
- Deaths under probation supervision
- Length of wait for those seeking transfer between prisons

Appropriate disclosure of information enhances public confidence in the system and reassurance that prisoners are held securely and safely. There is a public interest in keeping the public informed about how they are being protected from crime. The Freedom of Information Act helps to reassure the public and stakeholders that prisons are fulfilling their duty of care to people in prison.

Information disclosed under the FOIA also enables public engagement with and knowledge of the criminal justice system as well as supporting the government's transparency agenda.

Extension of the Freedom of Information Act

Currently, private organisations providing public services are not liable to the same requirements to disclose under FOI. Private prisons are providing the same service as state run prisons. The rights to information about the regimes and establishment should be the same. Prisoners in the main have no choice in whether they are held

in a private or state run prison and the rights of people held in these prisons should be equivalent.

The specifics of the custodial environment and the potential vulnerabilities of the population mean that transparency and accountability in the system are even more essential than in other public services. Private contractors providing custodial services should be held to the same standards of responsibility as state providers.

We believe that extending the act will not have significant cost implications. Private contractors are already obliged to provide the Ministry of Justice, Her Majesty's Chief Inspector of Prisons and Ministers and other regulatory bodies with large amounts of information for monitoring purposes. Much of the data that could be requested under FOI is already collated and held. Careful and effective managing of this information when requested under the FOI would not be a burden to private contractors. Public interest in the cost of public services and contracting processes is very high at the moment. Lack of accurate information and an obscure commissioning process can impede proper debate.

We note that the House of Commons' Public Accounts Committee recently called on the government to extend the Freedom of Information Act.

<http://www.parliament.uk/business/committees/committees-a-z/commons-select/public-accounts-committee/news/pfi-report-publication/> The Committee focused on the poor deal the taxpayer was getting in PFI contracts. They stated that the taxpayer's position is made worse by poor transparency of investor and contract information alongside patchy public sector commercial skills. Currently, the Ministry of Justice is moving to a Payment by Results model in prison and probation service contracts and similar concerns have been raised about these contracts.

While Freedom of Information provisions do not apply to private providers of public services the public cannot hold the government to account or decide on whether taxpayers are receiving value for money for services. Public bodies often cite commercial sensitivities for not allowing freedom of information provisions to apply to the private sector. Although some details of negotiations and contracts are commercially sensitive, it is currently too easy for departments and investors to hide behind commercial confidentiality, rather than provide full disclosure of costs and benefits to inform value for money. These are publically funded investments and should be subject to public scrutiny.

We support the Public Accounts Committee's recommendation that the freedom of information should be extended to private companies providing public services and that the Treasury should define commercial confidentiality and where exceptional circumstances can be applied. Extending the FOIA would increase public confidence in the workings of closed institutions by ensuring another level of accountability and visibility for companies with contracts that may not be reviewed for twenty five years.