



Use of Freedom of Information Requests in Prison and Jail Studies

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About the Authors

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About the CAIJ

The Centre for Access to Information and Justice (CAIJ) at the University of Winnipeg aims to be an international hub for public interest research on matters of freedom of information (FOI) and access to justice in Canada and beyond. Through local and international collaborative projects, the CAIJ promotes a multi-disciplinary and critical approach to research and policy engagement. The CAIJ investigates government practices, tracks general trends in FOI and access to justice, as well as charts national and regional variations in these practices. The CAIJ advances theoretical, empirical, and policy-oriented studies of FOI and access to justice in the form of workshops, reports, articles, and books produced by its members.

The CAIJ's mission and goals include:

- Advancing knowledge of FOI and access to justice practices through multi-disciplinary and critical collaborative research projects;
- Organizing knowledge mobilization and research-driven working groups, workshops, seminars, training, and conferences on FOI and access to justice;
- Providing a welcoming and enabling context for students and visiting scholars working in the areas of FOI and access to justice in Canada and beyond;
- Engaging in outreach with a community and public interest focus.

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Executive Summary

Prison and jail scholars are increasingly using freedom of information (FOI) requests as a means of producing data for their research. Traditionally, prison and jail research has relied on interviews, policy analysis, media analysis, and other conventional approaches to producing data. Over the past decade especially, the number of academic research projects relying on data produced through FOI is increasing. This reflects a growing acknowledgement in the field of prison and jail studies of the capacity for FOI to provide researchers with access to valuable data, as well as a growing acknowledgement of FOI's role in social science research design and methods. The data that researchers obtain through FOI enable them to ask innovative research questions and shed light on old research questions in new ways.

In this report, we take stock of English-language scholarly publications appearing during the past two decades in which scholars and researchers used FOI requests to generate data for their studies on prison and jail systems. We review these studies looking at trends in frequency over time, where they come from, what other data sources they used along with FOI, and what novel contributions FOI requests have allowed researchers to make to existing prison and jail scholarship.

We identified 17 publications that fit our selection criteria. Although the overall number is low, we document an upward trend over the past two decades in the number of publications on prisons and jails using FOI to produce empirical material, particularly in the past 10 years. We found that the vast majority of prison and jail scholarship using data obtained through FOI comes from Canada (N=7) and the United States (N=6), with a lesser number being produced in the United Kingdom (N=2). We found only one prison and jail publication outside of Canada, the United Kingdom, and the United States using FOI as a method. This was in Australia. Only one of the studies that we found was comparative. We also examined the data sources these publications used: four of the articles relied only on data obtained through FOI, while 13 combined their use of FOI requests with other methods of producing data.

FOI has helped scholars in multiple disciplines advance empirical, theoretical, methodological, and policy debates in prison and jail studies. Our exegesis of these 17 articles revealed four major themes in this regard. These themes are: (1) FOI as access to hidden imprisonment trends; (2) using FOI to uncover discrimination within prison systems; (3) privatization as a hindrance to FOI; and, (4) exposing government secrecy using public record requests.

Introduction

Throughout the world, prison and jail scholars are increasingly turning to the use of freedom of information (FOI) requests to obtain data for their research. Information requests allow researchers to obtain government records that would never otherwise be released (Lamoureux, 2019; Savage & Burrows, 2007; Brownlee, 2015). Past prison and jail research relied on traditional research methods, such as surveys, interviews, media analysis, and ethnography. The trends we identify in this report reflect a growing acknowledgement in the field of prison and jail studies of the capacity of FOI to provide researchers with access to novel forms of data. These data allow researchers to ask innovative research questions and shed new light on old research questions.

In this report, we take stock of English-language scholarly publications appearing during the past two decades (2001-2020) in which scholars used FOI requests to generate data for their studies on prison and jail systems. We review these studies by examining trends in frequency over time, national focus, and data triangulation.

The structure of the report is as follows. First, we provide an overview of our central goals in conducting this review. Second, we discuss our methodology. Third, we highlight some general trends and observations looking at differences by country, number and types of data sources used, and changes in frequency of publications over time. Fourth, we present the results of our review, examining how each study contributed to prison and jail scholarship. We identify and discuss four ways that FOI requests have helped scholars advance key empirical, theoretical, methodological, and policy debates in the field of prison and jail studies. Finally, we conclude the report with reflections on what our findings mean for prison and jail studies and criminological research more broadly, and make recommendations for how prison and jail scholarship might better take advantage of FOI as a means of producing social scientific data.

Report Objectives

In this report, we review literature in prison and jail studies to understand how researchers are using FOI as a data generation tool. We set out to address four questions:

1. In which countries are prison and jail scholars conducting the greatest number of FOI requests to generate data for their research?
2. What other kinds of data do prison and jail scholars using FOI typically collect and combine with the results of their FOI requests?
3. How are data obtained through FOI helping researchers advance key empirical, theoretical, methodological, and policy debates in prison and jail studies?
4. Are there any other trends about prison and jail research evident in these works?

Methodology

Our methodology consisted of reviewing major peer-reviewed research articles published in the past two decades (from the beginning of January 2001 to the end of August 2020) on issues of prison and jail in the US, UK, Canada, and elsewhere that relied to some degree on data generated by filing FOI requests. We used several databases to identify these articles including (but not limited to): Web of Science, the International Bibliography of the Social Sciences, and Google Scholar.

We looked at studies in which the researchers themselves submitted the FOI requests to the government agencies in question. This was a significant criterion for inclusion in our review. We looked only at peer-reviewed, journal publications and research reports. We include assessment of other detention facilities in our sample because detention facilities are similar to prisons and jails as carceral spaces. We do not examine papers that report on unsuccessful attempts to use FOI in prison research (Watson & van der Meulen, 2019; Watson, 2015; Wright et al., 2015; Mopas & Turnbull, 2011). We do not report on papers that may use some FOI disclosures and report more generally on penal policy (Balfour, 2018;

Monaghan, 2014). We do not report on theses or dissertations. We also do not report on book chapters (e.g., Owusu-Bempah & Wortley, 2014). In one such book chapter, we would note that the data Owusu-Bempah & Wortley (2014) gained access to under FOI showed clear evidence of Indigenous and African Canadian over-representation in provincial and territorial jails. This is an example of the important findings to be made using FOI in social science research. Although scholars working in criminal justice, criminology, justice studies, law, and sociology departments conducted most of these inquiries, we did not exclude other disciplines (e.g., medicine or international studies), as long as the inquiry was focused on issues relevant to prison, detention and jail. Only a marginal percentage of the studies we reviewed came from scholars working in these other fields.

We focus on studies in which the researcher submitted the FOI request themselves. This is because we wanted to assess the extent to which researchers are beginning to use FOI as a method of data collection by submitting their own requests rather than drawing on what is already available in the public record. Academic researchers have relied on the FOI disclosures of journalists and other organizations (e.g., civil rights groups) for a long time. When researchers craft and submit their own requests, we interpret it to reflect a shift in the field of prison and jail studies toward a more investigative, intensive approach to getting records from the backstage of government. It may also reflect a growing sense of frustration among researchers with the quality of interviews they conduct with prison and jail officials.

We exclude from our review publications on prison and jail and FOI that are philosophical in nature or related to broader concerns about prison and jail transparency. These are important contributions that we have learned a great deal from. We do not, however, consider them here. Finally, we exclude from our analysis papers where data were obtained by the researcher through FOI, but these data only played an inconsequential role in the overall analysis. These are important contributions, but they do not fit our selection criteria for this report. In total, we identified 17 sources that largely fit our selection criteria. Similarities and trends were assessed throughout these sources. As similarities were identified, the

articles were then placed into one or more of the trends that were established. We believe this to be a fairly complete list. We apologize in advance to any authors whose work we may have missed. Our searches were thorough, but not perfect. We believe there will be more of these studies as countries continue to pass FOI laws around the world, but that there may also be additional barriers to using FOI in countries with higher levels of political violence and lower normalization of FOI use in social science.

Context & Related Literature

Criminal justice agencies including penal agencies take great steps to prevent disclosure of records regarding prisons and prisoners (K. J. Brown, 2009). As Piché (2012) notes, prison and jail bureaucracies are difficult to obtain information from. They tend to be secretive and to manage information strategically. Piché details a number of strategies for accessing information from prison and jail bureaucracies. Prison research is often also connected to mobilizations against the creation of new prisons or to decrease levels of incarceration. Piché (2015) details strategies for journalists, researchers, and activists hoping to use FOI requests as a means of contesting incarceration. Piché describes use of FOI to obtain data for research, but also for activist strategies that are abolitionist in nature. Piché also writes about how to go public with FOI disclosures and how to connect with various audiences to influence politics.

Not all prisons and jails are public. Casarez (1994) argues that the privatization of prisons and jails is frustrating not the least because FOI is not directly applicable to private entities. Privatization works against access to information and government transparency in many ways. According to Eisen (2018), certain private corporations in the US such as the former Corrections Corporation of America (now CoreCivic) are not subject to the same FOI laws that state prisons must follow. However, FOI can still prove fruitful in the context of privatization of prisons and jails. Selman & Leighton (2010) used FOI requests to obtain con-

tracts on private prisons and jails across several states in the USA. While contracts may remain accessible, however, this is only one kind of record related to prisons and jails. In general, the more that incarceration and imprisonment become privatized, the more challenging that use of FOI requests will be for public interest researchers who are looking into these topics.

FOI requests also have important implications for the confidentiality of prisoners as well as victims and their families (Nieman, 2008). FOI in some countries does not feature stringent protections for personal information, leading to abuses of FOI. For example, Corda & Lageson (2020) show how the lack of protections for criminalized persons under US FOI law allows their criminal records to be accessed (using FOI) and turned into a commodity for bail and bond companies that monitor persons on parole or some other release. This is a good example of some of the more nefarious uses and unintended consequences of FOI law that are important to be aware of.

General Trends & Observations

Although the total number of articles is small, we document an upward trend over the past two decades in publications using FOI to produce empirical material on prison and jail systems, particularly in the past 10 years.

Regionally, we find a higher prevalence of studies using FOI requests to advance prison and jail studies research in Canada and the US than in the UK. Of the 17 total sources we reviewed, (N=7) came from Canada, (N=6) from the US, (N=2) came from the UK, while the remaining (N=2) were from Australia and the international community. This may be reflective of the different methodological histories in the different countries (Savage & Burrows, 2007).

A quarter of the sources we identified relied on FOI as their sole source of data (N=4, 23%). Around 30 percent of the publications we reviewed combined FOI with one other source of data (N=5, 29%). Over a third of the publications we reviewed made

Table 1: Articles by year

Year	Articles	References
2001-2005	1	George, 2002
2006-2010	5	Yeager, 2006 Yeager, 2008 Larsen & Piché, 2009 Flynn & Cannon, 2009 Brown & McDuffie, 2009
2011-2015	6	Piché, 2011 Bingham & Sutton, 2012 Noferi & Koulish, 2015 Sikand, 2015 Kerwin et al., 2015 Granski et al., 2015
2016-2020	5	Koulish, 2016 Piché et al., 2017 Parkes, 2017 Brooker & Webster, 2017 Patler et al., 2018

use of three (FOI plus two other sources) (N=6, 35%). Only two publications we reviewed made use of four.

Of those 13 studies combining FOI with one or more data sources, open source material was most frequently used by researchers (N=12, 92%). This includes census data, newspaper articles, published government reports, and any other information that is publicly available online without filing an FOI request. The second most popular method to combine with the results of FOI was interviewing (N=5, 38%). Other combinations were used with much less frequency, including combining FOI with surveys, experiments or questionnaires. (N=2, 15%).

FOI as Access to Hidden Imprisonment Trends

The first prominent theme in the studies we reviewed is access to hidden imprisonment trends using FOI. The information that could be requested can include details on prisoner and detainee populations such as mental illness cases, solitary confinement cases, medical information,

use of force cases, grievances, among other factors. Many studies we assess have been successful in gaining information. However, there remain unsuccessful attempts when requests are denied. Gaining information on the broader populations or even specific factors such as prisoner or detainee admissions can help to uncover certain trends that impact the population that is being studied. In the following cases, researchers uncovered details regarding prisoner or detainee populations and hidden imprisonment trends in the region or district of interest.

For their research on solitary confinement in immigration detention facilities throughout California, [Patler et al. \(2018\)](#) submitted an FOI request on every incident of solitary confinement between 2013-2016. Obtaining a spreadsheet with the requested information, Patler and coauthors discovered the following regarding detainees in solitary confinement: 48 percent of detainees were segregated for “discipline or pending discipline,” 39 percent for protective custody, 10 percent for facility security threat, and 2 percent for medical reasons. Further, fifty-seven percent of solitary confinement cases involving detainees in California were found to involve detainees with mental illness whom also made up 15 percent of the Immigration and Customs Enforcement Agency’s (ICE) overall detained population. Patler and coauthors referred to a 2010 Human Rights Watch report that estimated at least 15 percent of the detained population were suffering from mental illness. As a result of this study, [Patler et al. \(2018\)](#) advise “detainees, especially those with special vulnerabilities, should not be forced to choose between fear and harm in the general population or the negative health impacts associated with solitary confinement” (p. 458). Access to this information allows for data pertaining to multiple facilities to be analyzed for trends and outliers, if the agency complies. In this particular case, the ICE field offices in California proved to be fairly compliant with the researchers, aside from a missing release date from 45 cases ([Patler et al., 2018](#)).

In a similar case within the US, [Noferi & Koulish \(2015\)](#) received information for their request regarding ICE’s methodology and “Risk Classification Assessment” (RCA) results, which included 485 RCA detailed summaries on detainees. In addition, they had also received ICE guidance and

Table 2: Articles by country

Country	Articles	References
USA	6	Patler et al., 2018 Noferi & Koulish, 2015 Kerwin et al., 2015 Granski et al., 2015 Brown & McDuffie, 2009 Koulish, 2016
Canada	7	Piché et al., 2017 Yeager, 2006 Yeager, 2008 Larsen & Piché, 2009 Piché, 2011 Parkes, 2017 Bingham & Sutton, 2012
UK	2	Sikand, 2015 Brooker & Webster, 2017
Australia	1	George, 2002
Other	1	Flynn & Cannon, 2009

training manuals from the American Immigration Council via an FOI request. ICE had deployed the automated RCA tool to assist in detention decisions ([Noferi & Koulish, 2015](#)). Noferi and Koulish found that the RCA detailed summaries which were sent to detention facilities had five sections: overview regarding detention or release, special vulnerabilities, mandatory detention assessment, public safety risk assessment, and flight risk assessment. The RCA was also found to collect non-citizens’ basic personal information including gender, age, as well as country of citizenship and origin. Noferi and Koulish note that a more transparent risk assessment system that would also respect individual rights could be implemented by immigration enforcement authorities, further advising that public disclosure, government oversight, audit trails, and individual access to data could provide more due process in decisions relating to the detainees ([Noferi & Koulish, 2015](#)). [Kerwin et al. \(2015\)](#) had also received information from ICE on detainee population details via FOI requests that were submitted by reporters from the Boston Globe and Associated Press. Kerwin et al.’s

article is one of the exceptions within our sample since their focus was on datasets that were provided by the FOI requests. Their analysis focused on datasets of those who were detained by ICE in 2009 and 2012, which included information on detainees' name, age, country of origin, criminal convictions and most serious convictions, time (or days) in ICE custody, and final removal order date. Following this approach, Kerwin et al. produced comparisons between 2009 and 2012 relating to: whether or not the minimum detention bed mandate is being met, average detention lengths, and the percent of detainees with a criminal conviction (Kerwin et al., 2015). During their research on detainee deaths in the US, Granski et al. (2015) was able to utilize FOI requests that were made publicly available through the ICE FOI Act Library on the internet. In regard to the healthcare provisions in US detention centres and detainee deaths, Granski and coauthors had analyzed the ICE Health Service Corps with the help of this information available from the ICE FOI Act Library, which is a collection of previous FOI requests and responses that were placed into a database. While this is another exception within our sample, the data retrieved by these authors is important. Granski and coauthors found files on detainee deaths from 2004 to 2014, including the deaths by year, deaths by type of detention facility, length of detainee stay, average ICE daily population, the yearly death rate of detainees, and the most common causes of deaths in detention facilities (Granski et al., 2015).

In research on prison Mother Baby Units (MBUs) in England and Wales, Sikand (2015) analyzed the response to an FOI request made to the Ministry of Justice for MBU admissions and rejections. Sikand used qualitative research such as questionnaires and interviews with women prisoners for their experiences to be recorded. The FOI request, a literature review, and thematic analysis further complemented the research. The FOI request helped her uncover a climbing MBU rejection rate over a five-year period (2010 to 2015) and a large number of applications that were unaccounted for (Sikand, 2015). The data collected from the request helped to reveal these trends that would have otherwise been disregarded.

In regard to mental health in the Canadian prison system, Bingham & Sutton (2012) ad-

Table 3: Use of FOI in relation to other methods

Sources	Articles
FOI only	4
FOI plus one additional source	5
FOI plus two sources	6
FOI plus three or more sources	2
Total	17

dress three particular case studies: Ashley Smith, Bobby-Lee Worm, and "KJ." These three cases addressed by Bingham and Sutton involved federally sentenced women with serious mental health issues in Canada that were worsened through the abuses they were subject to in the federal prison system. Notably, Ashley Smith committed suicide in front of five Correctional Service of Canada (CSC) guards who watched and failed to intervene in 2007. Bingham and Sutton requested access to all information on federally sentenced women with mental health issues from CSC. While CSC had attempted obstructing the requested information, Bingham and Sutton had still received pieces of information. Through their research, Bingham and Sutton noted that one third of federally sentenced women experience mental health issues and around half have carried out self-harm. In addition, CSC's treatment of federally sentenced women was noted to be overly focused on assessment as opposed to treatment, lacking regard for certain mental health issues, recklessly authorizing force against women with mental health issues, among other factors (Bingham & Sutton, 2012). In times when research access for qualitative studies such as interviews with prisoners is closed off or denied, FOI disclosures may provide an important avenue for revealing details on hidden imprisonment trends that other methods simply cannot uncover.

Using FOI to Uncover Discrimination within Prison Systems

The second theme we found is use of FOI to uncover cases of discrimination against vulnerable and diverse imprisoned populations. Racial pro-

filing, discrimination against transgender prisoners, and abuses against peoples with special vulnerabilities such as mental illness were found to be prevalent throughout several research reports and peer-reviewed articles within the sample where FOI or ATI (Access to Information) requests were used. The authors represented in this theme have observed or noted cases of profiling, abuses, or discrimination within the prison and incarceration systems. In theory and in practice, FOI should allow the user to access the public records where researchers can identify and expose cases of profiling, abuse, and discrimination that can be common within prison systems, if the records were not destroyed.

Piché et al. (2017) address “Indigenizing corrections” as a theme in their research on the promotion of penal infrastructure initiatives in Canada through government agencies and prison authorities. FOI requests and an online content search were the main methods of accessing information on the promotion of Canadian penal infrastructure projects. Piché and coauthors note that jails and prisons have historically been oppressive to Indigenous Peoples (and continue to be), along with the histories of residential schools and the reserve system. The examples of the creation of a healing room and traditional food preparation setting at the Whitehorse Correctional Centre to adopt Indigenous culture into the prison spaces were noted, with Piché and coauthors further advising that the results continue to indicate that incarceration is still the “antithesis of traditional healing practices and First Nations spirituality.” Piché and coauthors indicated attempts made by prison and jail authorities in framing incarceration in Canada to be inclusive and sensitive to Indigenous traditions, despite the prison systems already being entrenched in the systemic discrimination against Indigenous Peoples (Piché et al., 2017). Through their access to the requested information, Piché and coauthors could analyze and productively criticize the government and prison system’s attempts to promote the ideology behind an inclusive carceral environment for Indigenous Peoples in Canadian prisons.

Larsen & Piché (2009) discuss the Kingston Immigration Holding Centre (KIHC) in Ontario, which also came to be known as “Guantanamo North” due to its resemblance to Guantanamo Bay in

Cuba. The immigration detention facility was operated by the Canadian Border Services Agency (CBSA) and CSC for detaining those who are considered a threat to national security through security certificate cases (also recognized as “secret trials”). Larsen and Piché had analyzed documents that were received as a result of ATI requests to CBSA, CSC, and Public Safety Canada, with some of the records being already publicly available. The requests that Larsen and Piché had sent were general to start but became more focused on certain documents and records once the “initial picture” was developed. This led to Larsen and Piché focusing on racial profiling in this case, as they mentioned how KIHC was built for specific prisoner profiles such as Muslims. Larsen and Piché note how allowances of religious practices and specific cultural foods such as Halal is part of the operating guidelines with cooperation of the surrounding Muslim communities. Larsen and Piché acknowledge that KIHC was indeed built for specific profiles of inhabitants, whether the policies and features were recognized as “worthy acts of cultural accommodation or as extensions of systemic racism” (Larsen & Piché, 2009). Similarly, Noferi & Koulisch (2015) found racial profiling to be present with the ICE RCA tool in the US. Noferi and Koulisch provide an example from their FOI responses of RCA cases, with one case being of a single, 26-year-old Salvadorian male who had no criminal history or immigration history. The RCA tool still identified him of being “strongly suspected of gang membership,” with the tool further advising that the man is placed in detention in “medium/high custody.” This was not uncommon in the RCA algorithm, but with minimal transparency in the immigration system, Noferi and Koulisch advise that similar profiling would be increasingly difficult to uncover (Noferi & Koulisch, 2015). Koulisch (2016) refers to mandatory detention as a form of structural violence due to the physical and psychological harm that is inflicted to non-citizens and minority populations (Koulisch, 2016). Yet, FOI requests can still provide a strategy to reveal such cases of racial profiling.

Several researchers within the sample also used FOI or ATI requests for issues relating to gender and mental health. In her article on the role of litigation in potentially ending solitary confinement in Canada, Parkes (2017) discusses how there

is increasingly more awareness of the harms and cruelties of solitary confinement, which disproportionately affects Indigenous women and men with women generally being over-represented in Canada. Among the methods used for her research, Parkes sent ATI requests to the Province of Quebec and Province of Manitoba for data on prisoners in segregation and solitary confinement. Parkes notes how the Correctional Investigator (federal prison ombudsperson) regarded administrative segregation as being “so overused [as a management tool] that nearly half (48 percent) of the current inmate population has experienced segregation at least once during their present sentence” (Parkes, 2017, p. 168). In her article, George (2002) discussed Victoria’s Metropolitan Women’s Correctional Centre (MWCC) in Australia. In several instances, FOI requests were sent to the Corrections Corporation of America (CCA) that ran MWCC at the time. George notes the lack of accountability and lack of humane oversight throughout the years that CCA had operated the MWCC. Documents obtained through George’s FOI request revealed human rights abuses against incarcerated women within the MWCC, such as prisoners being gassed in an enclosed space, among other abuses against the women (George, 2002). In addition to the topic of gender and mental health, Bingham & Sutton (2012) reported that Canada is seen as an example for many other countries yet sets the bar too low by not addressing the problems and abuses faced by incarcerated women with mental health issues in the federal prison system (Bingham & Sutton, 2012). This is clearly an issue that is observed in other developed countries as well.

For their research on healthcare policies addressing transgender prisoners, G. R. Brown & McDuffie (2009) analyzed policies and directives in regard to transgender prisoners’ healthcare access and housing in the US prison system. Brown and McDuffie sent FOI requests to 50 states, the District of Columbia, and the Federal Bureau of Prisons (BOP) regarding any Department of Corrections “assessment and treatment guidelines for gender identity disorder (GID)” (G. R. Brown & McDuffie, 2009). In addition, policies, practices and any other documents of GID treatment, medical care, housing, among other factors were requested. Brown and McDuffie discovered a memo in Florida from 1995 that was noted as having guid-

ance for authorities to discontinue any hormonal or surgical treatment that involved an attempt to a sex change once a transgendered individual was incarcerated. The findings produced from their research influenced Brown and McDuffie to advise that the Department of Corrections around the United States should allow for the treatment of prisoners with severe GID with cross-sex hormones to prevent the prisoners from eventually resorting to self-harm and causing more costly incidents (G. R. Brown & McDuffie, 2009). As noted above, the responses for FOI requests produced information exposing similar cases of profiling, discrimination, and abuses within the prison systems and immigration detention systems.

Privatization as a Hindrance to FOI

Incidences of privatization were noted in a few of the articles in our sample. We define privatization as private ownership and/or operations of criminal justice functions and organizations. As observed in this third theme, privatization can cause barriers to information accessibility as records are controlled by for-profit corporations (as opposed to public governmental bodies). Several researchers, academics, and authors (including those mentioned below) have warned against privatizing prison systems. However, the use of private contractors for operating prisons and detention centres have been increasingly prominent in countries such as the US, Australia, and the United Kingdom, among others (Flynn & Cannon, 2009). This theme explores privatization of criminal justice as an obstacle to information access and FOI.

Following ICE’s response to the Boston Globe and Associated Press’ FOI request of the ICE datasets of detainees in 2009 and 2012, Kerwin2015piecing found that ICE met the minimum detention bed mandate (34,000 beds) by contracting out to the Federal Bureau of Prisons, for-profit prison corporations, and local governments that often sub-contract with for-profit prisons, aside from ICE’s own facilities. In 2012, private (for-profit) prisons were noted to have owned and operated around 67 percent of all detention beds, with the number likely increasing over the years. Kerwin et al. had advised that the government should be entirely responsible for administering

the prison and detention system, as privatization may be a massive barrier to transparency and accountability (Kerwin et al., 2015).

With the Global Detention Project, Flynn & Cannon (2009) researched and discussed the privatization of immigration detention throughout the world, analyzing example cases from Australia, Germany, Italy, South Africa, and Sweden. Primary and secondary sources were used for their research, including interviews, literature review and review of state institution publications, media reports, and information received from FOI requests. Using these methods, the authors and the Global Detention Project created a database of detention sites. Flynn and Cannon acknowledged Sweden as a “model country” for removing private security companies from operating detention centres and allowing more consultation and access for non-governmental organizations, researchers, and media. On the other hand, South Africa’s use of private contractors for immigration detention was noted as resulting from the government wanting shared or minimized responsibility (“burden-sharing”) to enforce immigration policies and was a beginning step for more privatization in the prison systems in South Africa. For Australia, Flynn and Cannon noted that privatization was viewed as a way of cutting costs and to improve efficiency of immigration detention centres. One of the most important performance mitigating factors observed by Flynn and Cannon was how the private contractors’ services were improved or maintained with an abundance of surveillance and oversight by government agencies or international organizations. Finally, Flynn and Cannon advise that scholarly attention should be focused on the “potential impact of private contractors on the policy process” further noting how this could help to direct alternative policy solutions.

George (2002) expressed frustrations with the first private prison “experiment” in the MWCC in Australia. George sent an FOI request for her client’s medical record, which was responded to with missing pages (pages that were significant to George’s research). George also requested “the number of incidents of self harm and attempted suicide” in another FOI request and the general manager at MWCC had refused to release the information as it had the potential to expose CCA to “commercial disadvantage.” George found ris-

ing levels of self-harm, mismanagement, and incompetence of CCA staff in emergency situations, among many other problems (some of which mentioned in the previous theme). In addition, CCA and the government were noted to having failed to adequately inspect, monitor, and review the MWCC, allowing for problems and abuses to further progress (George, 2002). While the access to public records through the government is considered a taxpayer’s right as a citizen, records held by private companies and contractors occupy a gray area with FOI. As observed within this theme, access to the information and records held by private companies such as CCA is possible but is also hindered as a result of private companies being excluded from the purview of FOI and ATI laws.

Exposing Government Secrecy using Public Record Requests

This final theme addresses the role of FOI in exposing government secrecy and determining the transparency of government as well as corporate practices. Researchers within the sample have encountered incidences of government secrecy and malpractice or had provided suggestions on how transparency and accountability could be improved. Exposing government secrecy can overlap with activism, as exhibited by Matthew Yeager and Justin Piché, among others. FOI and ATI can provide a tool for uncovering and exposing these government and corporate practices that keep data and information hidden from citizens.

Yeager (2008) provides examples of how his research became “tied up in access problems” throughout his research on dangerous offenders in Canada. His research involved interviewing more than 100 so-called dangerous offenders to gain an understanding on their histories, experiences with judiciaries, and their experiences with CSC and the National Parole Board. Yeager requested information from CSC and the National Parole Board for the names of dangerous offenders, the dangerous offenders’ criminal record (or FPS number), and their institutional addresses in the Ontario region. The ATI requests were denied by CSC as well as National Parole Board, while the research project’s financial support from the government was also denied with CSC noting that Yea-

Table 4: Articles by theme

Theme	Articles	References
FOI as Access to Hidden Imprisonment Trends	6	Patler et al., 2018 Noferi & Koulish, 2015 Kerwin et al., 2015 Granski et al., 2015 Sikand, 2015 Bingham & Sutton, 2012
Using FOI to Uncover Discrimination within Prison Systems	8	Piché et al., 2017 Larsen & Piché, 2009 Noferi & Koulish, 2015 Koulish, 2016 Parkes, 2017 George, 2002 Bingham & Sutton, 2012 Brown & McDuffie, 2009
Privatization as a Hindrance to FOI	3	Kerwin et al., 2015 Flynn & Cannon, 2009 Amanda George, 2002
Exposing Government Secrecy using Public Record Requests	11	Yeager, 2006 Yeager, 2008 Piché, 2011 Bingham & Sutton, 2012 Piché et al., 2017 Larsen & Piché, 2009 Parkes, 2017 Noferi & Koulish, 2015 Kerwin et al., 2015 George, 2002 Brooker & Webster, 2017

ger's research did not "meet the requirements of CSC's research policy." Yeager noted that the respondents at one institution had submitted a grievance stating that they were entitled to see the researcher (Yeager). Yeager pursued an ATI Act lawsuit and sought political pressure from Members of Parliament on the Standing Committee on Justice yet was unsuccessful in both approaches. Yeager (2008) described these events that hindered his research project as an example of "state censorship of convict criminology".

As part of the same research agenda, Yeager (2006) filed a lawsuit against CSC relating to the ATI Act, which began in 2001. His research at this time had aimed toward "where convicts serving a fixed determinant sentence were ordered by the National Parole Board to serve every day of their sentence" as opposed to a release on mandatory supervision (Yeager, 2006). Yeager made an ATI request to CSC asking for an Offender Intake Assessment software copy, including the Custody Rating Scale, the General Statistical Information on Recidivism Scale (GSIR), and a Community Risk/Needs Management Scale, among other features. Microdata on the 1992-1993 CSC release cohort and a codebook were also requested. CSC denied the ATI request, stating that the software would not work on a personal computer and that the microdata request would involve creating a "new record." Yeager took the administrative appeal to the Information Commissioner of Canada, which also denied his request. The manager of CSC's research division had admitted that the agency would create the data for preferred researchers if the request had fit the agenda of CSC's research unit. After an oral argument in 2001, a Judge had ordered the CSC to release the microdata and create a codebook for Yeager, with the government's arguments about the processing time being rejected. In 2003, Yeager filed for a Leave to Appeal to the Supreme Court of Canada, arguing that software "was and should be a 'record' under the ATI [Act]," and that software was "under the control" of the crown. Yeager also disputed the assertion of disclosure "unreasonably" interfering with government operations. The Leave to Appeal application was dismissed by the Supreme Court with no reasons cited (Yeager, 2006).

In his article on "going public," Piché (2011) ex-

plores the ability to access information in regard to prisons in Canada and the frequent lack of disclosure of government agencies. Piché focuses on "going public" with findings in research, in media, or by other means as a way of generating leverage for more information access or for social change. This entailed an analysis on how federal, provincial, and territorial governments control and manage information about penal infrastructure initiatives. Piché conducted a content search of 14 prison agency websites as a part of the first research phase. The second phase involved contacting agency officials by phone in attempt to confirm and disclose information regarding the construction of new prison facilities. He then filed FOI requests to provincial/territorial and federal agencies (such as CSC) on prison construction projects and initiatives as a part of the third research phase. Piché informed the government agencies that he was "going public" with the information he had received and that the agencies had one more chance to release the most updated information they had. CSC continuously refused to disclose information on construction initiatives, while provincial/territorial agencies disclosed information with some significant gaps. Piché noted these gaps in the information that the agencies sent him and in some cases he bluffed about the information he had received to retrieve more information from the agencies. However, CSC still failed to disclose. Piché continued to pressure CSC and government officials to release information on new federal penal infrastructure by bringing it into the public domain and making it a government transparency issue. The issue was raised on CBC's Power and Politics among several other news outlets and media sources as well as opposition parties in the government, bringing government transparency to the forefront of the discussion. Piché advised that researchers keep track of and record barriers that they come across when attempting to gain access to information/public records and strategies that helped to overcome them (Piché, 2011).

Researchers and authors throughout our sample have had similar experiences with the accessibility of certain public records in Canada. Regarding their research on penal infrastructure campaigns, Piché et al. (2017) describes how "front stage messages communicated to the public are

assembled by bureaucrats and marketing firms operating in the backstage of these punishment campaigns". Larsen & Piché (2009) had found secrecy to be a factor in their research on the KIHC, mentioning that the construction and process of deliberation was kept secret from the public until a 2006 press release, which excluded or limited public debate. Provincially, Parkes (2017) commented on the Manitoban government which had claimed that 2009 records on the use of segregation in women's and men's jails did not exist in any form that could be produced. Parkes appealed to the Manitoba Ombudsman, then the government subsequently asked Parkes to pay fees over \$5000 for an excel spreadsheet to be produced. In a similar example, Bingham & Sutton (2012) sent a complaint to the Information Commissioner of Canada for CSC's attempts in obstructing access to the authors' requested information relating to federally sentenced prisoners with mental health issues. Furthermore, the CSC's refusal to provide statistics and information regarding the treatment of federally sentenced women resulted in further violation of the United Nation's Convention on the Rights of Persons with Disabilities (Bingham & Sutton, 2012).

In the US, immigration detention operations under ICE were prevalent in the sample. Noferi & Koulish (2015) advise how tools such as ICE's RCA should be transparently and publicly validated to different populations. With their research on ICE detainees, Kerwin et al. (2015) recommend that data should consistently be made publicly available as often as possible in the form of proactive disclosures. They also note that non-governmental organizations, researchers, and scholars should be allowed to serve as a "force multiplier" who assist in informing policy development, operational strategies and oversight (Kerwin et al., 2015). In Australia, George (2002) noted the many areas of failure with the CCA and Victorian government in regard to the MWCC, including CCA's failures of disclosure that were mentioned above. With their research on prison mental health In-Reach teams in England, Brooker & Webster (2017) had not noted any compliance issues but had advised that the National Health Service should be properly monitoring its contracts and ensure the full implementation of the Care Programme Approach with national standards being met (Brooker & Webster,

2017). Government transparency and accountability are clearly international issues. FOI and ATI requests promote transparency and uncover secretive governmental habits that can be exposed in published articles and research reports. Researchers, academics, and authors can be agents in advocating for transparency and can push for governments and corporations to maintain accountability in their operations.

Concluding Remarks

More and more researchers refuse to see the rhetoric of prison and jail agencies as reliable data, opting instead to access insider prison and jail records that are more revealing and in our estimation more accurate and credible in many ways. Many of the works reviewed above show that use of FOI in prison and jail research can be revealing of criminal justice trends and prison and jail practices that would otherwise never be known, observed, or analyzed. This confirms our view that FOI is a powerful methodological tool in the social sciences as well as in journalism and in activism.

We were also able to show how researchers are using FOI in conjunction with other data sources and methods. FOI records can reveal a major part of a social and political process or practice, but they cannot reveal all angles or all dimensions of that phenomenon. It is important for social scientists using FOI in their research to continue to innovate as it regards research design, data collection, and data analysis. Using other data sources and methods in conjunction with FOI only amplifies the methodological power of FOI. FOI requests can provide access to valuable insights about prison and jail. However, there are barriers and limits (Luscombe & Walby, 2015; Luscombe et al., 2017; Walby & Luscombe, 2017, 2018, 2019a,b). We also think the array of research designs demonstrated here and the insightful findings of the publications summarized in this report show there is reason for optimism and continued use of FOI requests in prison and jail research. Moreover, making the results public in terms of sharing FOI disclosures is also important for journalists and researchers to consider.

Use of FOI requests in prison and jail studies

is clustered in Canada and the USA at this time. There was one study in Australia and two in the UK. This is interesting given that in a previous CAIJ report (Luscombe & Walby, 2020) we found FOI was used more frequently in UK policing research. Will there be more prison and jail research coming from Australia and other countries as FOI laws expand? Or are there other barriers to using FOI in social science research? In previous work (Walby & Luscombe, 2017), we suggested that association of FOI with journalism might be one reason social scientists are reluctant to engage in more investigative research. This sentiment might translate into skepticism with journal editors and journal reviewers. Another barrier may be the continued belief in the reliability and validity of interviews with prison and jail agents and criminal justice agents more broadly. The example of a comparative research design using FOI in prison and jail research is promising and insightful, we contend. It is significant that 13 of the studies we assessed combined their use of FOI requests with other methods of producing data. This is an important methodological trend. We encourage future methodological innovation, combining use of FOI with emerging computational methods, to make sure access to information regarding carceral spaces and practices is the greatest possible. As noted, some of the authors working in this space have also taken steps to mobilize their works in ways that shape prospects for social justice and the possibilities of a world without human caging. We encourage researchers to work with prisoner solidarity groups to enhance their requests but also maximize the impact of the research for families and friends of loved ones behind bars.

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