



**U.S. Department of Justice**

Office of Justice Programs

Office of the General Counsel

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*Washington, D.C. 20531*

Via Email: [amlani@epic.org](mailto:amlani@epic.org)

**OCT 31 2017**

Ms. Natasha Amlani  
Electronic Privacy Information Center  
1718 Connecticut Avenue, N.W., Suite 200  
Washington, D.C. 20009

Re: OJP FOIA No. 18-00050

Dear Ms. Amlani:

This letter acknowledges and responds to your Freedom of Information Act/Privacy Act request that you sent to the Department of Justice (DOJ). On October 26, 2017, the DOJ, Office of Information Policy (OIP) forwarded your request, dated June 15, 2016, and copies of two pages of material, to the Office of Justice Programs (OJP), Office of the General Counsel (OGC) for processing and responding directly to you. A copy of your request is attached for your convenience.

After a review of the two pages located by OIP, which originated within OJP, OGC has determined that these documents are appropriate for release in full and without excisions. This completes the processing of your request by OJP.

For your information, Congress excluded three categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. 552 (c). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not exist.

You may contact Dorothy Lee, Government Information Specialist, who processed your request at (202) 616-3267, as well as, our FOIA Public Liaison, Carolyn Kennedy, Deputy General Counsel, for any further assistance and to discuss any aspect of your request at:

Office of Justice Programs  
Office of the General Counsel  
810 7<sup>th</sup> St., N.W., Room 5400  
Washington, D.C. 20531  
Telephone: (202) 307-6235  
Email: [FOIAOJP@usdoj.gov](mailto:FOIAOJP@usdoj.gov)  
Fax Number: (202) 307-1419

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Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with my response to your request, you may administratively appeal by writing to the Director, Office of Information Policy, United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's eFOIA portal at <http://www.justice.gov/oip/efoia-portal.html>. Your appeal must be postmarked or transmitted electronically within 90 days from the date of this letter. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,



Dorothy A. Lee  
Government Information Specialist

Attachments

# FOIA Request

**ELECTRONIC PRIVACY INFORMATION CENTER**

1718 CONNECTICUT AVENUE NW, SUITE 200  
WASHINGTON, D.C. 20009  
202-483-1140  
FAX 202-483-1248

RECEIVED  
JUN 14 2016  
Office of Information Policy

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**TO: ATTORNEY GENERAL -  
DOJ**

**FROM: NATASHA AMLANI**

COMPANY:

Electronic Privacy Information Center

DATE:

6/15/16

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RECIPIENT'S FAX NUMBER:

(202) 514-1009

SENDER'S EMAIL:

amlani@epic.org

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RECIPIENT'S TELEPHONE NUMBER:

(202) 514-FOIA

SENDER'S TELEPHONE NUMBER:

(202) 483-1140

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TOTAL NO. OF PAGES INCLUDING COVER:

5

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**COMMENTS:  
EPIC FOIA Request**

the individual understanding of the requester.<sup>10</sup>

Conclusion

Thank you for your consideration of this request. As provided in 5 U.S.C. § 552(a)(6)(E)(ii)(I), I will anticipate your determination on our request within ten business days. For questions regarding this request, John Tran can be contacted at 202-483-1140 x123 or FOIA@epic.org.

Respectfully Submitted,

Natasha Amlani  
EPIC IPIOP Clerk

John Tran  
EPIC FOIA Counsel

cc:

Office of Justice Programs - Bureau of Justice Statistics  
Attorney General  
Office of Legal Policy  
U.S. Parole Commission

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<sup>10</sup> 28 CFR Part 35 § 16.10(k)(2)(iii)

# epic.org | ELECTRONIC PRIVACY INFORMATION CENTER

VIA FAX  
June 15, 2016

**Attorney General  
Laurie Day  
Chief, Initial Request Staff  
Office of Information Policy  
Department of Justice  
Suite 11050  
1425 New York Avenue, N.W.  
Washington, DC 20530-0001  
Fax: (202) 514-1009**

Dear FOIA Officer:

This letter constitutes a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and is submitted on behalf of the Electronic Privacy Information Center ("EPIC") to the Federal Communications Commission ("FCC").

EPIC seeks records relating to evidence-based practices in sentencing, including policies, guidelines, source codes, and validation studies.

## Documents Requested

1. All validation studies for risk assessment tools considered for use in sentencing, including but not limited to, COMPAS, LSI-R, and PCRA.
2. All documents pertaining to inquiries for the need of validation studies or general follow up regarding the predictive success of risk assessment tools.
3. All documents, including but not limited to, policies, guidelines, and memos pertaining to the use of evidence-based sentencing.
4. Purchase/sales contracts between risk-assessment tool companies, included but not limited to, LSI-R and the federal government.
5. Source codes for risk assessment tools used by the federal government in pre-trial, parole, and sentencing, from PCRA, COMPAS, LSI-R, and any other tools used.

EPIC FOIA Request

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Evidence-based Practices

## Background

Evidence-based assessments predict future behavior by analyzing statistical data. In the criminal justice system, risk-assessment algorithms use data about defendants including their criminal history (e.g. previous offenses, failure to appear in court, violent offenses, etc.) or socio-demographic characteristics (e.g. age, sex, employment status, drug history) to then predict the person's risk of recidivism or risk of failing to appear when on bail. Such predictions are based on average recidivism rates for the group of offenders that share the defendant's characteristics. The recidivism calculation has been used by judges in pretrial release hearings as well as parole and probationary hearings, and are increasingly being used as factor considered in determining sentencing. In addition, the Justice Department's National Institute of Corrections encourages the use of the assessments at every stage of the criminal justice process.<sup>1</sup> However, many have questioned the underlying data, the reliability of the outcomes as well as defendants' lack of opportunity to challenge the results.

In 2014, then U.S. Attorney General Eric Holder called for the U.S. Sentencing Commission to study the use of algorithms in courts, concerned that the scores may be a source of bias.<sup>2</sup> In addition, Jonathan Wroblewski, Director of the Office of Policy and Legislation in the the Justice Department sent a letter to the U.S. Sentencing Commission<sup>3</sup> asking them to study how data analysis was being used in sentencing, and to issue recommendations on how such analysis should be used. The Justice Department expressed reservations about components of sentencing reform legislation pending in Congress<sup>4</sup> that would base prison sentences on factors such as "education level, employment history, family circumstances and demographic information."

There are three main risk assessment tools that are used across the country. These are: Correctional Offender Management Profiling for Alternative Sanctions (COMPAS), Public Safety Assessment (PSA) and Level of Service Inventory Revised (LSI-R). COMPAS, created by the for-profit company Northpointe, assesses variables under five main areas: criminal involvement, relationships/lifestyles, personality/attitudes, family, and social exclusion. The LSI-R, developed by Canadian company Multi-Health Systems, also pulls information from a wide set of factors, ranging from criminal history to personality patterns. Using a narrower set of

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<sup>1</sup> Julia Angwin, Jeff Larson, Surya Mattu & Lauren Kirchner, *Machine Bias*, PROPUBLICA (May 23, 2016)

<https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing>;  
Evidence-Based Decision Making, NATIONAL INSTITUTE OF CORRECTIONS,  
<http://info.nicic.gov/ebdm/>

<sup>2</sup> Speech Presented at the National Association of Criminal Defense Lawyers 57th Annual Meeting, 27 FED. SENTENCING REPORTER 252 (April 2015),  
<http://fsr.ucpress.edu/content/27/4/252.full.pdf+html>.

<sup>3</sup> Letter from Jonathan Wroblewski, Director of the Office of Policy Legislation to Patti Saris, Chair of the Sentencing Commission (July 29 2014),  
<https://www.justice.gov/sites/default/files/criminal/legacy/2014/08/01/2014annual-letter-final-072814.pdf>.

<sup>4</sup> Recidivism Reduction and Public Safety Act, S.1675, 113th Cong. (2014); Public Safety Enhancement Act, H.R.2656, 113th Cong. (2013).

parameters, The Public Safety Assessment, developed by the Laura and John Arnold Foundation,<sup>5</sup> only considers variables that relate to a defendant's age and criminal history.

In addition, the Post-Conviction Risk Assessment Instrument (PCRA) is an evidence-based tool specific to the federal system. The PCRA uses information from an offender's past to identify both the risk of reoffending and the needs to be addressed to lessen that risk.<sup>6</sup> Two previously proposed pieces of legislation discussed adopting the PCRA in sentencing.

Because risk assessments are controversial yet are being increasingly relied upon, the non-public documents are needed to increase public understanding of how a defendant's risk is determined, and what steps need to be taken to ensure that the criminal justice system produces equitable outcomes. In addition, the documents are essential to give defendants the opportunity to rebut the risk assessments in their cases and provide additional information that may affect the sentence if necessary.

### Request for "News Media" Fee Status and Fee Waiver

EPIC is a "representative of the news media" for fee classification purposes.<sup>7</sup> Based on EPIC's status as a "news media" requester, EPIC is thus entitled to receive the requested records without being assessed search or review fees, and the documents are not in the commercial interest of EPIC.<sup>8</sup>

In addition, because disclosure of the validity of the evidence-based practices will "contribute significantly to public understanding of the operations or activities of the government," all duplication fees should be waived.<sup>9</sup> The subject of the request, evidence-based practices, has a direct and clear connection to identifiable operations and activities of the federal government, namely policy reform, sentencing of federal criminals, and criminal justice generally. Since the algorithms and results of validation studies, if any, have not been released to the public, the disclosure of the requested records will be meaningfully informative about government operations and activities regarding government use, recommendations, and results of evidence-based practices and thus will be "likely to contribute" to an increased public understanding of those operations and activities. Lastly, since EPIC is a news media requester, it has presumptively satisfied the requirement that the disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to

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<sup>5</sup> Press Release, More Than 20 Cities and States Adopt Risk Assessment Tools to Help Judges Decide Which Defendants to Detain Prior to Trial, LAURA AND JOHN ARNOLD FOUNDATION, June 26, 2015, <http://www.arnoldfoundation.org/more-than-20-cities-and-states-adopt-risk-assessment-tool-to-help-judges-decide-which-defendants-to-detain-prior-to-trial/>.

<sup>6</sup> OFFICE OF PROB. AND PRETRIAL SERV.S, ADMIN. OFFICE OF THE U.S. COURTS, AN OVERVIEW OF THE FEDERAL POST CONVICTION RISK ASSESSMENT (2011), <http://www.uscourts.gov/statistics-reports/publications/post-conviction-risk-assessment>.

<sup>7</sup> *EPIC v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003).

<sup>8</sup> 5 U.S.C. § 552(a)(4)(A)(ii)(II).

<sup>9</sup> § 552(a)(4)(A)(iii).



# Responsive Documents

CARL LEVIN  
MICHIGAN

RUSSELL SENATE OFFICE BUILDING  
WASHINGTON, DC 20510-2202  
(202) 224-6221

# United States Senate

WASHINGTON, DC 20510-2202

COMMITTEES:  
ARMED SERVICES  
GOVERNMENTAL AFFAIRS  
SMALL BUSINESS  
INTELLIGENCE

July 1, 2009

The Honorable Eric H. Holder, Attorney General  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Dear Attorney General Holder:

I am writing to express my support for the Michigan State Appellate Defender Office's request for funding for the Criminal Defense Review and Training on Evidence Based Sentencing in Problem-Solving Courts through the Recovery Act: Edward Byrne Memorial Competitive Grant Program.

The State Appellate Defender Office (SADO) identified inaccuracies in an algorithm-based sentencing instrument used by the Michigan circuit courts. Some of the known errors with the program, COMPAS, include factoring in arrests into determining future behavior. Arrests are a seemingly benign part of the formula; however the program does not tabulate for wrongful arrests, nor does it consider errors in reporting. Funding for this program would help SADO evaluate COMPAS by determining how judges are using the program, as well as train both trial and appellate defense attorneys in the usage of this program. In addition, SADO is collaborating with the manufacturer to improve the accuracy and effective use of this evidence-based instrument.

Problem-solving courts use evidence-based practice and risks/needs assessments instruments in order to match the sentencing to the crime. It is critical that we evaluate the accuracy of these instruments in order to uphold fairness in sentence within our judicial system. I trust you will give this application every consideration for funding. I would like to be informed as to the timetable for processing these applications and of the disposition of this application in particular. Please address your response to my Lansing regional office at the address and telephone number shown below.

Sincerely,



Carl Levin

CL/mh

## STATE OFFICES

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**U.S. Department of Justice**

**Office of Justice Programs**

*Office of Communications*

*Washington, D.C. 20531*

**JUL 20 2009**

The Honorable Carl Levin  
United States Senator  
124 West Allegan  
Suite 1810  
Lansing, MI 48933

Dear Senator Levin:

This responds to your letter, dated July 1, 2009, to Attorney General Holder, in support of the grant application submitted by the State Appellate Defender Office, to the Bureau of Justice Assistance (BJA) for funding under Category VII: Supporting Problem-Solving Courts of the Fiscal Year 2009 Edward Byrne Memorial Competitive Grant Program.

BJA has received and is currently reviewing the application. Please be assured that this application will be given careful and thorough consideration during the review process.

The grant application review process generally consists of the following four steps: application review, programmatic review, financial review, and award notification. Once the application period ends, applications are reviewed for registration information and completeness, and to ensure the applicant meets the basic eligibility requirements defined in the solicitation. For competitive grant programs, this step may also include a peer review of the application to assess the merits of an application or concept paper for federal funding. The results of this programmatic review are used along with other relevant factors to assess applications and make ultimate funding decisions. Typically awards are made, and applicants are notified, before the end of the fiscal year.

Thank you for your comments and for your interest in Department of Justice grant programs. If we may of further assistance, please contact this office at (202) 307-0703.

Sincerely,



Kim M. Lowy  
Director