



GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT ON DISABILITY SERVICES

**Andrew Reese, Director**  
One Independence Square  
250 E Street, SW, Washington, DC 20024  
202.730.1700 | [www.dds.dc.gov](http://www.dds.dc.gov)

March 30, 2023

*Via Electronic Mail Only to: [142872-32478371@requests.muckrock.com](mailto:142872-32478371@requests.muckrock.com)*

MuckRock News  
Attn: Todd Feathers  
263 Huntington Ave.  
Boston, MA 02115

**RE: FOIA Request for algorithmic tools**

Dear Mr. Feathers:

This letter serves as a final timely response to your Freedom of Information Act (FOIA) request. On March 15, 2022, through email, I received a copy of your FOIA request seeking:

Pursuant to the DC Freedom of Information Act, I request the following records regarding algorithmic tools used by your agency to guide decision making for the administration of Social Security Disability Insurance (SSDI), Supplemental Security Income (SSI), and/or supplemental state disability benefits:

For the purposes of this request, the term algorithmic tools refers to computer software or code that employs machine learning techniques (sometimes described as artificial intelligence or predictive analytics). It does not apply to other types of algorithms, such as Excel formulas. My request applies to all algorithmic tools developed in-house by your agency, purchased for use by your agency, or otherwise used by your agency since Jan. 1, 2018 to help administer Social Security Disability Insurance (SSDI), Supplemental Security Income (SSI), and/or supplemental state disability benefits. Such algorithmic tools include, but are not limited to, models for:

- Fraud detection
- Rate setting
- Benefit use prediction (e.g., models that predict for how long individuals will require benefits or what the total cost will be)
- Enrollment prediction (e.g., models that predict enrollment rates among the larger population)
- Case management (e.g., models that group similar cases together or determine caseloads for adjudicators)
- Investigations (e.g., models that prioritize complaints for investigation or flag claims for additional review)
- Advertising/outreach prioritization (e.g. models used to decide where or to which groups to advertise)

For each algorithmic tool your agency has used since Jan. 1, 2018, I request the following records:

- 1) Executive summaries, project overviews, or comparable records that describe the scope and purpose of the algorithmic tool.
- 2) Contracts, statements of work, successful RFP submissions and bid packets, or comparable records that describe the purchase and/or construction of the algorithmic tool.

3) User handbooks, guides, training manuals, agency policies, or comparable records that describe the tool's functions and its appropriate uses..

I ask that all fees be waived as I am a journalist and intend to use the requested records to publish articles in the public interest. In the event you choose to impose fees, I request a detailed breakdown of the fees, including the hourly wage of the lowest-paid employee capable of processing the request and an explanation justifying the employee hours required to complete the request.

Should you choose to reject this request or redact portions of it, I ask that you provide a detailed breakdown of the statutory exemptions and associated case law underlying your decision to withhold each/any portion from public review.

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 15 business days, as the statute requires.

**Disposition: Other Disposition D(1) – No Records; Denied in Part (D.C. Official Code § 2-534(a)(1))**

The Department on Disability Services (DDS) does not possess or retain any algorithmic tools to assist in the administration of Social Security Disability Insurance, Supplemental Security Income, and/or supplemental state disability benefits. Therefore, DDS possesses no records that would satisfy this FOIA request.

DDS through its Developmental Disabilities Administration does use a Level of Need (LON) questionnaire, screening tool summary report, and cutoff scores for other purposes, which are all published on the DDS website and are publicly available. The LON manual is also publicly available at:

<https://dds.dc.gov/publication/level-need-assessment-and-screening-tool-manual>

Please note that the LON scoring algorithm is copyright protected by Connecticut Department of Developmental Services as described on the last page of the screening and assessment tool. While the LON is in the public domain, the LON scoring algorithm is not publicly unavailable and is not a record maintained by DDS. Instead, the LON scoring algorithm is proprietary property of the Connecticut Department of Disability Services and/or the University of Connecticut Health Center. DDS has no authority to disclose the algorithm and its disclosure may render it obsolete, adversely affecting the owners/developers of the algorithm. The LON scoring algorithm is not subject to disclosure through the Freedom of Information Act pursuant to D.C. Official Code § 2-534(a)(1), which exempts the disclosure of, “[t]rade secrets and commercial or financial information obtained from outside the government, to the extent that disclosure would result in substantial harm to the competitive position of the person from whom the information was obtained.”

For your reference, the Connecticut Department of Disability Services has published its LON screening tool and manual at:

<https://portal.ct.gov/DDS/Family/LON/LON-Tool>

To the extent it could be construed as responsive to your request, case law supports non-disclosure of the LON scoring algorithm. In *Salazar v. District of Columbia*, 750 F. Supp. 2d 65, 67-69 (D.D.C. 2010), issued a memorandum opinion on November 12, 2010, admitting that its prior memorandum opinion had been issued in error. *See also Salazar v. District of Columbia*, 596 F. Supp. 2d 67, 69 (D.D.C. 2009). In the 2010 case, the court on reconsideration recognized that the InterQual clinical data at issue in *Salazar*, which is substantively akin to the algorithms referenced in your FOIA request, is proprietary, that the owner “does derive substantial income from the use of its InterQual Criteria,” and that “it is highly probable that making the Criteria publicly available without any restrictions would cause an economic loss.” The court concluded that the competing interests of the plaintiffs in disclosure and the owner in protecting its trade secrets should be balanced and, upon reconsideration, needed to be imposed by a protective order. The court in *Salazar* recognized that disclosure of the proprietary clinical data needed to be limited and narrowly proscribed by a court-ordered protective order. Accordingly, absent a protective order issued by a court during active litigation of a specific matter relating to a specific person or class of persons, pursuant to the FOIA exemption set forth in D.C. Official Code § 2-534(a)(1), and to the extent that your FOIA request includes the LON scoring algorithm, DDS is hereby denying your request for the LON scoring algorithm for the foregoing reasons.

Please note that although this disposition may not be considered a denial, if, for any reason, you interpret this to be a denial of your request, please know that, under D.C. Official Code § 2-537 and 1 DCMR 412, you have the right to appeal this letter to the Mayor or to the Superior Court of the District of Columbia. If you elect to appeal to the Mayor, your appeal must be in writing and contain “Freedom of Information Act Appeal” or “FOIA Appeal” in the subject line of the letter, as well as on the outside of the envelope. The appeal must include: (1) a copy of the original request; (2) a copy of any written denial; (3) a statement of the circumstances, reasons, and/or arguments advanced in support of disclosure; and (4) contact information including a daytime telephone number, and either an e-mail or U.S. mailing address (or both) at which you can be reached.

The appeal must be mailed to: Mayor’s Office of Legal Counsel, FOIA Appeal, 1350 Pennsylvania Avenue, N.W., Suite 407, Washington, D.C. 20004. Electronic versions of the same information can instead be e-mailed to [foia.appeals@dc.gov](mailto:foia.appeals@dc.gov). Further, a copy of all appeal materials must be forwarded to the FOIA Officer of the involved agency or to the agency head of that agency if there is no designated FOIA Officer. Failure to follow these



administrative steps may result in a delay in the processing and commencement of a response to your appeal to the Mayor.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Nalaka A. Senaratne', with a horizontal line underneath.

Nalaka A. Senaratne  
Assistant General Counsel