



## MEMORANDUM

**To:** The Honorable James L. Graham, United States District Judge

**From:** Schal K. Boucher, U.S. Probation Officer *SKB*

**Re:** Transcript Request in U.S. vs. The Scotts Miracle-Gro Company,  
Docket No. 2:12CR24

**Date:** April 22, 2015

This officer was provided a copy of an order, dated April 2, 2015, issued by the Court requesting the parties in the captioned case to advance any objection by April 20, 2015, to a request filed by attorneys with Robbins, Geller, Rudman, and Dowd, LLP, in San Diego, California. The attorneys are asking the Court to unseal a transcript from an in camera proceeding that transpired on July 13, 2012 in the above case. In summary, defense counsel for Scotts Miracle-Gro Company and the government attorney were directed by the Court to file a motion responding to the request to release the aforementioned transcript should either party have any objection.

This officer met with Chief Probation Officer John Dierna, Deputy Chief Probation Officer Phelps Jones, and Supervising Probation Officer Beth Harris on April 13, 2015. This purpose of the meeting was twofold: 1) consider the Court's above directive to the parties and the probation office's response concerning disclosure of the transcript; and 2) discuss the potential disclosure of the presentence report as well as supporting documentation including electronic communication and objection letters received during the presentence phase of the captioned case. With respect to the former question, the probation officer takes no position and defers to the discretion of the Court. As it relates to the latter issue, the probation office recommends that the presentence report and all information collected during the presentence investigation not be disclosed and remain confidential.

In preparing the response to the second issue, the probation office consulted Local Rule 32.1(k), Rule 32 of the Federal rules of Criminal Procedure, and the Guide to Judicial Policy, Volume 8, Part D. It is this officer's opinion the presentence report, and any documents and correspondences gathered during the presentence investigation that are still maintained in the probation office's file not be disclosed. The probation office has concerns that disclosing such information and documents may potentially compromise the presentence investigative process

and free flow of sentencing information customarily received by the probation office and in turn provided to the Court for purposes of sentencing. Thus, it is this officer's opinion that maintaining the confidentiality of the presentence report and investigative information, including the resolution of any objections during the presentence process, is essential to the ongoing free flow of information.

Should the Court have any questions, or require additional assistance, please do not hesitate to contact this officer.

cc: John S. Dierna, Chief Probation Officer  
Phelps L. Jones, Deputy Chief Probation Officer  
Beth A. Harris, Supervising Probation Officer



## MEMORANDUM

**To:** The Honorable Judge James L. Graham  
**Cc:** John Dierna, Chief U.S. Probation Officer  
**From:** Schal K. Boucher, U.S. Probation Officer  
**Re:** Request for Authorization for U.S. Probation Officer to Release Certain Records from *United States v. The Scotts Miracle-Gro Company*, Dkt.#2:12CR0024  
**Date:** January 12, 2015

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On November 28, 2012, the United States Probation Officer responded in writing to Robbins, Geller, Rudman, and Dowd, LLP. in San Diego, California after receiving a Freedom of Information Act request for records in the above referenced matter. This law firm was requesting records for assistance with their civil case against The Scotts Miracle Gro Company. In summary, this officer advised this firm that the probation office is unable to release any records from the file without the Court's permission.

On December 10, 2014, the United States Probation Office received a Request for Authorization for the Release of Certain Records from Dkt. #2:12CR0024, *United States v. The Scotts Miracle-Gro Company*.

This memorandum serves as information to the Court regarding what documents are still maintained in the probation file as well as includes a copy of the Southern District of Ohio's policy regarding electronic file records.

Per the policy, the electronic casefile contains the Information, Plea Agreement, Judgment and Commitment Entry for the above referenced case. Additionally, per the policy, the presentence report, recommendation, addenda, and objection letters are also maintained in the file. The policy only allows for criminal history documents to be maintained for all prior felony convictions and misdemeanor convictions of domestic violence which is not pertinent to this case. The electronic case file would ordinarily maintain a copy of a victim declaration letter; however, no victim suffered a monetary loss in this case. Financial Form 48 is ordinarily maintained in the case file for individual defendants. However, the defendant in this matter was a corporation.

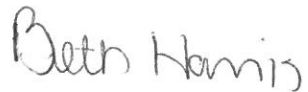
Should the Court require any additional assistance, please advise accordingly.

Respectfully,

Handwritten signature of Schal K. Boucher in cursive script.

Schal K. Boucher  
U.S. Probation Officer

Approved By:

Handwritten signature of Beth A. Harris in cursive script.

Beth A. Harris  
Supervising U.S. Probation Officer



## MEMORANDUM

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**Date:** January 29, 2013

**To:** All Staff

**From:** John S. Dierna Chief,  
U.S. Probation Officer  
Phelps L. Jones, Deputy Chief,  
U.S. Probation Officer

*John S. Dierna*  
John S. Dierna  
2013.02.04  
12:22:28 -05'00'

*Phelps L. Jones*  
Phelps Jones  
2013.02.04  
13:15:10 -05'00'

**Re:** PACTS Document Imaging Module (PDIM) Policy  
(Effective Date -September 20, 2012)  
(Revised Date- January 29, 2013)

### I. Purpose

On December 17, 2009, Assistant Director John Hughes issued a memorandum authorizing the disposal of paper records scanned into PACTS.

PDIM provides a national application for probation and pretrial services to store, catalogue, track, retrieve, and share key documents, in electronic format, required for case investigations, reports to the Court and/or other agencies, and offender supervision as electronic documents. The overall goal is to create an automated document retention database involving the use of less paper that will eventually evolve into a more efficient paperless electronic case filing system.

The United States Probation Office for the Southern District of Ohio will establish and use PDIM to store all official documents. **Except as described in the table below, scanned paper documents will not be retained for business purposes. The scanned record shall be the official record. At any time, the electronic documents may be viewed, shared, or printed as necessary to carry out any function.**

The practice of setting up paper case files will be discontinued. However, in accordance with the guidance granted by the Judicial Conference Committee on Court Administration and Case Management, the following forms, containing original signatures, will be both scanned, uploaded into PACTS into the electronic case file, as well as retained in written copy until further notice. These specific documents will be kept in an offender skeleton file that will be maintained by the

officer assigned to the case.

Form	Retention Time	Retention Location
Sex Offender Registration Acknowledgment Form	20 years	Offender Skeleton File w/ Officer
Other Documents Submitted under oath or w/in 18 U.S.C. 1001	20 years	Offender Skeleton File w/ Officer
MSR's	12 months	Offender Skeleton File w/ Officer
All Electronic Documents	20 years	District Network

## II. Scanning and Uploading Procedures and Quality Assurance

Probation officers are responsible for scanning and uploading documents into PACTS and ensuring quality control. Further, administrative staff and officers may work together to accomplish this task, as needed.

All documents must be in Adobe (.pdf) format or converted into an Adobe document before they can be uploaded into PACTS. "Static documents" or documents that cannot be modified will be scanned and uploaded into PACTS. Examples of these documents include monthly reports, arrest reports, and substance abuse monthly treatment reports.

"Living documents," such as Presentence Investigation Reports (PSI), will be scanned and uploaded into PACTS only after sentencing has occurred. For these types of documents, officers will continue to use local drives to store documents that are actively being worked on or could be modified. "Living documents" will be stored in Microsoft Word format on the network after the document is scanned and uploaded into PACTS. In supervision cases, the violation report and the Prob Form 12 will be uploaded into PACTS after the Prob Form 12 has been received by the probation officer, containing the judge's signature.

An element of quality assurance rests with the probation officer whose paper records are scanned and uploaded into the digital case file. It is the probation officer's responsibility to ensure that documents are being accurately scanned and uploaded into PACTS. To this end, there are quality assurance checks inherent in the scanning and uploading process. The employee that is scanning the document must ensure that the total number of pages are scanned and the images are legible. The employee that is uploading the document into PACTS reviews the image after it has been digitally uploaded to ensure that it is legible.

Another element of quality assurance occurs throughout the case plan preparation and review process. The probation officer's preparation and completion of the case plan, as well as the supervisor's review and approval responsibilities, require a thorough review of the case, to include chronological entries and documentation that has been collected since the last case plan. These case plan responsibilities serve as another assessment of quality assurance.

All documents received on any case (collaterals, PSI, or supervision) will be scanned and uploaded into PDIM. The electronic version will be the official document file. With the exception of the retention of the documents listed above, it will not be necessary to maintain paper case files.

### III. Documents to be stored in PDIM and Naming Conventions

After a document is scanned, it must be saved. Employees will save scanned documents to the network (IT staff will designate the appropriate folder to save scanned documents). Once the document is saved, it must be uploaded into PACTS. This is accomplished through the Document Imaging Functions in PACTS. The Document Upload tab must be selected. In the Document Upload screen, the following steps must be completed:

- 1) Select the appropriate docket number
- 2) Select the Document Type (the list below is the document types to be used in the Southern District of Ohio)
- 3) Enter document date which is always the date the document is uploaded
- 4) Add up to 20 characters under Notes field to provide more description of document
- 5) Select whether document is sealed or unsealed
- 6) Retrieve document from where it was saved by selecting browse and finding document
- 7) Select any employee that you want notified that the document was uploaded
- 8) Select save

The following non exhaustive list of documents are to be uploaded into PACTS. Attached to this policy is a memorandum that specifically relates to investigative documents and presentence staff responsibilities concerning district scanning procedures.

<u>Group</u>	<u>Document Type</u>	<u>Description</u>	
<u>Charging</u>	<u>Complaint</u>		
	<u>Indictment</u>		
	<u>Information</u>		
<u>Documents</u>	<u>Superseding Indictment</u>	<i>(use notes field to specify 2<sup>nd</sup>, 3<sup>rd</sup>, etc)</i>	
	<u>Superseding Information</u>	<i>(use notes field to specify 2<sup>nd</sup>, 3<sup>rd</sup>, etc)</i>	

<b><u>Investigations</u></b>	<u>Plea Agreement</u>		
	<u>Investigative Material</u>	<u>psychiatric/psychological info and substance abuse records</u> <i>(use notes field to specify)</i>	
	<u>Criminal History</u>	<u>Charging document, plea colloquy and judgements for all prior felony criminal convictions and misdemeanor convictions for domestic violence</u>	
	<u>Presentence Report</u>	<u>PSR, Revised PSR, Addendum to PSR Postsentence Report, Sentence Reduction Report</u> <i>(use notes field to specify)</i>	
	<u>Objections to PSR</u>	<u>Original Letter</u>	
	<u>Financial Investigation Material</u>	<u>Includes Net Worth Statement, Monthly Cash Flow, Declaration of Net Worth and Cash Flow, Authorization for Access to Financial Records, Net Worth Short Form, Request for Self Employment Records, Financial Worksheet - Lump Sum Payment Determination, Declaration of Victim Losses, Financial Information and Statements</u> <i>(use notes field to specify)</i>	
	<u>Misc Investigations</u>	<u>Use notes field to specify. Includes Collateral Responses from other districts.</u>	
	<b><u>Court Documents</u></b>	<u>J&amp;C Order</u>	<u>Includes Judgement &amp; Commitment Order, J&amp;C Amended, J&amp;C Remanded, J&amp;C Revocation</u> <i>(use notes field to specify)</i>
<u>Statement of Reasons</u>		<u>Statement of Reasons</u>	
<u>Misc Document</u>		<u>eDesignate, U.S. Sentencing Commission transmittal confirmation</u> <i>(use notes field to specify)</i>	
<b><u>Law Enforcement</u></b>		<u>Arrest Report</u>	<u>Includes New Arrest Report and Prior Arrest Report</u>
	<u>Notice to Law Enforcement</u>	<u>Includes Flash Notice, VCCLEA Notice of Address Change, DNA Results Notice, Sex Offender Notification, Notice to US Attorney (48H)</u> <i>(use notes field to specify)</i>	



**Supervision**

<u>ICE Correspondence</u>	<u>Includes Report for Deportation ICE Letter/Form</u>	
<u>BOP Correspondence/ Document</u>	<u>Includes BOP Progress Reports, Notice of Release and Arrival, CCC Notice of Release, Transmittal for E-Designate, Transmittal for Sentencing Commission, Prerelease Letter, Prerelease Planning Form</u> <i>(use notes field to specify)</i>	
<u>Misc Law Enforcement</u>	<i>(use notes field to specify)</i>	
<u>Probation MSR</u>	<u>Includes MSR (Prob 8), Notice Regarding MSR (Prob 36), pay stubs and any other documentation associated with monthly reporting.</u> <i>(use notes field to specify)</i>	
<u>Location Monitoring</u>	<u>Includes EM Enrollment Form, Activity Report, Schedule Changes, Agreement (Prob 61), Authorization to Release Information on Telephone Subscriber Service (Prob 62), Daily Activity Form (Prob 63), Participant Request for Leave (Prob 65), Notice of Denial of Earned Leave (Prob 66)</u> <i>(use notes field to specify)</i>	
<u>Passport Document</u>	<u>Includes Notice Regarding Passport, Notice Foreign Passport, Passport Receipt</u> <i>(use notes field to specify)</i>	
<u>Computer Monitoring Report</u>		
<u>Non-Compliance Report 12's</u>	<u>Includes Report on Offender Under Supervision (12A), Request to Modify Conditions (12B) with Waiver (49), Petition for Warrant or Summons (12C), Violation Report</u> <i>(use notes field to specify)</i>	
<u>Conditions of Probation and Supervised Release</u>	<u>Includes Prob 7A, Signed J&amp;C, Info for Felony/Misdemeanor Offenders, Consent Agreement, Financial Statement of Debtor</u> <i>(use notes field to specify)</i>	
<u>Payment Compliance Record</u>	<u>Record of Payments (Prob 38), Receipts, Community Service Record, Consent Agreement, Financial Statement of Debtor, Payment Agreement</u>	

	<u>Confidential Info Release Auth</u>	<u>Prob 74 (HIV/AIDS)</u>	
<b><u>Testing/ Treatment Services</u></b>	<u>Supervision Financial Form</u>	<u>Includes Customer Consent and Authorization for Access to Financial Records (11J), Customer Consent and Authorization for Access to Financial Records During Supervision (48I), Monthly Money Management Worksheet (48J)</u> <i>(use notes field to specify)</i>	
	<u>Transfer of Supervision</u>	<u>Includes Report to Transfer Case, Transfer Memo, Transfer Acceptance, and anything pertaining to temporary loan of the case file, Transfer of Jurisdiction (Form 22)</u> <i>(use notes field to specify)</i>	
	<u>Permission to Travel</u>	<u>Travel Permit</u>	
	<u>Case Closing Document</u>	<u>Termination Letter</u> <i>(use notes field to specify)</i>	
	<u>Misc Supervision</u>	<i>(use notes field to specify)</i>	
	<u>DAMH MTR</u>	<u>Monthly Treatment Record (Prob 46)</u>	
	<u>DA Testing/Treatment Document</u>	<u>Includes Drug, Alcohol, or Psych Evaluation, UA Test Results, Admission of Use Tox Referral Letter</u> <i>(use notes field to specify)</i>	
	<u>Contract Services Plan</u>	<u>Includes Prob 45, Polygraph Examination Referral</u>	
	<u>DAMH Release Form</u>	<u>Includes Prob 11 B, C, D, E, and I</u> <i>(use notes field to specify)</i>	
	<u>Misc Testing/Treatment</u>	<i>(use notes field to specify)</i>	
<b><u>Correspondence</u></b>	<u>Correspondence Received</u>	<u>Includes letters from family, letters from inmate</u> <i>(use notes field to specify)</i>	
<b><u>Official Parole Documents</u></b>	<u>Certificate (PAR, MR, MP, SPT etc)</u>		
	<u>Court Martial Order</u>		

	<u>Estimated Parole Guideline Worksheet</u>		
	<u>Evaluative Report</u>		
	<u>Administrative Procedures for Preliminary Hearing</u>	<u>F-2</u>	
	<u>Letter to/from Parole Commission</u>		
	<u>Notice of Actions</u>		
	<u>Notice of Release and Arrival</u>		
	<u>Parole Violator Warrant</u>		
	<u>Summary of Preliminary Interview</u>		
	<u>Treaty TSR Sentence &amp; Conditions</u>		
	<u>Parole Progress Report</u>	<u>F-3</u>	
	<u>Report on Committed Offender</u>	<u>A0235</u>	




## MEMORANDUM

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**Date:** September 6, 2012 (Revised January 28, 2013)

**To:** All Presentence Staff

**From:** Phelps L. Jones,  
Deputy Chief U.S. Probation Officer

 Phelps Jones  
2013.02.04 13:15:42  
-05'00'

**Re:** Presentence Documents and District Scanning Implementation (Policy)

The presentence supervisors and guidelines specialists met in August 2012 to identify the documents to batch scan and the documents to be held in the supervision hard file for later shredding as the district commences PACTS document imaging. This memorandum provides further clarification and policy concerning presentence documents and the presentence officers' role and responsibility as the district implements the document scanning initiative.

Presentence officers will be responsible for scanning presentence investigative documents for all pending cases, that is, completed investigations whereby the final presentence report has been transmitted to Court and the defendant is awaiting sentencing. Additionally, presentence officers will scan documents during their current and future investigations. However, the final presentence report along with any post sentencing ordered amendments, and all addenda will be scanned and uploaded after sentencing.

The objective will be that pertinent presentence documents will be scanned and uploaded to PACTS by the time presentence officers are finished with the presentence file, which should normally be within several days of sentencing. Furthermore, it is important to timely complete scanning of documents in cases involving defendants who have been directly placed on supervision, or will be released from confinement after serving short sentences. As a result of this decision, the scanning company will not batch scan documents in these presentence files. Files currently in I and I will be scanned by the scanning company.

Previously completed collateral investigations will be scanned in the future. Current and subsequent collateral investigation documents will be scanned and uploaded no later than the date when the investigation is completed, i.e., the date when the collateral response letter is sent to the requesting district. In addition to the collateral request and response letters, documents to be scanned and uploaded would be the same as the documents we will electronically maintain for

our own district's presentence investigations.

With the exception of documents that are prohibited from being maintained in the file, e.g., NCIC printouts, case agent reports, etc., presentence officers can scan and upload any other paper records secured during the presentence investigation. However, other than the list of documents below that are required to be scanned and uploaded in all cases, any additional documents to be scanned would be considered discretionary and the decision to scan would be left to the presentence officer. In other words, this is a judgment call. Consider the gathered documents and decide what reasonably might be needed in the future, or decide whether the records in the file are more expansive and additional detail is important beyond what was outlined in the presentence report. If the presentence report adequately summarizes the collected information, and nothing further could be gleaned from the record in the investigative file, then there would not necessarily be a need to scan and upload such document(s). Again, this is in the officer's discretion. The list below outlines what must be scanned and uploaded to PACTS in all cases.

**The following presentence documents are to be scanned into the electronic file:**

#### **Court Documents**

All charging instruments to include: Indictment and/or Information, and superseding charging documents, Plea Agreement, Statement of Facts, Judgment, Statement of Reasons

#### **Presentence Report, et al**

Presentence report, recommendation and all attachments, e.g., all addenda, objection letters, sentencing memoranda

#### **Criminal History**

Charging document, plea colloquy and judgments for all prior felony criminal convictions and misdemeanor convictions for domestic violence\*

#### **Presentence Investigation Documents**

Victim Declaration Letters, Mental Health Records, Substance Abuse Records, all Form 48s

#### **Post Sentencing Administrative Presentence Records**

Electronic submission report to Sentencing Commission, eDesignate BOP submission verification

**The following documents should not be scanned and can be shredded unless the officer decides there is a need to maintain any of the listed documents, or other records not listed above:**

Form 1, Form 14s, releases, \*all prior misdemeanor records, criminal history offense reports, records for physical condition, financial records, non-federal presentence reports, non-federal violation reports, Adult Parole Authority records, any other document gathered not required to be scanned.

Please contact your supervisor, guidelines specialist, or me if you have any questions.



ADMINISTRATIVE OFFICE OF THE  
UNITED STATES COURTS


HONORABLE JOHN D. BATES  
Director

WASHINGTON, D.C. 20544

December 16, 2014

MEMORANDUM

To: Chief Judges, United States District Courts

From: Judge John D. Bates 

RE: REQUESTS FOR ACCESS TO PRESENTENCE REPORTS **(INFORMATION)**

It has come to the attention of the Administrative Office that the Department of Justice (DOJ) Bureau of Justice Statistics (BJS), in cooperation with its Office of the Pardon Attorney (OPA), recently contacted some district chief judges requesting the disclosure of certain presentence reports. Specifically, authorization was requested to disclose reports that OPA now has to BJS and to the RAND Corporation in order to assist a study of the exercise of executive clemency.

Rule 32(c) of the Federal Rules of Criminal Procedure, 18 U.S.C. § 3552(a) and (d), 18 U.S.C. §§ 4205 & 4207, and 28 U.S.C. § 994(w) prescribe a limited number of persons and entities entitled to a copy of a presentence report. OPA is not among the entities authorized by statute to receive a copy of a presentence report, but sentencing courts and chief probation officers, with a sentencing judge's approval, routinely provide OPA with presentence reports to facilitate its consideration of clemency petitions. Third parties seeking access to information contained in presentence reports (such as the RAND Corporation here) must comply with case law, Judiciary and DOJ policy,<sup>1</sup> and local rules and standing orders that prescribe the manner for making a disclosure request. Courts generally deny such requests absent compelling circumstances. The sentencing judge determines whether further disclosure is warranted.

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<sup>1</sup>The face sheets on presentence reports from 2004 to the present remind recipients of this longstanding policy by noting that "[i]t is the policy of the federal Judiciary and the Department of Justice that further redisclosure of the presentence report is prohibited without the consent of the sentencing judge." See JCUS-MAR 04, p. 13 (adopting the revised model face sheet for presentence investigation reports to remind recipients of pre-existing policy); see also *Guide to Judiciary Policy*, Vol. 8, Part D, § 630(c).

If you have been contacted by a representative from the BJS, OPA, or the RAND Corporation regarding the clemency study and have questions regarding the appropriateness of disclosing a particular presentence report, you may want to consult with your chief probation officer. Alternatively, you may want to respond by advising that any request for the disclosure of a presentence report should be directed to the sentencing judge in conformity with existing Judiciary and DOJ policy. For further assistance you may contact Matthew Rowland, Chief, Probation and Pretrial Services Office, at (202) 502-1616.

cc: Judges, United States District Courts  
District Court Executives  
Clerks, United States District Courts  
Chief Probation Officers