

# **EXHIBIT 6**

**Internal Revenue Service**  
Appeals Office M/S 55203  
5045 E Butler Ave  
Fresno, CA 93727-5136

Date: **MAR 22 2013**

**MICHAEL GELTNER**  
105 NORTH VIRGINIA AVENUE, STE. 305  
FALLS CHURCH VA 22046

**Department of the Treasury**

**Person to Contact:**

Brett Ziegler  
Employee ID Number: 1000094813  
Tel: (559) 253-4828  
Fax: (559) 253-4890

**Refer Reply to:**

AP:W:A10:T4:FSC

**In Re:**

Freedom of Information Act

**Disclosure Case Number(s):**

F13025-0059

**Tax Period(s) Ended:**

Dear Michael Geltner,

This letter is in response to your appeals request dated February 27, 2013 for Freedom of Information Act (FOIA) information. According to your letter you are appealing the response from the Disclosure Specialist of your request for information dated January 21, 2013.

You requested the following documents:

- Contract documents for Contract or Order No. TOS09014B.
- Any modifications provided by DOT to the contract or order mentioned above.
- Any documentation reflecting the modification, novation, or assignment of the contract/order which shows how Sonenschein, Nath, & Rosenthal, LLP came to replace Thacher, Proffitt, & Wood, LLP as counsel to or advisor to DOT under the above mentioned contract/order number.

The Disclosure Specialist located 70 pages in response to your request and they released 58 pages in full and 12 pages in part. They withheld the 12 pages in part and notated the applicable FOIA exemption (b)(4) in their response dated February 22, 2013.

Your appeal stated that you believe that exemption (b)(4) should not apply as the documents sought should not contain either trade secrets or commercial or financial information which is confidential.

We have reviewed the response of the Disclosure Specialist and have determined that it is appropriate under the circumstances. The Appeals office responsibility concerning the appeal of FOIA cases is limited to a de novo review to ensure the documents withheld or redacted for the specific requester, and the documents requested fall within the FOIA exemption(s) cited. Toward that end,

we address the adequacy of the search and the appropriateness of the redactions and the exemptions cited. Our written notice is your determination that the redacted information was withheld properly through the FOIA exemption(s) cited. Our sole responsibility is to determine if the documents were properly withheld under the FOIA.

We sustain the assertion of FOIA exemption (b)(4) to withhold the proprietary information contained in the unedited ruling. FOIA exemption (b)(4) protects "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." 5 U.S.C. Section 552(b)(4). This exemption is intended to protect the interests of both the government as well as the submitter of the information and this exemption provides the government with an assurance the information provided will be reliable. Based on the reading of the determination as sanitized, there is clearly no trade secret involved, rather the focus in this case is on whether the information is commercial or financial, obtained from a person (entity) and is privileged or confidential.

When the information relates to a business, the courts have had little difficulty in considering that information as "commercial or financial." The Court of Appeals for the District of Columbia has firmly held that these terms should be given their "ordinary meanings", holding that records are commercial so long as the submitter has a "commercial interest" in them. *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1290 (D.C. Cir 1983) (citing *Washington Post Co. v. HHS*, 690 F.2d 252, 266 (D.C. Cir. 1982) and *Board of Trade v. Commodity Futures Trading Commission*, 627 F.2d 392, 403 (D.C. Cir 1980)). Similarly, the Court of Appeals for the Second Circuit has held that the term "commercial" includes anything "pertaining or relating to or dealing with commerce." *American Airlines, Inc. v. National Mediation Board*, 588 F.2d 863, 870 (2d Cir. 1978); see also *Hustead v. Norwood*, 529 F. Supp. 323, 326 (S.D. Fla. 1981) ("information relating to the employment and unemployment of workers constitutes commercial or financial information").

Under FOIA subsection (b)(4), the term "person" refers to a wide range of entities, including corporations, banks, state governments and so on. In regard to confidential information, when information is voluntarily provided, the government's interest protected by non-disclosure is that of ensuring the continued and full availability of the information and the requester's interest protected by non-disclosure is that of protecting information that for whatever reason, would customarily not be released to the public by the person/entity from whom it was obtained.

As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and the Office of Disclosure as a non-exclusive alternative to litigation. The Office of Appeals is not a part of this mediation process. Using OGIS services does not affect your right to pursue litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. If you disagree with the Appeals determination and wish to pursue mediation, you may contact OGIS in any of the following ways:

Office of Government Information Services  
National Archives and Records Administration  
Room 2510  
8601 Adelphi Road  
College Park, MD 20740-6001  
Email: [ogis@nara.gov](mailto:ogis@nara.gov)  
Telephone: 301-837-1996  
Facsimile: 301-837-0348  
Toll-free: 1-877-684-6448

The FOIA requires us to advise you of the judicial remedies granted in the Act. You may file a complaint in the United States District Court for the District in which you reside, or have your principal place of business, or in which the agency records are located, or in the District of Columbia.

Sincerely,



C. Ace  
Appeals Team Manager