

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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REPUBLICAN NATIONAL COMMITTEE		)
310 First Street, SE		)
Washington, DC 20003		)
	Plaintiff,	)
		)
v.		)
		)
INTERNAL REVENUE SERVICE		)
1111 Constitution Avenue NW		)
Washington, DC 20224,		)
	Defendant.	)
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Civil Case No. \_\_\_\_\_

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF’S  
MOTION FOR A PRELIMINARY AND PERMANENT INJUNCTION**

Plaintiff Republican National Committee (“Plaintiff” or “RNC”), an unincorporated political committee, moves for a preliminary and permanent injunction against Defendant Internal Revenue Service (“IRS” or “Defendant”) to enjoin it from withholding records sought under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. The requested records pertain to documents and correspondence dealing with the criteria that were used by the IRS or Department of Treasury personnel when reviewing applications for tax-exempt status under section 501(c)(4) of the Internal Revenue Code.

The FOIA deadline for processing requests and providing records was July 9, 2013, and the statutory extension period ran on July 23, 2013. The IRS presented Plaintiff with letters indicating, without specifics, that locating the requested documents was taking longer than expected. Not one of the four letters indicated a firm deadline for producing the records, leaving Plaintiff without any notion of when the IRS will comply with its request. Due to the continuing

and unexplained delay by the IRS, Plaintiff is suffering and will continue to suffer irreparable injury to its statutory right of access to records under FOIA absent preliminary injunctive relief of the sort requested here.

### **STATEMENT OF FACTS**

Plaintiff is an unincorporated political party committee located in Washington, DC, which operates as the national committee for the Republican political party and is interested in issues related to tax-exempt organizations. Plaintiff sought to review documents and correspondence related to criteria used for reviewing and approving 501(c)(4) tax-exempt organization applications to better understand the IRS's internal processes and to allow Plaintiff to serve its supporters and the general public more effectively. Waclawski Decl. ¶ 4.

The IRS's Exempt Organizations Division is responsible for ensuring compliance with federal income tax laws related to organizations exempt from income tax under the Internal Revenue Code, including reviewing Form 1024 applications for tax-exempt status. This includes the authority to request additional information from organizations to ensure compliance with the Internal Revenue Code, applicable regulations, and IRS standards and guidance. Waclawski Decl. ¶ 3.

Plaintiff sought to obtain documents and correspondence pertaining to the criteria and procedures used by the IRS personnel to review and approve the tax-exempt status of certain organizations applying for 501(c)(4) status under the Internal Revenue Code. Plaintiff, sent the IRS a FOIA request dated May 21, 2013 that sought:

Any and all documents and correspondence including emails, reports, transcripts or other documents dated between January 1, 2010 and May 20, 2013 containing the words "tea party," "patriot," and/or "9/12 project" or other words which pertain to the development of criteria used to identify and target 501(c)(4) tax-exempt organizations.

Any and all documents and correspondence dated between January 1, 2010 and May 20, 2013 pertaining to the screening of or heightened scrutiny to taxpayers based on donations to targeted 501(c)(4) tax-exempt organizations or other known political contributions and affiliations.

Any and all correspondence dated between January 1, 2010 and May 20, 2013 between Sarah Hall Ingram and IRS employees containing the words “tea party,” “patriot,” or “9/12 Project” and or any other correspondence pertaining to the targeting of 501(c)(4) organizations.

Any and all documents and correspondence from January 1, 2010 and May 20, 2013 between IRS employees and Celia Roady.

Any and all documents and correspondence from January 1, 2010 and May 20, 2013 between IRS employees and officials at the Treasury Department and the White House which include the terms “tea party,” “patriot,” “9/12 project,” and or other terms which pertain to the targeting of 501(c)(4) tax-exempt organizations.

Any and all correspondence from January 1, 2010 and May 20, 2013 between IRS employees at the Cincinnati Office and IRS Headquarters in Washington, DC which contain the words “tea party,” “patriot,” and or “9/12 project” and or which pertain to the targeting of certain 501(c)(4) organizations.

Any and all correspondence from January 1, 2010 and May 20, 2013 pertaining to the denials or omissions of top IRS officials – including Doug Shulman and Lois Lerner – in Congressional testimony with regards to reports of IRS targeting certain 501(c)(4) tax-exempt organizations.

Waclawski Decl. ¶ 5; Pl.’s Ex. 1.

The IRS responded with a letter dated June 28, 2013, claiming that it did not receive Plaintiff’s request letter until June 10, 2013 and that it would be unable to produce the requested documents by July 9, 2013. Further, in the same letter, the IRS claimed the ten-day extension of the twenty-day response period allowed by the FOIA, which would have resulted in a response deadline of July 23, 2013. Additionally, the letter acknowledged that it would be unable to meet the extended due date and requested an extension of time to August 23, 2013, at which point the IRS stated “we believe we can provide a final response.” Waclawski Decl. ¶ 7; Pl.’s Ex. 2.

On August 19, 2013, four days prior to the date the IRS estimated it would be able to provide a final response to Plaintiff's FOIA request, the IRS sent a second letter indicating that it was still working on Plaintiff's request and would need additional time to collect, process and review responsive documents. The letter stated, "I will contact you by October 4, 2013, if I am still unable to complete your request." The letter did not provide a date by which the IRS would produce records responsive to Plaintiff's request but merely gave a date indicating when the IRS would notify Plaintiff if it was unable to complete Plaintiff's request. Waclawski Decl. ¶ 8; Pl.'s Ex. 3.

On October 24, 2013, Plaintiff mailed a letter to the IRS stating the IRS' failure to contact Plaintiff by October 4, 2013. Plaintiff expressed the IRS's failure to honor its own timeline and once again renewed Plaintiff's original FOIA request. Waclawski Decl. ¶ 9; Pl.'s Ex. 4. Later in October, Plaintiff received the IRS' letter dated October 22, 2013, eighteen days after the IRS stated it would contact Plaintiff. The letter stated that the IRS agent had been furloughed from October 1, 2013 through October 16, 2013 and was resuming work on Plaintiff's request and that it would contact Plaintiff by January 17, 2014 "if I am still unable to complete your request." The letter did not provide a date by which the IRS would produce records responsive to Plaintiff's request but merely gave a date indicating when the IRS would notify Plaintiff if it was unable to complete Plaintiff's request. Waclawski Decl. ¶ 10; Pl.'s Ex. 5.

Plaintiff then received a letter from the IRS dated January 16, 2014 stating that it was still working on Plaintiff's request and need additional time to collect, process and review such responsive documents. The letter stated "I will contact you by April 18, 2014, if I am still unable to complete your request." The letter did not provide a date by which the IRS would produce records responsive to Plaintiff's request but merely gave a date indicating when the IRS would

notify Plaintiff if it was unable to complete Plaintiff's request. Waclawski Decl. ¶ 11; Pl.'s Ex. 6.

Plaintiff has come to learn that the IRS has produced to other organizations documents that fall into some or all of the requested categories of documents by Plaintiff. Anderson Decl. ¶ 2. Plaintiff continues to be perplexed by the undue delay in producing the requested documents, especially given that documents of the very same nature as those that Plaintiff requested have been already produced to other requesting entities. Release of the requested documents is in the public interest, as the public has a strong interest in knowing how the IRS, as an agency of the United States government, interprets and enforces the tax laws. Waclawski Decl. ¶ 3. The IRS's continued refusal to respond to Plaintiff's request and produce responsive documents undermines the public interest in government transparency and increases public fear of corruption and unaccountable government action.

### **ARGUMENT**

For the following reasons, Plaintiff is entitled to a preliminary injunction requiring production of the documents responsive to its FOIA request.

#### **A. The Freedom of Information Act's Requirements**

The Freedom of Information Act, 5 U.S.C. § 552, creates a presumption of access to records of the federal government except to the extent that a federal agency can establish a right to withhold documents under one of nine exemptions. FOIA exists "to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold governors accountable to the governed." *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978). 5 U.S.C. § 552(a)(3) requires agencies to make records available "promptly" when the agency has received a proper request that "reasonably describes such records."

An agency must respond to FOIA requests within twenty business days of the receipt of the request. *Id.* § 552(a)(6)(A). An agency may extend the twenty-day deadline by an additional ten business days if “unusual circumstances” exist. *Id.* § 552(a)(6)(B). After the twenty-day and additional ten-day deadlines have passed with no production of records, a requester is deemed to have exhausted administrative remedies with respect to the request and may seek an injunction in a district court of the United States to compel disclosure of the withheld records. *Id.* §§ 552(a)(6)(C)(i); 552(a)(4)(B).

B. Plaintiff Is Entitled to a Preliminary Injunction

Because the IRS has failed to meet the applicable statutory deadlines for FOIA requests, Plaintiff has exhausted its administrative remedies and may seek judicial relief from this Court through a preliminary injunction. *Id.* Preliminary injunctive relief is appropriate in FOIA cases. *See Elec. Privacy Info. Center v. Dep’t of Justice*, 416 F. Supp. 2d 30, 35 (D.D.C. 2010) (summarizing the use of preliminary injunctions in FOIA cases). The “FOIA does not limit a Court’s equitable powers.” *Landmark Legal Found. v. EPA*, 910 F. Supp. 2d 270, 277 (D.D.C. 2012).

When considering a motion for preliminary injunctive relief, the court must consider “whether: (1) there is a substantial likelihood plaintiff will succeed on the merits; (2) plaintiff will be irreparably injured if an injunction is not granted; (3) an injunction will substantially injure the other party; and (4) the public interest will be furthered by the injunction.” *Serono Labs., Inc. v. Shalala*, 158 F.3d 1313, 1317–18 (D.C. Cir. 1998).

1. Plaintiff will likely succeed on the merits

Plaintiff most certainly has a right of access to the requested records. Many of the records responsive to Plaintiff’s request should be available for public inspection and copying

under 5 U.S.C. § 552(a)(2)(D), which requires agencies to make available “copies of all records, regardless of form or format, which have been released to any person under paragraph (3) and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records.” Plaintiff is aware of similar requests for substantially the same records that have been produced by the IRS, yet the IRS has yet to deliver any requested documents to Plaintiff. Anderson Decl. ¶ 3.

But even if 5 U.S.C. § 552(a)(2) did not apply, Plaintiff is entitled to access the requested records under 5 U.S.C. § 552(a)(3). Section 552(b) contains nine exemptions to the disclosure requirements of FOIA. None of these exemptions would apply to the categories of documents requested by Plaintiff, and even if some portion of the requested documents fell under an exemption, Defendant is required to disclose any reasonably segregable, non-exempt portions of the requested records. 5 U.S.C. § 552(b); 26 C.F.R. § 601.702(c)(9)(iv)(B). Even in the unlikely circumstance that the IRS determines that an entire record is exempt from disclosure, Plaintiff is entitled to a *Vaughn* index of the documents withheld. *See Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973); *Founding Church of Scientology v. Bell*, 603 F.2d 945, 959 (D.C. Cir. 1979); *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987).

As of the date of filing this motion, Plaintiff’s request has been pending for two hundred twenty-six business days, and one hundred eighty-three business days have elapsed since the extended statutory deadline for response of July 23, 2013. Plaintiff’s request is reasonably narrow, does not include classified documents, and does not include documents that require substantial judgment as to whether they meet the exemptions in 5 U.S.C. § 552(b). Even if Plaintiff’s request were broad or complex:

courts often find that **one to two months is sufficient time for an agency to process broad FOIA requests** that may involve classified or exempt material. *See, e.g., ACLU*

[*v. Dep't of Defense*], 339 F. Supp. 2d [501,] 504–05 (despite the fact that national security issues were raised by the FOIA request at issue, ordering production of all responsive documents within one month); *Judicial Watch, Inc. v. Dep't of Energy*, 191 F. Supp. 2d 138, 140–41 (D.D.C. 2002) (ordering agencies to process over 6000 pages of material within 60 days); *NRDC v. Dep't of Energy*, 191 F. Supp. 2d 41, 43 (D.D.C. 2002) (ordering the “vast majority” of the processing of 7500 pages to be completed within 32 days).

*Elec. Privacy Info. Center*, 416 F. Supp. 2d at 40 (emphasis added). The IRS has well exceeded the deadline for producing documents to which Plaintiff is unquestionably entitled.

## 2. Plaintiff will be irreparably injured

Delay in providing access to records constitutes irreparable injury to Plaintiff. Public knowledge of the actions and operations of government is fundamental to a democracy, and “*timely* public awareness” is “a necessity.” *Id.* (emphasis in original). Delay in disclosure constitutes a “cognizable harm.” *See id.* at 40–41.

## 3. Minimal burden on Defendant

Defendant IRS cannot claim an undue burden, given that a preliminary injunction would simply require it to comply with its pre-existing statutory duties under FOIA long after the deadline for completing such duties has passed. The IRS has failed to satisfy both the regular and extended statutory deadlines for responding to Plaintiff’s FOIA request and producing responsive records.

The extended statutory deadline was July 23, 2013, well over one month prior to the filing of this motion. When the IRS provided notice to Plaintiff that the IRS anticipated providing a response by August 23, 2013, Plaintiff did not exercise its statutory right to seek judicial review at that time, deciding to accept the IRS’s assurance that it would provide a final response by August 23. Pl.’s Ex. 2. The IRS’s self-imposed final response deadline of August 23 passed as did the IRS’s three subsequent requests for additional response time. No additional



self-imposed deadline has been given by the IRS to Plaintiff for the disclosure of any responsive records. Instead, the IRS provided on more than one occasion, dates by which it would notify Plaintiff if unable to complete its request. Pl.'s Ex. 3, 5, 6.

Plaintiff has provided ample time for the IRS to respond to its FOIA request, and any burden placed upon the IRS through the issuance of a preliminary injunction would be significantly less than the burden placed upon the IRS by Congress through FOIA's requirements, which required disclosure of responsive records over two hundred days prior to the filing of this motion.

4. A preliminary injunction serves the public interest

The public interest would be served through the issuance of a preliminary injunction in this action because the public has an interest in "an agency's faithful adherence to its statutory mandate" and because the public interest is furthered by disclosure of documents through FOIA that provide the public information on "an agency's performance of its statutory duties." *Elec. Privacy Info. Center*, 416 F. Supp. 2d at 42 (quoting *Jacksonville Port Auth. v. Adams*, 556 F.2d 52, 59 (D.C. Cir. 1977) and *Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 773 (1989)). The public interest is served when government agencies comply with the statutory duties placed upon them by Congress, and the public interest is harmed when government agencies fail to meet those duties, as the IRS has in processing Plaintiff's FOIA request.

**WAIVER OF BOND REQUIREMENT UNDER RULE 65(c)**

Federal Rule of Civil Procedure 65(c) provides that no preliminary injunction shall issue without the giving of security by the application in an amount determined by the court. "[I]t is within the Court's discretion to waive Rule 65(c)'s security requirement where it finds such a

waiver to be appropriate in the circumstances.” *Cobell v. Norton*, 225 F.R.D. 41, 50 n.4 (D.D.C. 2004). Because the IRS will not be harmed through a court order requiring it to perform a duty already required by statute, a bond would not be appropriate in this case. Accordingly, Plaintiff respectfully requests that the court waive the bond requirement in the event the requested preliminary injunction is granted.

### CONCLUSION

Plaintiff has satisfied the requirements for obtaining preliminary injunctive relief. Given the vast amount of time that has already elapsed since the IRS received Plaintiff’s FOIA request as well as the extended statutory deadline, Plaintiff respectfully asks the Court to enter an order granting Plaintiff’s motion for a preliminary and permanent injunction and requiring production of responsive documents within ten business days of the entry of the order.

For the foregoing reasons, Plaintiff’s motion for a preliminary and permanent injunction should be granted. Plaintiff also asks that that this Court grant any other relief that may be appropriate, including attorney’s fees and costs under applicable provisions of law.

Dated: April 15, 2014.

Respectfully submitted,

By:     /s/Jason Torchinsky    

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 15, 2014, copies of the foregoing Plaintiff's Motion for a Preliminary and Permanent Injunction were served by certified mail on the following parties:

Internal Revenue Service  
1111 Constitution Avenue NW  
Washington, DC 20224

And

Attorney General Eric H. Holder, Jr.  
U.S. Department of Justice  
950 Pennsylvania Ave. NW  
Washington, DC 20530

And

Ronald C. Machen, Jr.  
U.S. Attorney for the District of Columbia  
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/s/ Jason Torchinsky  
JASON TORCHINSKY