

**FILED**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

2014 NOV 17 P 4: 32

SOLERS, INC.  
950 N. Glebe Road, Suite 1100  
Arlington, Virginia 22203

Plaintiff,

v.

INTERNAL REVENUE SERVICE  
1111 Constitution Avenue, NW  
Washington, DC 20224

Defendant.

CLERK US DISTRICT COURT  
ALEXANDRIA, VIRGINIA

Case No. 1:14 CV 1548  
LMB/JFA

**COMPLAINT**

Plaintiff Solers, Inc. (“Solers”), by counsel, brings this action against Defendant Internal Revenue Service (the “IRS”) for violation of the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”):

**PARTIES**

1. Solers is an information technology solutions provider for the federal and commercial sectors. Solers is a Virginia corporation that maintains a principal place of business in Arlington, Virginia.

2. The IRS is an agency of the United States Government and is headquartered at 1111 Constitution Avenue, NW, Washington, DC 20224. The IRS has possession, custody and control of records that should be released to Solers pursuant to a valid FOIA request.

**JURISDICTION AND VENUE**

3. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

4. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e).

**FACTUAL BACKGROUND**

5. On May 7, 2014, Solers issued a FOIA request to the IRS requesting all documents relating to its tax liabilities and potential assessed penalties (“Solers FOIA Request”), Request Case Number F14135-0010.

6. In the Solers FOIA Request, Solers sought all documents in the IRS’s administrative file associated with Solers for the taxable year 2010 to include:

a. Documents, notes and IRS correspondence related to the Form 1120 audit conducted by the IRS of Solers;

b. Documents, notes and internal IRS correspondence related to the Notices of Proposed Adjustment and associated Explanation of Items;

c. Documents, notes and internal IRS correspondence related to the Protest of Proposed Adjustment;

d. Correspondence related to Solers;

e. Documents, notes and internal IRS correspondence related to the quality control that was performed on the Notice of Proposed Adjustment and Explanation of Items; and

f. Documents, notes and internal IRS correspondence related to guidance received by IRS agents regarding intentional disregard penalties.

7. The IRS requested additional time to respond to the Solers FOIA Request due to the volume of the records it was required to review.

8. On June 30, 2014, Solers received a response letter from the IRS dated June 25, 2014.

9. In its response to the Solers FOIA Request, the IRS stated that it was withholding certain documents because release of (1) thirty-two pages in part and twenty-six pages in full purportedly would impair the IRS assessment, collection and enforcement proceedings and because the information would reveal law enforcement techniques, procedures and guidelines, (2) five pages in full and two pages in part would purportedly intrude upon the deliberative process privilege, the attorney work-product privilege and the attorney-client privilege, and (3) one document in part would be an unwarranted invasion of personal privacy (the “Determination”).

10. On July 16, 2014, Solers timely appealed the Determination to the IRS Appeals Officer (the “Solers Appeal”).

11. Solers appealed the Determination on the following grounds:

a. The Determination by the IRS broadly and unjustifiably applied FOIA Exemption 7(A), which exempts release of records compiled for law enforcement purposes only to the extent that production of such records could interfere with enforcement proceedings;

b. The Determination failed to provide the required specificity to support the IRS’ contention that disclosure of the withheld documents would impair an ongoing or imminent tax administration function or have an adverse impact on the IRS’s ability to administer the tax laws; and

c. The IRS’s response failed to provide either responsive internal IRS correspondence or a declaration that no responsive documents were found.

12. The Solers Appeal was rejected by the IRS.

13. The IRS’s response denying Solers’ appeal was improper because it failed to specify how disclosure of the withheld documents would interfere with administrative

proceedings, or even the nature of the administrative proceedings, making an exemption claim pursuant to 5 U.S.C. § 552(b)(7)(A), 5 U.S.C. § 552(b)(3) and IRC § 6103(e)(7) improper.

Further, the IRS failed to provide a rational nexus between the creation of the withheld documents and the reasonable expectation that such documents were created for law enforcement purposes.

14. The IRS's decision to deny Solers' appeal was improper because the IRS' reliance on 5 U.S.C. § 552(b)(5) was overbroad, requiring a blanket exemption for any internal correspondence within the agency.

15. The IRS's decision to deny Solers' appeal was improper because the IRS' reliance on 5 U.S.C. § 552(b)(6) was misplaced given that the IRS could not specify the nature of the alleged invasion of personal privacy.

16. Because Solers' appeal of the Determination was denied, Solers has exhausted all administrative remedies with respect to the Solers FOIA Request.

**COUNT 1 – Violation of FOIA, 5 U.S.C. § 552**

17. Solers incorporates paragraphs 1 through 16 as if fully stated herein.

18. The IRS is unlawfully withholding records requested by Solers pursuant to 5 U.S.C. § 552.

19. The exemptions cited by the IRS, specifically, 5 U.S.C. § 552 (b)(3), (b)(5), (b)(6), (b)(7)(A), and IRC § 6103(b)(2) and (E)(7), are improper.

20. Solers is being irreparably harmed by reason of the IRS' withholding of the documents based upon the IRS' claim that the documents are exempt from disclosure, without providing sufficient detail regarding the exemptions upon which the IRS purportedly relies.

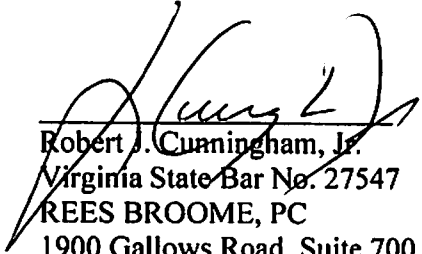
21. Solers will continue to be irreparably harmed unless the IRS is compelled to conform its conduct to the requirements of the law.

22. Solers is entitled to the documents withheld by the IRS to the extent that such documents are not subject to a proper exemption from disclosure pursuant to 5 U.S.C. § 552 (b)(3), (b)(5), (b)(6), (b)(7)(A), and IRC § 6103(b)(2) and (E)(7).

Wherefore Solers, Inc. requests that this Court order the IRS to produce a *Vaughn* index of any documents withheld pursuant to an exemption, require disclosure of any redacted materials to the extent that those materials are not subject to a proper exemption under 5 U.S.C. § 552, award it attorneys' fees pursuant to 5 U.S.C. § 552(a)(4)(E) and grant all other relief deemed appropriate.

Solers, Inc.  
By Counsel

Dated: November 9, 2014



Robert J. Cunningham, Jr.  
Virginia State Bar No. 27547  
REES BROOME, PC  
1900 Gallows Road, Suite 700  
Tysons Corner, VA 22182  
Tel: (703) 790-1911  
Fax: (703) 847-0463  
rcunningham@reesbroome.com  
*Counsel for Solers, Inc.*

Mariam W. Tadros  
Virginia State Bar No. 75502  
REES BROOME, PC  
1900 Gallows Road, Suite 700  
Tysons Corner, VA 22182  
Tel: (703) 790-1911  
Fax: (703) 847-0463  
mtadros@reesbroome.com  
*Counsel for Solers, Inc.*

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