

Ronson J. Shamoun
California Bar No. 226178
Allison D.H. Soares
California Bar No. 259973
RJS Law Firm
303 A Street, Ste. 400
San Diego, CA 92101
Telephone: (619) 595-1655
Fax: (619) 595-1658
Email: RShamoun@RJSLawfirm.com

Attorneys for the Plaintiff
Smart-Tek Services Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SMART-TEK SERVICES INC.,

Plaintiff.

v.

UNITED STATES INTERNAL
REVENUE SERVICE,

Defendant.

Case No. '15CV449 L NLS

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

INTRODUCTION

1. Plaintiff Smart-Tek Services Inc. brings this action for declaratory and injunctive relief under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552.

2. Plaintiff seeks to compel disclosure of agency records that are being unlawfully withheld by the United States Internal Revenue Service.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action and personal jurisdiction over the parties under 5 U.S.C. § 552(a)(4)(B) and 5 U.S.C. §

1 552(a)(6)(C)(i). This Court also has jurisdiction over this action under 28 U.S.C. §
2 1331.

3 4. Venue is proper in this Court under 5 U.S.C. § 552(a)(4)(B).
4

5 **PARTIES**

6 5. Plaintiff Smart-Tek Services Inc. is a company incorporated under the
7 laws of Nevada, but with its principal place at 11838 Bernardo Plaza Ct Ste 240,
8 San Diego, CA 92128.

9 6. Defendant United States Internal Revenue Service is an agency within
10 the meaning of 5 U.S.C. § 552(f)(1) and is subject to the requirements of FOIA.
11 Defendant has possession, custody, and control of records to which Plaintiff seeks
12 access.
13

14 **BACKGROUND**

15 7. The FOIA requires federal government agencies to release requested
16 agency records to the public unless a statutory exemption applies. 5 U.S.C. §
17 552(a)(3)(A).

18 8. An agency has 20 working days after receipt of a FOIA request in
19 which to determine whether to comply with the request. 5 U.S.C. § 552(a)(6)(A)(i).

20 9. If the federal agency fails to respond to the FOIA request, a district
21 court may order the production of any agency records improperly withheld from
22 the complainant. 5 U.S.C. § 552(a)(4)(B).

23 ///

24 ///

25 ///

26 **STATEMENT OF FACTS**

1 10. On May 12, 2014, Plaintiff sent a written FOIA request to the
2 Defendant United States Internal Revenue Service for agency records.

3 11. On June 6, 2014, Defendant sent Plaintiff a response acknowledging
4 receipt of the FOIA request but failed to make any determination about the request.

5 12. Plaintiff attempted to work in good faith with Defendant by permitting
6 extensions of time to provide the requested documentation.

7 13. However, Plaintiff still had not received any of the requested
8 documents more than seven months after making the request.

9 14. On January 8, 2015, Plaintiff sent a certified letter to the disclosure
10 specialist handling the request, informing her that if Plaintiff did not receive the
11 requested documents by January 31, 2015, it would be forced to bring this action.

12 15. To date, Defendant has provided no documentation responsive to the
13 request.

14 16. Plaintiff has exhausted its administrative remedies under 5 U.S.C. §
15 552(a)(6)(C)(i).

16
17 **COUNT 1**

18 **VIOLATION OF THE FOIA: FAILURE TO COMPLY WITH**
19 **STATUTORY DEADLINES**

20 17. Plaintiff asserts and incorporates by reference the above paragraphs.

21 18. Plaintiff properly requested records within Defendant's control and
22 possession under the FOIA.

23 19. Defendant wrongfully withheld the requested records in violation of
24 the FOIA.

25 20. Defendant's response to Plaintiff's FOIA request violated the
26 statutory deadlines imposed by the FOIA, including the deadlines set forth in 5
27 U.S.C. § 552(a)(6)(A).

1 21. Plaintiff is being irreparably harmed by reason for Defendant's
2 unlawful withholding of records responsive to Plaintiff's FOIA request, and
3 Plaintiff will continue to be irreparably harmed unless Defendant is compelled to
4 conform its conduct to the requirements of the law.

5
6 **RELIEF**

7 Plaintiff prays that this court:

- 8 A. Declare Defendant's failure to disclose the requested records unlawful;
9 B. Order Defendant to produce, by a certain date, any and all non-exempt
10 records responsive to Plaintiff's FOIA request and a *Vaughn* index of any
11 responsible records withheld under claim of exemption;
12 C. Enjoin Defendant from continuing to withhold any and all non-exempt
13 records responsive to Plaintiff's FOIA request;
14 D. Award Plaintiff its costs and reasonable attorneys' fees incurred in this
15 action under 5 U.S.C. § 552(a)(4)(E); and
16 E. Grant such other relief as the court may deem just and proper.

17
18
19
20 Dated: February 27, 2015

Respectfully submitted.

21 s/ Ronson Shamoun
22 Ronson J. Shamoun
23 Attorney for Plaintiff
24 rshamoun@rjlawfirm.com
25
26
27