

# FAX

## FROM

CONFIDENTIAL LOEVY  
LOEVY & LOEVY ATTORNEYS AT LAW  
311 N Aberdeen St, Chicago 3rd Floor  
CHICAGO  
Illinois 60607

**Phone** (312) 243-5902  
**Fax Number** (312) 243-5902

## TO

**Phone**  
**Fax Number** +18778079215

**DATE** 01/19/2021

## NOTE

FOIA Request on behalf of Alliance Member Services.

# LOEVY & LOEVY

311 N. Aberdeen St., 3rd Floor, Chicago, Illinois 60607

January 14, 2021

Dear Disclosure Manager:

This is a request under the Freedom of Information Act/Privacy Act. I am an attorney representing Alliance Member Services ("AMS"). I submit this FOIA request on behalf of AMS. At all times relevant to the processing of this request, AMS should be considered as the primary FOIA requester.

As shown in the March 20, 2012 letter from the National Association of Insurance Commissioners ("NAIC") to then-Representative Edward R. Royce, NAIC stated that they are "not required to file a Form 990 pursuant to an Internal Revenue Service (IRS) ruling." In that same letter, NAIC offered to provide then-Rep. Royce relevant documentation. NAIC indicated that IRS approved the exemption initially in 1955, then reaffirmed this exemption upon NAIC's incorporation and receipt of the tax-exempt status in 1999. The March 20, 2012 letter is attached for your reference.

Pursuant to Freedom of Information Act, 5 U.S.C. § 552, AMS requests the following records:

1. National Association of Insurance Commissioners ("NAIC") seeking Exemption from the IRS Form 990 filing requirements. These can be applications (i.e., Form 1023, 1023-EZ, Form 1024), memos, letters, or other forms of plea;
2. IRS's final determination letter (with attachments) in response to NAIC's request for exemption from the IRS Form 990 filing requirements;
3. NAIC's IRS Form 990, Form 990-EZ, Form 990-PF, Form 990-T, and Form 5227 submissions for the most recent two years;
4. All correspondence between IRS Commissioners/employees and NAIC regarding the request for Exemption stated in #1; and
5. All correspondence between Congressman Edward R. Royce and IRS regarding IRS issuing NAIC an Exemption from the IRS Form 990 filing requirements between January 1, 2011 and December 31, 2012.

We believe the majority of relevant records to be located within the Tax Exempt & Government Entities Division, but we ask that you search other divisions within the IRS to ensure all potentially responsive records are located. Please search previous Commissioners' emails and correspondence as well.

In order to determine my status for the applicability of fees, you should know that I am an "other" requester seeking information for personal or non-commercial use.

AMS is one of the four 501(c)(3) organizations that comprise the Nonprofits Insurance Alliance. AMS provides staff, services, and support to the other organizations in Nonprofits Insurance Alliance.

# LOEVY & LOEVY

311 N. Aberdeen St., 3rd Floor, Chicago, Illinois 60607

Nonprofits Insurance Alliance is a group of 501(c)(3) nonprofit, tax-exempt insurers whose purpose is to serve 501(c)(3) tax-exempt nonprofit organizations by providing a stable source of reasonably priced liability insurance tailored to the specialized needs of the nonprofit sector and to assist these organizations to develop and implement successful loss control and risk management programs.

AMS is seeking this information to better understand why NAIC has for years operated an intense lobbying effort to stop tens of thousands of small and medium people-serving 501(c)(3) nonprofits from getting the insurance they require. Details from the information we are requesting are a critical part of understanding the scope and nature of those efforts. These records may be shared with the public.

I am willing to pay fees for this request up to a maximum of \$1,000. If you estimate that the fees will exceed this limit, please inform us first.

Please send all correspondence to the following email addresses: [pdavis@insurancefor nonprofits.org](mailto:pdavis@insurancefor nonprofits.org), [CReed@insurancefor nonprofits.org](mailto:CReed@insurancefor nonprofits.org), [matt@loevy.com](mailto:matt@loevy.com), and [eun@loevy.com](mailto:eun@loevy.com). We would also like the responsive records to be sent electronically to the above email addresses and in PDF format if possible.

Thank you for your consideration of this request.

Sincerely,

Matt Topic



Outside FOIA Counsel for AMS  
o/b/o Alliance Member Services  
Loevy & Loevy  
311 N Aberdeen, 3rd Floor  
Chicago, IL 60607  
773-368-8812

Pamela E. Davis



Founder & CEO of AMS  
Alliance Member Services  
300 Panetta Ave  
Santa Cruz, CA 95060



**Department of the Treasury  
Internal Revenue Service  
Privacy, Governmental Liaison and Disclosure  
Centralized Processing Unit**

Stop 93A  
PO Box 621506  
Atlanta, GA 30362

Matt Topic  
Loevy & Loevy  
311 N. Aberdeen Street, 3rd Floor  
Chicago, IL 60607

Date:  
February 1, 2021  
Employee name:  
Michael Young  
Employee ID number:  
1000436696  
Telephone number:  
949-575-6406  
Fax number:  
855-205-9335  
Case number:  
2021-06653  
Re: FOIA Request

Dear Matt Topic:

This is a final response to your Freedom of Information Act (FOIA) request dated January 14, 2021, received in our office on January 19, 2021.

You asked for the following records.

1. National Association of Insurance Commissioners ("NAIC") seeking Exemption from the IRS Form 990 filing requirements;
2. IRS's final determination letter (with attachments) in response to NAIC's request for exemption from the IRS Form 990 filing requirements;
3. NAIC's IRS Form 990, Form 990-EZ, Form 990-PF, Form 990-T, and Form 5227 submissions for the most recent two years;
4. All correspondence between IRS Commissioners/employees and NAIC regarding the request for Exemption stated in #1; and
5. All correspondence between Congressman Edward R. Royce and IRS regarding IRS issuing NAIC an Exemption from the IRS Form 990 filing requirements between January 1, 2011 and December 31, 2012.

The disclosure of the information you requested is governed by Internal Revenue Code (IRC) §§ 6104 and 6103.

IRC § 6104 provides access to the records you requested. IRC § 6104 requires that certain annual returns, reports, applications for exemption, and notices of status be available for public inspection. Generally, the exempt organization is responsible for making these documents available for public inspection at its principal office and local or field offices having three or more employees.

The IRS has a routine agency procedure that should be used to request copies of exempt organization annual returns, reports, applications for exemption, and notices of status. You should use Form 4506-A, Request for Public Inspection or Copy of Exempt Organization IRS Form, to request this information. Form 4506-A and instructions are available at IRS.gov by searching at: <https://www.irs.gov/forms-instructions>.

Exhibit 2



As an alternative, you may be able to get copies of the information you seek in one of the following ways.

- Visit the organization to inspect the return instead of requesting it from the IRS. Exempt organizations must make their returns available for public inspection.
- The following site on [irs.gov](http://irs.gov) provides information on political organizations: [www.irs.gov/polorgs](http://www.irs.gov/polorgs).
- Many Form 990 series returns are available at the following websites: [www.guidestar.org](http://www.guidestar.org) and [www.foundationcenter.org/findfunders/](http://www.foundationcenter.org/findfunders/), as well as other websites.

Treasury Regulation 6 CFR 601.702(d) provides that requests for records processed in accordance with routine agency procedures are specifically excluded from the processing requirements of FOIA. As a result, Disclosure offices do not process requests for copies of exempt organization annual returns, reports, applications for exemption, and notices of status under the FOIA.

To the extent your request seeks records other than information available under IRC § 6104, your request is being denied for the following reason.

The scope of your request extends to records, to the extent that any exist, that consist of or contain the tax returns or return information of a third party. Please be advised that such records, to the extent that they exist, would be confidential and may not be disclosed unless specifically authorized by law. FOIA subsection (b)(3) permits the withholding of records that are specifically exempted from disclosure pursuant to a statute other than the FOIA. IRC § 6103, which consists of detailed provisions that concern the disclosure of returns and return information, has been held to be a statute meeting the criteria of FOIA subsection (b)(3). Specifically, IRC § 6103 prohibits the release of returns and return information unless disclosure is authorized by the IRC. As your request asks for third party return information and none of the exceptions to the confidentiality provisions of IRC § 6103 allow for disclosures to you, exemption (b)(3) is being asserted in conjunction with IRC § 6103(a) to withhold from you the return information, to the extent such records exist, of a third party.

If you would like to discuss our response, you have the right to contact the FOIA public liaison, Summer Sutherland, at 801-620-2149.

The FOIA Public Liaison responds to FOIA requests for copies of documents maintained by the IRS. There is no provision in the FOIA to resolve tax, collection, or processing issues. If you need assistance with tax-related issues, you can call the IRS at 800-829-1040.

You also have the right to contact the Office of Government Information Services (OGIS). The Office of Government Information Services, the Federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and federal agencies. The contact information for OGIS is:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road--OGIS  
College Park, MD 20740-6001  
202-741-5770  
877-684-6448  
ogis@nara.gov  
ogis.archives.gov

You have the right to file an administrative appeal within 90 days from the date of this letter. By filing an appeal, you preserve your rights under FOIA and give the agency a chance to review and reconsider your request and the agency's decision. I've enclosed Notice 393, Information on an IRS Determination to Withhold Records Exempt From the Freedom of Information Act - 5 U.S.C. 552, to explain your appeal rights.

Your decision to contact the FOIA public liaison or OGIS for assistance resolving your dispute does not extend the 90-day period in which you can file an appeal.

If you have questions, you can contact the person at the telephone number at the top of this letter.

Sincerely,

A handwritten signature in black ink that reads "David Nimmo". The signature is written in a cursive, slightly slanted style.

David Nimmo  
Disclosure Manager  
Disclosure Office 13

Enclosure:  
Notice 393





Department of the Treasury  
Internal Revenue Service

### Notice 393

(Rev. September 2016)

#### Information on an IRS Determination to Withhold Records Exempt From The Freedom of Information Act – 5 U.S.C. 552

#### Appeal Rights

You may file an appeal with the Internal Revenue Service (IRS) within 90 days after we (1) deny you access to a record in whole or in part; (2) have made an adverse determination as to your category as a requester; (3) deny your request for a fee waiver or reduction; or (4) have advised you that no records responsive to your request exist. You may file an appeal within 10 days when a request for expedited processing has been denied.

Your appeal must be in writing, must be signed by you, and must contain:

Your name and address,

- Description of the requested records,
- Date of the request (and a copy, if possible),
- Identity of the office and contact on the response letter, and
- Date of the letter denying the request (and a copy, if possible)

Mail your appeal to:

#### IRS Appeals

Attention: FOIA Appeals  
M/Stop 55202  
5045 E. Butler Ave.  
Fresno, California 93727-5136

#### Judicial Review

If we deny your appeal, or do not address an issue raised in your appeal within 20 days (excluding Saturdays, Sundays, or legal public holidays) after the date we receive your appeal, you may file a complaint in United States District Court in the district in which (1) you reside; (2) your principal place of business is located; (3) the records are located; or (4) the District of Columbia. A complaint may be filed within 10 days (excluding Saturdays, Sundays, or legal public holidays) after the date we receive your appeal if your appeal is from an adverse determination of a request for expedited processing. If you choose to file suit before receipt of a final determination by the Appeals office, the administrative appeals process may cease.

The rule for effecting service of judicial process upon the Internal Revenue Service is set forth in Federal Rule of Civil Procedure 4(i). In addition to service upon the

United States, as set forth in Rule 4(i)(1), service must be made upon the Internal Revenue Service by registered or certified mail as set forth in Rule 4(i)(2)(A).

The address of the Internal Revenue Service is: Internal Revenue Service, Attention CC:PA, 1111 Constitution Avenue, N.W., Washington, D.C. 20224. Exemptions The Freedom of Information Act, 5 U.S.C. 552, does not apply to matters that are:

(b)(1) • specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified under such executive order,

(b)(2) • related solely to the internal personnel rules and practices of an agency,

(b)(3) • specifically exempted from disclosure by statute (other than section 552b of this title), provided that the statute:

(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(B) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

**Note:** Internal Revenue Code sections 6103 and 6105 are statutes which qualify for exemption 3 treatment. Section 6103 protects the confidentiality of tax returns and information pertaining to a taxpayer collected by the IRS. Section 6105 protects information obtained from a foreign country under a tax treaty.

(b)(4) • trade secrets and commercial or financial information obtained from a person and privileged or confidential,

(b)(5) • inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency,

(b)(6) • personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy,

(b)(7) • records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication,

(C) could reasonably be expected to constitute an unwarranted invasion of personal privacy,

(D) could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,

(E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

(F) could reasonably be expected to endanger the life or physical safety of any individual.

(b)(8) • contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions, or

(b)(9) • geological and geophysical information and data, including maps, concerning wells.





Department of the Treasury

Internal Revenue Service

Privacy, Governmental Liaison & Disclosure  
Centralized Processing Unit  
Stop 93A

PO Box 621506

Atlanta, GA 30362

SA. JEFFERSON CITY UT 840

1 FEB 2021 PM 4 FOREVER  
USA



Matt Topic  
Loevy & Loevy  
311 N Aberdeen Street, 3<sup>rd</sup> Floor  
Chicago, IL 60607

60607-12499



# LOEVY & LOEVY

311 N. Aberdeen St., 3rd Floor, Chicago, Illinois 60607

February 19, 2021

Sent via USPS

FOIA Appeals  
M/Stop 55202  
5045 E. Butler Ave.  
Fresno, California 93727

**Re: Freedom of Information Act Appeal Case Number 2021-06653**

Dear FOIA Appeals Officer,

Our firm represents Alliance Member Services (“AMS”) and submits this letter on behalf of AMS. We appeal the denial of the FOIA Case Number 2021-06653.

## **I. The FOIA Request**

On January 19, 2021, we submitted the following FOIA request to the IRS on behalf of AMS:

Pursuant to Freedom of Information Act, 5 U.S.C. § 552, AMS requests the following records:

1. National Association of Insurance Commissioners (“NAIC”) seeking Exemption from the IRS Form 990 filing requirements. These can be applications (i.e., Form 1023, 1023-EZ, Form 1024), memos, letters, or other forms of plea;
2. IRS’s final determination letter (with attachments) in response to NAIC’s request for exemption from the IRS Form 990 filing requirements;
3. NAIC’s IRS Form 990, Form 990-EZ, Form 990-PF, Form 990-T, and Form 5227 submissions for the most recent two years;
4. All correspondence between IRS Commissioners/employees and NAIC regarding the request for Exemption stated in #1; and
5. All correspondence between Congressman Edward R. Royce and IRS regarding IRS issuing NAIC an Exemption from the IRS Form 990 filing requirements between January 1, 2011 and December 31, 2012.

The request was submitted via fax. The copy of the fax confirmation along with the original request is attached as Exhibit A.

## **II. The IRS’ Response**

On February 5, 2021, we received a response letter, dated February 1, 2021. The office that processed the request was identified as Privacy, Governmental Liaison and Disclosure Centralized Processing Unit. The IRS employee is Michael Young (ID # 1000436696). The copy of the denial letter is attached as Exhibit B.

In the denial letter, IRS stated that the requested records are governed by “Internal Revenue Code (IRC) §§ 6104 and 6103.” *Id.* IRS also invited AMS to utilize the Form 4605-A for copies of exempt organization annual returns, reports, applications for exemption, and notices of status. Parts 1-3 of the



request pertain to exempt organization annual returns, reports, applications for exemption, and notice of status. We thank you for your further instructions and will follow them. We do not challenge the IRS's denial of Parts 1-3 in this appeal.

For the remainder of the request (Parts 4-5), IRS stated that “[t]he scope of [the] request extends to records, to the extent that any exist, that consist of or contain the tax returns or return information of a third party.” *Id.* IRS stated that “such records, to the extent that they exist, would be confidential and may not be disclosed unless specifically authorized by law.” *Id.* IRS claimed that these records are exempt under “FOIA subsection (b)(3)” in conjunction with IRC § 6103. *Id.* The IRS claimed that IRC § 6103 “prohibits the release of returns and return information unless disclosure is authorized by the IRC.” *Id.*

AMS challenges the IRS' denial for Parts 4-5 of the request.

### III. Appeal

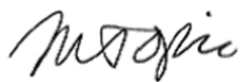
The denial was unfounded for several reasons.

First, IRS provided a “Glomar” response, claiming that it cannot even state whether correspondence exists regarding NAIC's exception from the IRS Form 990 filing requirement. We are aware of no authority permitting the IRS to assert Glomar in these circumstances. Further, NAIC has publicly acknowledged both on its website ([https://www.naic.org/documents/about\\_faq.pdf](https://www.naic.org/documents/about_faq.pdf)) and to its letter addressed to Congressman Royce (dated Mar. 20, 2012) that “[t]he NAIC is not required to file a Form 990 pursuant to an Internal Revenue Service (IRS) ruling. The documentation from the IRS exempting the NAIC from that requirement will be provided to your office in hard copy. The NAIC was afforded this exemption in 1955 and it was reaffirmed upon our 1999 incorporation and receipt of tax exempt status.” We are attaching NAIC's letter to Congressman Edward R. Royce addressing its exception from filing Form 990 requirements as Exhibit C.

Second, both the Glomar response and the IRS's underlying exemption theory are based on a misapplication of IRC § 6103. That provision “prohibits the release of returns and return information.” But nothing in the statutory definitions of “return” or “return information” applies to applications for an exception to the Form 990 requirement pursuant to IRC § 6033(a)(3). There is no mention in those definitions of applications for exceptions under Section 6033(a)(3) or to “exceptions” of any kind. Similarly, an application for an exception to the Form 990 requirement does not indicate whether a “taxpayer's return was, is being, or will be examined or subject to other investigation or processing” and does not implicate any “determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense[.]” Nor is an application for an exception to the Form 990 requirement a “return” of any kind.

For these reasons, we ask that IRS reconsider its denial.

Sincerely,



Matthew Topic

# FAX

## FROM

## TO

CONFIDENTIAL LOEVY  
LOEVY & LOEVY ATTORNEYS AT LAW  
311 N Aberdeen St, Chicago 3rd Floor  
CHICAGO  
Illinois 60607

**Phone** (312) 243-5902

**Fax Number** (312) 243-5902

**Phone**

**Fax Number** +18778079215

**DATE** 01/19/2021

## NOTE

FOIA Request on behalf of Alliance Member Services.

**EXHIBIT A**

# LOEVY & LOEVY

311 N. Aberdeen St., 3rd Floor, Chicago, Illinois 60607

January 14, 2021

Dear Disclosure Manager:

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As shown in the March 20, 2012 letter from the National Association of Insurance Commissioners ("NAIC") to then-Representative Edward R. Royce, NAIC stated that they are "not required to file a Form 990 pursuant to an Internal Revenue Service (IRS) ruling." In that same letter, NAIC offered to provide then-Rep. Royce relevant documentation. NAIC indicated that IRS approved the exemption initially in 1955, then reaffirmed this exemption upon NAIC's incorporation and receipt of the tax-exempt status in 1999. The March 20, 2012 letter is attached for your reference.

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# LOEVY & LOEVY

311 N. Aberdeen St., 3rd Floor, Chicago, Illinois 60607

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I am willing to pay fees for this request up to a maximum of \$1,000. If you estimate that the fees will exceed this limit, please inform us first.

Please send all correspondence to the following email addresses: [pdavis@insuranceforprofits.org](mailto:pdavis@insuranceforprofits.org), [CReed@insuranceforprofits.org](mailto:CReed@insuranceforprofits.org), [matt@loevy.com](mailto:matt@loevy.com), and [eun@loevy.com](mailto:eun@loevy.com). We would also like the responsive records to be sent electronically to the above email addresses and in PDF format if possible.

Thank you for your consideration of this request.

Sincerely,

Matt Topic



Outside FOIA Counsel for AMS  
o/b/o Alliance Member Services  
Loevy & Loevy  
311 N Aberdeen, 3rd Floor  
Chicago, IL 60607  
773-368-8812

Pamela E. Davis



Founder & CEO of AMS  
Alliance Member Services  
300 Panetta Ave  
Santa Cruz, CA 95060



**Department of the Treasury  
Internal Revenue Service  
Privacy, Governmental Liaison and Disclosure  
Centralized Processing Unit**

Stop 93A  
PO Box 621506  
Atlanta, GA 30362

Matt Topic  
Loevy & Loevy  
311 N. Aberdeen Street, 3rd Floor  
Chicago, IL 60607

Date:  
February 1, 2021  
Employee name:  
Michael Young  
Employee ID number:  
1000436696  
Telephone number:  
949-575-6406  
Fax number:  
855-205-9335  
Case number:  
2021-06653  
Re: FOIA Request

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**EXHIBIT B**



As an alternative, you may be able to get copies of the information you seek in one of the following ways.

- Visit the organization to inspect the return instead of requesting it from the IRS. Exempt organizations must make their returns available for public inspection.
- The following site on [irs.gov](http://irs.gov) provides information on political organizations: [www.irs.gov/polorgs](http://www.irs.gov/polorgs).
- Many Form 990 series returns are available at the following websites: [www.guidestar.org](http://www.guidestar.org) and [www.foundationcenter.org/findfunders/](http://www.foundationcenter.org/findfunders/), as well as other websites.

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To the extent your request seeks records other than information available under IRC § 6104, your request is being denied for the following reason.

The scope of your request extends to records, to the extent that any exist, that consist of or contain the tax returns or return information of a third party. Please be advised that such records, to the extent that they exist, would be confidential and may not be disclosed unless specifically authorized by law. FOIA subsection (b)(3) permits the withholding of records that are specifically exempted from disclosure pursuant to a statute other than the FOIA. IRC § 6103, which consists of detailed provisions that concern the disclosure of returns and return information, has been held to be a statute meeting the criteria of FOIA subsection (b)(3). Specifically, IRC § 6103 prohibits the release of returns and return information unless disclosure is authorized by the IRC. As your request asks for third party return information and none of the exceptions to the confidentiality provisions of IRC § 6103 allow for disclosures to you, exemption (b)(3) is being asserted in conjunction with IRC § 6103(a) to withhold from you the return information, to the extent such records exist, of a third party.

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Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road--OGIS  
College Park, MD 20740-6001  
202-741-5770  
877-684-6448  
ogis@nara.gov  
ogis.archives.gov

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If you have questions, you can contact the person at the telephone number at the top of this letter.

Sincerely,



David Nimmo  
Disclosure Manager  
Disclosure Office 13

Enclosure:  
Notice 393



Department of the Treasury  
Internal Revenue Service

### Notice 393

(Rev. September 2016)

#### Information on an IRS Determination to Withhold Records Exempt From The Freedom of Information Act – 5 U.S.C. 552

#### Appeal Rights

You may file an appeal with the Internal Revenue Service (IRS) within 90 days after we (1) deny you access to a record in whole or in part; (2) have made an adverse determination as to your category as a requester; (3) deny your request for a fee waiver or reduction; or (4) have advised you that no records responsive to your request exist. You may file an appeal within 10 days when a request for expedited processing has been denied.

Your appeal must be in writing, must be signed by you, and must contain:

Your name and address,

- Description of the requested records,
- Date of the request (and a copy, if possible),
- Identity of the office and contact on the response letter, and
- Date of the letter denying the request (and a copy, if possible)

Mail your appeal to:

#### IRS Appeals

Attention: FOIA Appeals  
M/Stop 55202  
5045 E. Butler Ave.  
Fresno, California 93727-5136

#### Judicial Review

If we deny your appeal, or do not address an issue raised in your appeal within 20 days (excluding Saturdays, Sundays, or legal public holidays) after the date we receive your appeal, you may file a complaint in United States District Court in the district in which (1) you reside; (2) your principal place of business is located; (3) the records are located; or (4) the District of Columbia. A complaint may be filed within 10 days (excluding Saturdays, Sundays, or legal public holidays) after the date we receive your appeal if your appeal is from an adverse determination of a request for expedited processing. If you choose to file suit before receipt of a final determination by the Appeals office, the administrative appeals process may cease.

The rule for effecting service of judicial process upon the Internal Revenue Service is set forth in Federal Rule of Civil Procedure 4(i). In addition to service upon the

United States, as set forth in Rule 4(i)(1), service must be made upon the Internal Revenue Service by registered or certified mail as set forth in Rule 4(i)(2)(A).

The address of the Internal Revenue Service is: Internal Revenue Service, Attention CC:PA, 1111 Constitution Avenue, N.W., Washington, D.C. 20224. Exemptions The Freedom of Information Act, 5 U.S.C. 552, does not apply to matters that are:

(b)(1) • specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified under such executive order,

(b)(2) • related solely to the internal personnel rules and practices of an agency,

(b)(3) • specifically exempted from disclosure by statute (other than section 552b of this title), provided that the statute:

(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(B) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

**Note:** Internal Revenue Code sections 6103 and 6105 are statutes which qualify for exemption 3 treatment. Section 6103 protects the confidentiality of tax returns and information pertaining to a taxpayer collected by the IRS. Section 6105 protects information obtained from a foreign country under a tax treaty.

(b)(4) • trade secrets and commercial or financial information obtained from a person and privileged or confidential,

(b)(5) • inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency,

(b)(6) • personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy,

(b)(7) • records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication,

(C) could reasonably be expected to constitute an unwarranted invasion of personal privacy,



(D) could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,

(E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

(F) could reasonably be expected to endanger the life or physical safety of any individual.

(b)(8) • contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions, or

(b)(9) • geological and geophysical information and data, including maps, concerning wells.



Department of the Treasury

Internal Revenue Service

Privacy, Governmental Liaison & Disclosure  
Centralized Processing Unit  
Stop 93A

PO Box 621506

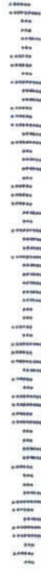
Atlanta, GA 30362

SA. JEFFERSON CITY UT 840

1 FEB 2021 PM 4 FOREVER  
USA



Matt Topic  
Loevy & Loevy  
311 N Aberdeen Street, 3<sup>rd</sup> Floor  
Chicago, IL 60607



60607-124999







March 20, 2012

The Honorable Edward R. Royce  
U.S. House of Representatives  
2185 Rayburn House Office Building  
Washington, DC 20515-0540

Dear Mr. Royce,

I am in receipt of your letter dated February 28 and I am happy to respond to your inquiries concerning the National Association of Insurance Commissioners (NAIC). The NAIC was organized in 1871 by the chief insurance regulators of the states to exchange ideas and information and to promote the uniformity of insurance regulation in policy, laws and regulations where such uniformity is appropriate. In 1999 the NAIC incorporated under the laws of the State of Delaware and was awarded 501(c)(3) tax exempt status shortly thereafter. Membership in the NAIC is voluntary; however, all 50 states, the District of Columbia and five US territories are represented. More than 4000 state statutes, regulations, bulletins, attorney general opinions and court cases reference the NAIC. The NAIC supports the insurance regulatory work of its members providing services and systems that would otherwise fall to the states to develop individually.

At the outset, it appears there may be some confusion regarding the role of the NAIC in the national state based system of insurance regulation and I hope this letter serves as sufficient clarification for you. The NAIC as an association does not have regulatory authority, but its members do. The association does provide a forum for members to establish regulatory policy, standards, and best practices. However, the decision to implement such standards remains with the individual states. The NAIC therefore does play an integral role in the national system of state based regulation as a forum for standard setting, but it is not a regulator. There can be confusion when collective state regulatory actions developed at an NAIC meeting are mistakenly referred to as actions “of the NAIC” in the press or elsewhere, but at no time has the organization itself represented that it is a regulator. This is consistent both with Commissioner Voss’s testimony, which indicated the NAIC as an association is not a national or federal regulator, and the NAIC press release you cited in your letter which mentioned the role centralized resources of the NAIC play in assisting state regulators in carrying out their regulatory function.

I will now turn to responding to some of the specific issues you have raised:

The NAIC’s legal status is a Delaware non-profit corporation recognized as a 501(c)(3) by the Internal Revenue Service. The NAIC is not a trade association and you are correct that members of the NAIC object to its characterization as such. A trade association is made up of businesses or business people in a common field and is designed to assist its members and its industry in dealing with mutual business problems. The NAIC is an association of elected and appointed state regulatory officials charged with regulating the insurance industry under state law.

## EXHIBIT C

EXECUTIVE OFFICE • 444 North Capitol Street, NW, Suite 701 • Washington, DC 20001-1509

p | 202 471 3990 f | 816 460 7493

CENTRAL OFFICE • 1100 Walnut Street, Suite 1500 • Kansas City, MO 64106-2197

p | 816 842 3600 f | 816 783 8175

CAPITAL MARKETS & INVESTMENT ANALYSIS OFFICE • 48 Wall Street, 6th Floor • New York, NY 10005-2906

p | 212 398 9000 f | 212 382 4207

Specifically, the NAIC is organized for the purposes of:

“. . . assisting state insurance regulators, individually and collectively, in serving the public interest and achieving the following fundamental insurance regulatory goals: a) protect the public interest, promote competitive markets and facilitate the fair and equitable treatment of insurance consumers; b) promote, in the public interest, the reliability, solvency and financial solidity of insurance institutions; and c) support and improve state regulation of insurance.” (Source: NAIC Articles of Incorporation)

You mention the oral testimony of Commissioner Voss in response to a question from Congressman Dold. Commissioner Voss’s full response, according to the transcript was as follows:

“The NAIC is really our organization that helps us put standards together, standard setting, and sort of collectively represents what our thoughts are. We don’t put ourselves out as some regulatory body. Having said that, I think through even Federal regulation laws, if you look at the Health Care Reform Act, the NAIC has been asked to set standards for certain processes under PPACA. And so collectively, the regulators get together and discuss those. But we don’t hold ourselves out as some kind of Federal or national regulatory system. We are a national body that represents all of the regulators.”

Commissioner Voss clearly makes the point that the NAIC is not a regulatory body, though she mistakenly uses the word “system” at the end of her response where the word “body” would be more appropriate. We appreciate the opportunity to clarify that word choice and apologize for any confusion it may have caused you.

The NAIC as a non-profit corporation does not have regulatory authority, and I am not aware that it has ever presented itself as having such authority. However, its membership is composed of individuals that do have such authority and the NAIC provides a forum and vehicle for its membership to develop standards and collectively set regulatory policy including serving as its members’ collective voice, crafting models laws and guidelines, coordinating examinations, and consulting each other regarding regulatory actions.

The NAIC activities you have identified do not amount to regulating interstate commerce or exercising regulatory authority as the NAIC simply provides these resources to assist the states in carrying out their regulatory functions.

You have identified several NAIC programs which are explained as follows:

- The Securities Valuation Office (SVO) is a division within the NAIC that conducts credit quality assessment and valuation of securities owned by state regulated insurance companies. Insurance companies report ownership of securities to the SVO as part of their annual financial statement filings which are mandated by the states. The SVO conducts credit analysis on these securities for the purpose of assigning an NAIC designation and/or unit price. These designations and unit prices are produced solely for the benefit of state insurance departments who may utilize them as part of the state’s monitoring of the financial condition of its domiciliary insurers.
- System for Electronic Rate and Form Filing (SERFF). The NAIC developed this system in 1996 to provide a cost-effective method for handling insurance policy rate and form filings between regulators and insurance companies. The SERFF system is designed to enable companies to send and for states to receive, comment on, and approve or reject insurance industry rate and form filings for their insurance products.



- Financial Standards and Accreditation Program. The NAIC accreditation program establishes and maintains standards to promote sound insurance company financial solvency regulations. These standards are developed by the state regulators who are members of the Financial Standards and Accreditation Committee and then must be approved by a super majority of the entire membership. Through this program, the solvency regulation of multi-state insurance companies is enhanced, made uniform and monitored so that state regulators can rely upon each other to make certain companies licensed and selling insurance in the several states are held to adequate solvency standards through a process of financial analysis and examination performed by the domiciliary state regulators.
- Market Analysis Procedures Working Group. The NAIC's Market Analysis Procedures Working Group (MAP) is the national forum for states to share and coordinate their insurance market analysis programs. The working group, which is made up of state insurance regulators, reviews and coordinates state market analysis programs and develops procedures for uniform, nationwide analysis using their adopted Framework for Market Analysis.
- The National Insurance Producer Registry (NIPR) is a non-profit affiliate of the NAIC incorporated in 1996. NIPR supports the work of the states and the NAIC by providing an electronic means for the submission of insurance producers' licensing and appointment transactions to the states. NIPR is governed by a 13 member board of directors, with six members representing the NAIC, six industry trade association representatives, including three producer trades and the CEO of the NAIC as an ex-officio voting board member.

The NAIC is not required to file a Form 990 pursuant to an Internal Revenue Service (IRS) ruling. The documentation from the IRS exempting the NAIC from that requirement will be provided to your office in hard copy. The NAIC was afforded this exemption in 1955 and it was reaffirmed upon our 1999 incorporation and receipt of tax exempt status.

We share your interest in advancing positive regulatory reform to effect better insurance regulation for consumers. There are a number of initiatives underway individually in the states and through the NAIC that are being developed in exactly this spirit of positive regulatory reform. We welcome the opportunity to discuss our work with you or your staff, though we continue to believe that efforts to refine insurance regulation are and should remain the purview of the states.

I trust this response provides substantive answers to your questions and clarification of statements made in your recent letter to the NAIC. If I can be of further assistance, please contact me.

Sincerely,



Kevin M. McCarty  
NAIC President  
Florida Insurance Commissioner

**Internal Revenue Service**  
**Independent Office of Appeals Office**  
M/S 8000  
290 N. D Street  
San Bernardino, CA 92401

**Department of the Treasury**

**Person to Contact:**

Thelma Flotte  
Employee ID Number: 0693419  
Tel: (909) 388-8327  
Fax: (855) 543-4075

Date: March 16, 2021

**Refer Reply to:**

AP:EX:SBD:TXF

Matt Topic  
Loevy & Loevy  
311 N. Aberdeen Street, 3rd Floor  
Chicago, IL 60607

**In Re:**

Freedom of Information Act

**Disclosure Case Number(s):**

2021-06653

Dear Matt Topic,

This letter is in response to your appeals request dated February 19, 2021 for Freedom of Information Act (FOIA) information. According to your letter you are appealing the response of February 01, 2021 from the Disclosure Office of your request for information dated January 14, 2021.

You requested records on behalf of Alliance Member Services (AMS) and listed the requests numerically 1 thru 5 as follows:

1. National Association of Insurance Commissioners ("NAIC") seeking Exemption from the IRS Form 990 filing requirements;
2. IRS's final determination letter (with attachments) in response to NAIC's request for exemption from the IRS Form 990 filing requirements;
3. NAIC's IRS Form 990, Form 990-EZ, Form 990-PF, Form 990-T, and Form 5227 submissions for the most recent two years;
4. All correspondence between IRS Commissioners/employees and NAIC regarding the request for Exemption stated in #1; and
5. All correspondence between Congressman Edward R. Royce and IRS regarding IRS issuing NAIC an Exemption from the IRS Form 990 filing requirements between January 1, 2011 and December 31, 2012.

Exhibit 4



The Disclosure Specialist denied your request in full. The Disclosure Specialist notated the applicable Section § 6104 and FOIA exemption (b)(3) in conjunction with 26 U.S.C. Section § 6103(a) for documents to be withheld in full in the response dated February 01, 2021.

Your appeal states that you are not challenging the denial of Parts 1-3, but you are appealing the documents withheld in parts number 4 and 5 of your request, that states you are requesting; all correspondence between IRS Commissioners/employees and NAIC regarding the request for Exemption stated in #1; and all correspondence between Congressman Edward R. Royce and IRS regarding IRS issuing NAIC an Exemption from the IRS Form 990 filing requirements between January 01, 2011 and December 31, 2012.

We have reviewed the response of the Disclosure Specialist, the Disclosure database, and have determined that it is appropriate under the circumstances. Appeals 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 documents requested fall within the FOIA exemption(s) cited. Appeals only has jurisdiction over the denial of documents in response to a FOIA request. We address the adequacy of the search, the appropriateness of the redactions and documents withheld through determined FOIA exemptions. Our written notice is your determination that the redacted information was properly withheld through the FOIA exemptions cited. Our sole responsibility is to determine if the documents were properly withheld under the FOIA.

We are asserting, FOIA subsection (b)(3) which permits the withholding of records that are specifically exempted from disclosure pursuant to a statute other than the FOIA. IRC § 6103, which consists of detailed provisions that concern the disclosure of returns and return information, has been held to be a statute meeting the criteria of FOIA subsection (b)(3). Specifically, IRC § 6103 prohibits the release of returns and return information unless disclosure is authorized by the IRC. As your request asks for third party return information and none of the exceptions to the confidentiality provisions of IRC § 6103 allow for disclosures to you, exemption (b)(3) is being asserted in conjunction with IRC § 6103(a) to withhold from you the return information, to the extent such records exist, of a third party.

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  
8601 Adelphi Road - OGIS  
College Park, MD 20740  
E-mail: [ogis@nara.gov](mailto:ogis@nara.gov)  
Web: <https://ogis.archives.gov>  
Telephone: 202-741-5770  
Facsimile: 202-741-5769  
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,

**Joseph  
Haynes**

J. Haynes  
Appeals Team Manager

Date: 2021.03.16  
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**Internal Revenue Service**  
Appeals Fresno Campus, M/S 55203  
P.O. Box 24018  
Fresno, CA 93779-4018

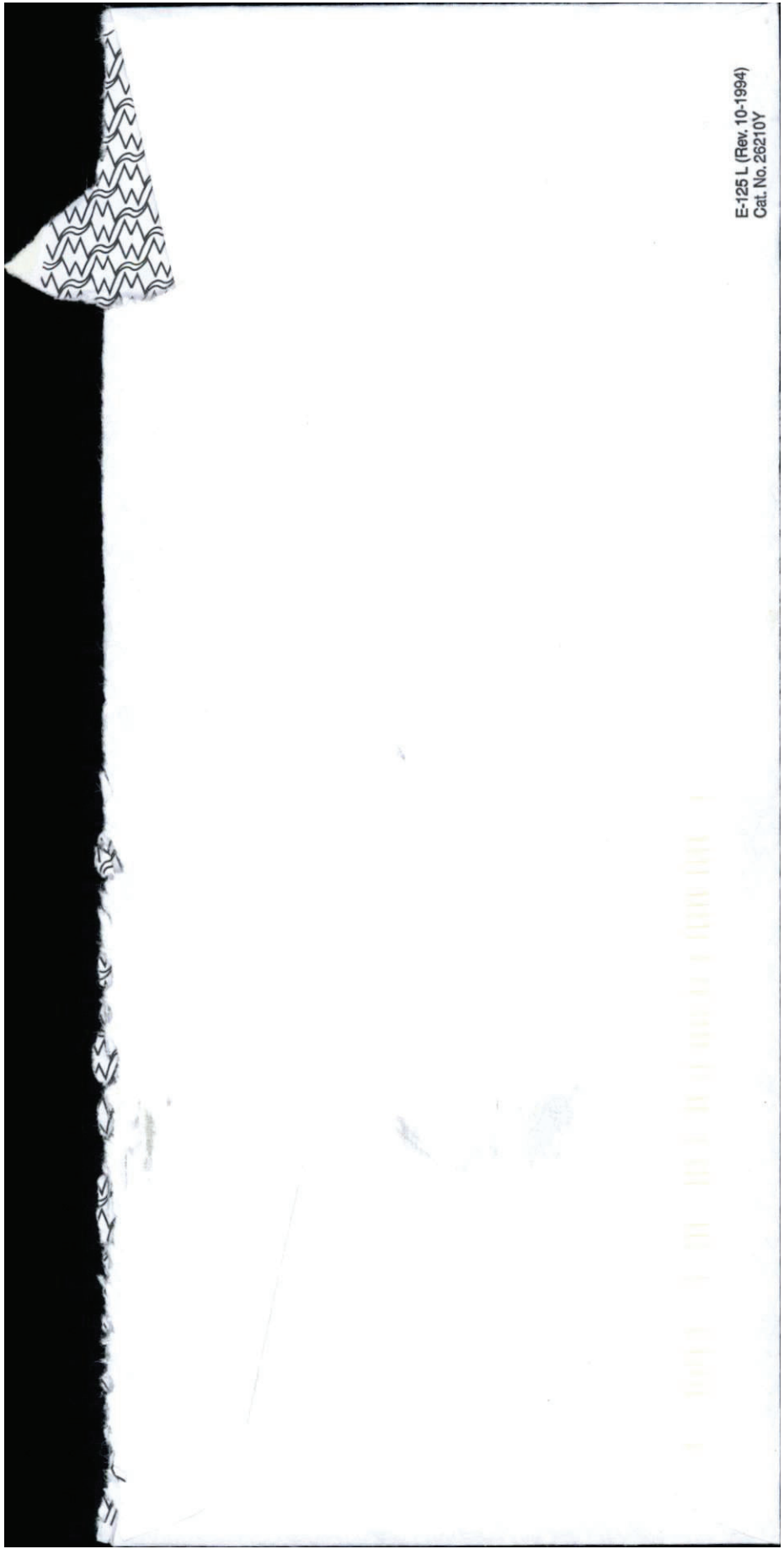
Official Business  
Penalty for Private Use, \$300



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