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IRS Appeals
Attention: FOIA Appeals
M/Stop 55203
5045 East Butler Avenue
Fresno, California 93727-5136

January 11, 2022

Via U.S. Certified Mail

Re: FOIA ADMINISTRATIVE APPEAL

FOIA Request – 2002-00423 Re: James C. Henry

Dear Administrator:

This is an appeal under the Freedom of Information Act, 5 U.S.C. § 552 and the Privacy Act under 5 U.S.C. § 552a. (Any reference to FOIA in this letter refers to both statutes.)

In a Request dated October 1, 2021, I, Attorney Robert E. Barnes made a FOIA request, through Power of Attorney, Form 2848, on behalf of James C. Henry, account number [REDACTED]

Specifically requested was:

1. Copies of CADE Individual Master File (IMF Complete transcripts) – Treasury/IRS, bearing Mr. Henry’s name and/or TIN ([REDACTED]) for the years: 2013 through 2021.
2. Copies of records identified as “Centralized Evaluation and Processing of Information Items (CEPIIs), Evaluation and processing of Information (EOI)” bearing Mr. Henry’s name and/or TIN ([REDACTED]) for the years: 2013 through 2021. This request includes but is not limited to the following documents: all tax returns, revenue agents’ work papers, notes, correspondence, transmittal slips, revenue agent’s reports, special agent’s notes, work papers, reports of interview, summonses, case activity work papers and any files, records, correspondence, memoranda, or other documents regarding any proposals, recommendations, referrals or other actions or suggested actions relating to the examination or investigation of the above-named taxpayer.
3. Copies and all attachment folders of IRS Form 9984 (Rev. 8-2005) entitled “Examining Officer’s Activity Record” or any audit papers bearing Mr. Henry’s name and/or TIN ([REDACTED]) for the years: 2013 through 2021

4. Please send copies of all documents and information related to any investigative work plans (Form 6085), if any, developed by any Special Agent in the investigation, if any, of James Henry TIN ([REDACTED])
5. Please send copies of all documents and information related to and including IRS Form 9838 (Criminal Investigation Report Control Log) relating to the investigation, if any, of James Henry TIN ([REDACTED])
6. Please send copies of all documents and information related to and including Criminal Tax Counsel's criminal evaluation report, if any, regarding James Henry TIN ([REDACTED])
7. A complete copy of the records, documents and information maintained in a system of records identified as "Treasury/IRS 46.002," Criminal Investigation Management Information System (CIMIS) and case files- Treasury/IRS, bearing James Henry's name and/or TIN ([REDACTED])
8. A complete copy of the system of records identified as "Treasury/IRS 46.022," Treasury Enforcement Communications System (TECS) – Treasury/IRS, bearing James Henry's name and/or TIN ([REDACTED])
9. A copy of Form 2797 entitled "Referral Report for Potential Fraud Cases" and any attachments thereto bearing James Henry's name and/or TIN ([REDACTED])
10. A transcript of the Information Return Master File (IRMF) – Treasury/IRS bearing James Henry's name and/or TIN ([REDACTED]) for the years: for the years: 2013 through 2021. Please provide the complete transcript that includes all information on the master file account.
11. Copies of the "Open Balance Transcript", bearing James Henry's name and/or TIN ([REDACTED]) for the years: 2013 through 2021.
12. Copies the "ICS History Transcript" bearing James Henry's name and/or TIN ([REDACTED]) for the years 2013 through 2021.

(See Ex. 1)

Through a response dated November 12, 2021, Mr. Henry's request was denied in full.

"We're denying your request, in full, for the following reason: FOIA exemption (b)(3) requires us to withhold information specifically exempt from disclosure by another law. The law supporting this exemption is Title 26 United States Code Section 6103(a)."

(See Ex. 2)

The following is a general response to the denial of the request:

The purpose of the Freedom of Information Act is to provide citizens with documents and information generated by the Government. As the Supreme Court said, “[t]he basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.” *N.L.R.B. v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242, (1978). Mt. Henry is trying to determine if government conduct has had an impact on his civil rights. By broadly and capriciously denying Mr. Henry’s FOIA Request, the Internal Revenue Service is preventing the governed from holding the governors accountable.

Under the Freedom of Information Act, the Internal Revenue Service is to apply exemptions narrowly; to segregate and release documents that do not fall under the exemptions; and to redact portions of documents that fall under an exemption while releasing the remaining, non-exempt portions. The Internal Revenue Service, however, is contending that the entire contents of this Request are exempt from the Freedom of Information Act. This contention is made without providing any general information about the contents of these documents declining Mr. Henry any opportunity to decide if the stated exemptions could reasonably apply. Further, it strains belief that every word on every page of the requested documents all fall under exemption (b)(3) of the Freedom of Information Act. The stated law upholding the exemption doesn’t just not apply as Robert E. Barnes has correctly filed his Form 2848 with respect to Mr. Henry and is entitled to receive the documents in question. In sum, the exemption of (b)(3) and IRC 6103(b)(2)(a) shows the capricious nature of the denial by the Internal Revenue System. This exemption only applies if release of the information would violate IRC 6103(b)(2)(a), which of course, it cannot. Mr. Henry is requesting his own tax returns and return information. IRC 6103(b)(2)(a) does not apply.

Once again, the IRS response set out above fail to articulate colorable bases for the application of the exemption claimed. This “kitchen sink” approach is inappropriate given the fact that FOIA and Privacy Act law requires an agency to redact exempt portions and release non-exempt portions. No attempt to segregate this information was made, and therefore, the IRS response was unlawful.

I trust that upon re-consideration, you will reverse the decision denying Barnes Law access to this material and grant the original request. However, if the appeal is denied, Barnes Law has been granted full authority to initiate a subsequent lawsuit to compel disclosure.

Regards,

Robert E. Barnes
Attorney and Counselor at Law

Cc: James C. Henry

