

Exhibit 1



February 3, 2022

Submitted online

Internal Revenue Service
GLDS Support Services
Stop 211
PO Box 621506
Atlanta, GA 30362-3006

Re: Records related to the leak of private taxpayer data to ProPublica

Dear Freedom of Information Officer:

The Functional Government Initiative (FGI) submits this request (the “request”) for records under the Freedom of Information Act, 5 U.S.C. § 552, as amended (FOIA), and the implementing regulations of the Internal Revenue Service (IRS), 26 C.F.R. § 601.702. FGI, which is a non-partisan organization, engages in research, investigation, and education to promote transparency in government and support values that help to build a solid infrastructure for a bright American future.

Your prompt response pursuant to the requirements of FOIA, 5 U.S.C. § 522(a)(6)(A), is appreciated.

REQUESTED RECORDS

FGI requests from the IRS all records from March 1, 2021, to the date the IRS conducts the search meeting the following criteria:

1. All agency communications discussing or mentioning the leak of private taxpayer data to ProPublica that began on June 8, 2021. At the minimum, the search should include the following:
 - a. Any links to the ProPublica website, specifically including any visits to the url <https://www.propublica.org/tips/>;
 - b. Any emails to, from, or including an email address ending in propublica.org;
 - c. Any visits to TorProject.org and any attempted downloads of the Tor Browser;
 - d. Names of citizens with leaked information, including Warren Buffet, Jeff Bezos, Michael Bloomberg, Bill Gates, Elon Musk, George Soros, or Mark Zuckerberg; or
 - e. Names of reporters and editors contributing to the stories revealing private taxpayer information, including Jesse Eisinger, Jeff Ernsthausen, Paul Kiel, Doris Burke, Carson Kessler, or Ellis Simani.



2. Communications between agency officials and staff in the legislative branch pertaining to or discussing the leak of taxpayer data. This should include all communications to, between, or including the following:
 - a. Any individuals working for members or committees of the U.S. House of Representatives whose email addresses typically end with mail.house.gov;
 - b. Any individuals working for members or committees of the U.S. Senate whose emails typically end with senate.gov preceded by the name of the senator (such as sanders.senate.gov, portman.senate.gov, warren.senate.gov, and so on) or a designation for a committee (such as judiciary.senate.gov, finance.senate.gov, hsgac.senate.gov, and so on).

We ask that you please provide all records in an electronic format. To the extent practicable, we desire electronic documents in native file format, or, if not practicable, with full metadata for all fields. See, e.g., 5 U.S.C. § 552(a)(3)(B) (“an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.”).

Please provide records in either:

1. Load-ready format with a .csv file index or Excel spreadsheet, or
2. In .pdf format without any “portfolios” or “embedded files,” and not in a single “batched” .pdf file.

If you should seek to withhold or redact any responsive records, we request that you:

1. Identify each such record with specificity (including date, author, recipient, and parties copied),
2. Explain in full the basis for withholding responsive material,
3. Provide all segregable portions of the records for which you claim a specific exemption (5 U.S.C. § 552(b)), and
4. Correlate any redactions with specific exemptions under FOIA.

The term “all records” in this request refers to, but is not limited to, any and all documents, letters, correspondence, emails including attachments, facsimiles, memoranda, text messages, letters, notes, telephone records, telephone notes, minutes of meetings, agendas of meetings, databases, comments, files, presentations, consultations, drawings, diagrams, graphs, charts, assessments, evaluations, schedules and calendar entries, telephone logs, digital logs such as those produced by Microsoft Teams, papers published and/or unpublished, reports, studies, photographs and other images, and/or all other responsive records, in draft or final form that fall within the definition of “agency records” subject to FOIA.



This request is not meant to exclude any other records that, although not specifically requested, are reasonably related to the subject matter of this request. If you or your office have destroyed or determine to withhold any records that could be reasonably construed to be responsive to this request, we ask that you indicate this fact and the reasons therefore in your response.

Agencies are prohibited from denying requests for information under the FOIA (per the FOIA Improvement Act of 2016) unless the agency reasonably believes release of the information will harm an interest that is protected by the exemption.¹

Should you decide to invoke a FOIA exemption, please include sufficient information for us to assess the basis for the exemption, including any interest(s) that would be harmed by release. Please include a detailed ledger which includes:

1. Basic factual material about each withheld record, including the originator, date, length, general subject matter, and location of each item; and
2. Complete explanations and justifications for the withholding, including the specific exemption(s) under which the record (or portion thereof) was withheld and a full explanation of how each exemption applies to the withheld material. Such statements will be helpful in deciding whether to appeal an adverse determination. Your written justification may help to avoid litigation.

If you determine that portions of the records requested are exempt from disclosure, we request that you segregate the exempt portions and send the non-exempt portions of such records to my attention at the email address or mailing address below within the statutory time limit.²

FGI is willing to receive records on a rolling basis.

FOIA's "frequently requested record" provision, enacted as part of the 1996 Electronic Freedom of Information Act Amendments, requires all federal agencies to give "reading room" treatment to any FOIA-processed records that, "because of the nature of their subject matter, the agency determines have become the subject of subsequent requests for substantially the same records."³ FOIA's Rule of 3, enacted as part of the 2016 FOIA Improvement Act, requires all federal agencies to proactively "make available for public inspection in an electronic format" "copies of records, regardless of form or format ... that have been released to any person ... and ... that have been requested 3 or more times."⁴

¹ FOIA Improvement Act of 2016 (Public Law No. 114-185), 5 U.S.C. § 552(a)(8)(A)

² 5 U.S.C. § 552(b)

³ 5 U.S.C. § 552(a)(2)(D)(ii)(I)

⁴ Id.



Therefore, we respectfully request that you make available online any records that the agency determines will become the subject of subsequent requests for substantially the same records, and records that have been requested three or more times.

REQUEST FOR FEE WAIVER

Pursuant to 5 U.S.C. § 552, we request a waiver of fees that IRS would otherwise charge for searching and producing the records described above, because this request satisfies both fee waiver requirements. FOIA provides for fee waivers when:

1. “[D]isclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government”; and
2. Disclosure “is not primarily in the commercial interest of the requester.”⁵

I. THE REQUEST IS IN THE PUBLIC INTEREST.

Under FOIA, a party is entitled to a fee waiver when “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the [Federal] government and is not primarily in the commercial interest of the requester.” See 5 U.S.C. § 552(a)(4)(A)(iii). The IRS FOIA regulations at 26 C.F.R. § 601.702(f)(2) establish substantially similar standards.

Thus, IRS must consider four factors to determine whether a request is in the public interest:

1. Whether the subject of the requested records concerns “the operations or activities of the Federal government,”
2. Whether the disclosure is “likely to contribute” to an understanding of government operations or activities,
3. Whether the disclosure “will contribute to public understanding” of a reasonably broad audience of persons interested in the subject, and
4. Whether the disclosure is likely to contribute “significantly” to public understanding of government operations or activities.

As shown below, FGI meets each of these factors.

A. The Requested Records Concern the Operations and Activities of the Federal Government.

⁵ 5 U.S.C. § 552(a)(4)(A)(iii)



The subject matter of this request concerns the operations and activities of the IRS. The Department of Justice Freedom of Information Act Guide acknowledges that “in most cases records possessed by a federal agency will meet this threshold.”⁶ This request asks for the following: information pertaining to the unlawful release of private taxpayer data to ProPublica and follow up actions or communications to discover the potential leak of data. Additional records requested are described earlier in this request. The threshold is met here because the records sought are possessed by IRS staff and are by nature about the IRS’s work as part of the Federal Government.

Thus, FGI meets this factor.

B. Disclosure is “Likely to Contribute” to an Understanding of Government Operations or Activities.

The requested records are meaningfully informative about government operations or activities and will contribute to an increased understanding of those operations and activities by the public.

In the case of this request, disclosure of the requested records is “likely to contribute” to an “increased public understanding” of government operations or activities. Disclosure of the requested information improve the public’s understanding of what exactly happened with the leak of private taxpayer data, whether such leaks are ongoing, and whether anyone at the IRS will be held accountable for the leak, given that the reason for the leak or identity of the leaker(s) remains unknown to the public. Once the information is made available, FGI will evaluate the information and present it to its followers and the general public in a manner that will meaningfully enhance the public’s understanding of this topic.

Thus, FGI meets this factor.

C. Disclosure of the Requested Records Will Contribute to the Understanding of a Reasonably Broad Audience of Persons.

The requested records will contribute to public understanding of IRS’s conduct prior to, during, and following the leak of American citizens’ private financial information. The improper release of this data was seemingly done outside the law, without consequence to any current employee, or potentially set to continue unabated until the individuals responsible are held accountable. A lot of people are interested in how the IRS intends to proceed. As explained above, the records will contribute to public understanding of this topic.

⁶ <https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/fees-feewaivers.pdf>



FGI will use the information it obtains from the disclosed records to educate the public at large about the decisions made by the IRS and its federal partners.

FGI has the ability and intention to effectively convey this information to the public (by means discussed in Section II below), and disclosure of information contained and gleaned from the requested records will contribute to a broad audience of persons who are interested in the subject matter. Indeed, the public does not currently have an ability to easily evaluate the requested records.

Disclosure of these records not only is “likely to contribute” but is certain to contribute to public understanding of how the IRS approached its statutory missions. The public is always well served when it knows how the government conducts its activities. Hence, there can be no dispute that disclosure of the requested records to the public will educate the public about whether these agencies have been making decisions in an objective and legal way.

Thus, FGI meets this factor.

D. Disclosure is Likely to Contribute Significantly to Public Understanding of Government Operations or Activities.

FGI is not requesting these records merely for their intrinsic informational value. Disclosure of the requested records will significantly enhance the public’s understanding of the IRS’s conduct and will help reveal more about this subject matter. Such public oversight of agency action is vital to our democratic system and clearly envisioned by the drafters of the FOIA.

Thus, FGI meets this factor, as well.

II. FGI HAS THE ABILITY AND INTENT TO DISSEMINATE THE INFORMATION TO A REASONABLY BROAD AUDIENCE OF PERSONS INTERESTED IN THE SUBJECT.

FGI is a non-partisan organization that informs, educates, and counsels the public about government operations. A key component of being able to fulfill this mission and educate the public about these duties is access to information that articulates what obligations exist for senior government officials. FGI has robust mechanisms in place to share information obtained from the requested records with the general public and other interested organizations, including a website, social media channels, and other similar platforms. FGI intends to make use of these channels to publish the information from these requested records as well as expert analysis. FGI intends to use any or all of these far-reaching media outlets to share with the public information obtained as a result of this request.



Through these means, FGI will ensure that:

1. The information requested contributes significantly to the public's understanding of the government's operations or activities,
2. The information enhances the public's understanding to a greater degree than currently exists,
3. FGI possesses the expertise to explain the requested information to the public,
4. FGI possesses the ability to disseminate the requested information to the general public, and
5. The news media recognizes FGI as a reliable source in the relevant field.

Public oversight and enhanced understanding of the IRS 's conduct is absolutely necessary. In determining whether disclosure of requested information will contribute significantly to public understanding, a guiding test is whether the requester will disseminate the information to a reasonably broad audience of persons interested in the subject. (*Carney v U.S. Dept. of Justice*, 19 F.3d 807 (2nd Cir. 1994)). FGI need not show how it intends to distribute the information, because “[n]othing in FOIA, the [agency] regulation, or our case law require[s] such pointless specificity.”⁷ It is sufficient for FGI to show how it distributes information to the public generally.⁸

III. OBTAINING THE REQUESTED RECORDS IS OF NO COMMERCIAL INTEREST TO FGI.

Disclosure is in no way connected with any commercial interest of the requestors. FGI is a non-partisan organization with supporters and members of the public who seek information that promotes transparency in government and supports values that help to build a solid infrastructure for a bright American future. FGI has no commercial interest and will realize no commercial benefit from the release of the requested records.

IV. FGI QUALIFIES FOR A FULL FEE WAIVER

For all of the foregoing reasons, FGI qualifies for a full fee waiver. We hope that the Department will immediately grant this fee waiver request and begin to search and disclose the requested records without any unnecessary delays.

Thank you for your prompt attention to this request. If you have any questions, please contact me via email. All records and any related correspondence should be sent to my attention to the email address below.

Sincerely,

⁷ *Judicial Watch*, 326 F.3d at 1314.

⁸ *Id.*



Chris Stanley
Policy Director
Functional Government Initiative
6218 Georgia Avenue NW, Ste 1 - 1235
Washington, DC 20011-5125
chris@functionalgovernment.org