

# Exhibit A



February 10, 2023

[Sent online at foiapublicaccessportal.irs.gov](https://foiaproductaccessportal.irs.gov)

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

Re: Records relating to the administration of the American Rescue Plan Act of 2021

Dear Freedom of Information Act Officer:

The Functional Government Initiative (FGI) submits this request for records under the Freedom of Information Act, 5 U.S.C. § 552 as amended, (FOIA) and the relevant implementing regulations of the Internal Revenue Service. FGI, a non-partisan organization, engages in research, investigation, and education to promote transparency in government. Your prompt response pursuant to the requirements of FOIA, 5 U.S.C. § 522(a)(6)(A), is appreciated.

President Biden signed the American Rescue Plan Act of 2021, which provides for a tremendous expansion of the IRS in personnel and its capabilities for enforcement. The records from this request would give the public insight on how a senior IRS official is overseeing implementation of these changes, which many believe could lead to increased intrusions by the government into the privacy of Americans.

REQUESTED RECORDS

FGI requests all records from IRS official Nikole Flax from January 1, 2022, to the date the search begins with the following search terms:

"87,000"	"tax gap"	"Zelle" + "reporting"
"Lois Lerner" or "Lerner"	"return on investing"	"Facebook Pay" +
"Holly Paz" or "Paz"	"return on investment"	"reporting"
"New agents"	"ROI"	"Meta Pay" + "reporting"
"Inflation Reduction Act"	"80 billion"	"Apple Pay" + "reporting"
"Build Back Better"	"misinformation"	"Google Pay" + "reporting"
"American Rescue Plan"	"disinformation"	"Western Union" +
"Audit" + "middle income"	"malinformation"	"reporting"
"Audit" + "small business"	"mal-information"	"Crypto + "reporting"
"Audit scrutiny"	"army of auditors"	"\$600"
"American Families Plan"	"Venmo" + "reporting"	"\$400,000"
"tax compliance agenda"	"PayPal" + "reporting"	"1099-K"

The term "all records" in this request refers to letters, correspondence, emails including attachments, calendars, electronic meeting invitations and replies, facsimiles, memoranda, text messages (including messages on encrypted apps such as Signal or WhatsApp), notes from

meetings and phone calls, minutes of meetings, agendas of meetings, comments, files, presentations, consultations, drawings, diagrams, graphs, charts, assessments, evaluations, telephone records and logs, virtual meeting logs (such as those produced by Microsoft Teams and Zoom), papers (published or unpublished), reports, studies, photographs and other images, databases, data, maps, 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.

We ask that you please provide all records in an electronic format and, to the extent practicable, in native file format or, if not practicable, with full metadata for all fields. FOIA provides that “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.”<sup>1</sup> Please provide records in either a load-ready format with an index in .csv file or Excel spreadsheet, or 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 do the following:

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<sup>2</sup>, and
4. Correlate any redactions with specific exemptions under FOIA.

If you or your office have destroyed or decide 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 for doing so in your response. Agencies are prohibited from denying requests for information under FOIA unless the agency reasonably believes release of the information will harm an interest that is protected by the exemption.<sup>3</sup>

Should you decide to invoke a FOIA exemption or any subsection (c) exclusions, please include sufficient information for us to assess the basis for the exemption, including any interests that would be harmed by release. Please include a detailed ledger with the following:

1. Basic factual material about each withheld record, including the originator, date, length, general subject matter, and location of each item, and
2. Complete justifications for each withheld record, including the specific exemptions 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 to my email address

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<sup>1</sup> 5 U.S.C. § 552(a)(3)(B).

<sup>2</sup> See 5 U.S.C. § 552(b).

<sup>3</sup> FOIA Improvement Act of 2016 (Public Law No. 114-185), 5 U.S.C. § 552(a)(8)(A).

below within the statutory time limit.<sup>4</sup>

FGI is willing to receive records on a rolling basis.

To facilitate our request most efficiently, we request that the FOIA office use the agency's email management system as part of the search for this request.

#### REQUEST FOR FEE WAIVER

Pursuant to 5 U.S.C. § 552 and the relevant FOIA regulations, we request a waiver of fees for searching and producing the records of this request. FOIA provides for a waiver of fees when a request is "in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester."<sup>5</sup>

Below are details explaining (1) how the disclosure of the requested records is in the public interest, (2) that FGI intends to distribute information to a broad audience of interested persons, and (3) that FGI has no commercial interests.

In addition, FGI is a "person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience" and thus qualifies as a "representative of the news media" under 5 U.S.C. § 552(a)(4)(A)(ii). Below are details explaining (4) how FGI clearly meets these criteria.

#### 1. THE REQUEST IS IN THE PUBLIC INTEREST.

Under FOIA, an agency must consider factors to determine whether a request is in the public interest. These include the following:

- A. Whether the subject of the requested records concerns "the operations or activities of the Federal government,"
- B. Whether the disclosure is "likely to contribute significantly" to an understanding of government operations or activities, and
- C. Whether the disclosure "will contribute to public understanding" of a reasonably broad audience of persons interested in the subject.

As shown below, FGI meets each of these factors.

#### **A. The requested records concern the operations and activities of the Federal government.**

The subject matter of this request seeks records from a senior IRS official involved in the planing for expansion and enforcement activities under the American Rescue Plan Act of 2021, therefore clearly about 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."<sup>6</sup> The threshold is met here not only because the records sought are by nature

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<sup>4</sup> 5 U.S.C. § 552(b).

<sup>5</sup> 5 U.S.C. § 552(a)(4)(A)(iii).

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

possessed by agency staff but also because they relate to work of the federal government.

Thus, FGI meets this factor.

**B. Disclosure is “likely to contribute significantly” to an understanding of government operations or activities.**

Disclosure of the requested records from a senior official at the IRS overseeing a major budget increase and hiring initiative is certain to contribute significantly to public understanding of how small businesses, corporations must adapt to the changes at the IRS. Americans of all income levels will be looking at how the IRS will monitor reporting of all wages, tips, salary, or other income and even payments between family and friends that are not income. Once the information is made available, FGI will evaluate the information and present it to its followers and make it available to the public.

FGI is not requesting these records merely for their intrinsic informational value. The public is always well served when it knows how the government conducts its activities, and the requested records would provide insight into how important decisions were made by federal officials. Hence, there can be no dispute that disclosure of the requested records to the public will significantly increase the public’s understanding about the agency’s actions and decisions and whether agency actions were conducted in an objective and legal way.

Thus, FGI meets this factor.

**C. Disclosure of the requested records will contribute to the understanding of a reasonably broad audience.**

FGI has the ability and intention to convey this information to a broad audience (by means discussed in Section 2 below). The public does not currently have an ability to easily evaluate the requested records, which concern records of a senior IRS official who oversees key operations integral in the as the IRS is implementing significant changes in in tax enforcement, transaction monitoring, and other matters. The information could help audience of taxpayers understand more behind the actions of the IRS.

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.

**2. FGI HAS THE ABILITY AND INTENT TO DISSEMINATE THE INFORMATION TO A REASONABLY BROAD AUDIENCE INTERESTED IN THE SUBJECT.**

FGI is a non-partisan organization that researches government operations and informs the public of its findings. Access to information about the activities and decisions of government officials is vital to fulfilling this mission. Once the information is obtained, FGI has robust mechanisms in place, including its website, social media channels, and other platforms, to share information. FGI intends to use its channels to publish the information from these requested records, along with expert analysis. FGI also has a broad network of reporters, bloggers, and media publications with interest in its content and with durable relationships with the organization. FGI intends to use these far-reaching media outlets to publicize information obtained from this request.

Through these means, FGI’s dissemination of the information will:

- Ensure that the information requested contributes significantly to the public's understanding of the government's operations or activities,
- Ensure that the information enhances the public's understanding to a greater degree than currently exists,
- Demonstrate that FGI possesses the expertise to explain the requested information to the public,
- Demonstrate that FGI possesses the ability to make the requested information accessible to the general public, and
- Demonstrate that the news media recognizes FGI as a reliable source in the relevant field.

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.<sup>7</sup> FGI need not show how it intends to distribute the information, because, as the court noted, "nothing in FOIA, the [agency] regulation, or our case law require[s] such pointless specificity."<sup>8</sup> It is sufficient for FGI to show how it distributes information to the public generally.<sup>9</sup>

### 3. 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. FGI has no commercial interest and will realize no commercial benefit from the release of the requested records.

### 4. FGI IS A REPRESENTATIVE OF THE NEWS MEDIA.

Under FOIA, the term "representative of the news media" includes any person or entity that "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience."<sup>10</sup> In *Cause of Action v. Federal Trade Commission*, the Court of Appeals for the District of Columbia broke the test for who is a media entity into five parts: "A requester must: (1) gather information of potential interest (2) to a segment of the public; (3) use its editorial skills to turn the raw materials into a distinct work; and (4) distribute that work (5) to an audience."<sup>11 12</sup>

In interpreting this test, the court noted "the news-media waiver . . . focuses on the nature of the requester, not its request."<sup>13</sup> Accordingly, where a requester "satisfies the five criteria as a general matter, it does not matter whether any of the individual FOIA requests does so."<sup>14</sup> Moreover, the media entity waiver applies to newer organizations as well as older ones: "there is no indication

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<sup>7</sup> *Carney v U.S. Dept. of Justice*, 19 F.3d 807 (2nd Cir. 1994).

<sup>8</sup> *Judicial Watch*, 326 F.3d at 1314.

<sup>9</sup> *Id.*

<sup>10</sup> 5 U.S.C. § 552(a)(4)(A)(ii).

<sup>11</sup> 799 F.3d 1108, 1120 (D.C. Cir. 2015).

<sup>12</sup> The court further noted that "the news-media fee waiver applies only to records that 'are not sought for commercial use.'" *Cause of Action*, 700 F.3d at 1120. For the reasons set forth in section 3 above, FGI is not requesting these records for commercial use.

<sup>13</sup> 799 F.3d 1108, 1120 (D.C. Cir. 2015) at 1121 (emphasis in the original).

<sup>14</sup> *Id.*

that Congress meant to make the lack of a prior publication record disqualifying when it enacted the statutory definition in 2007.”<sup>15</sup>

**A. FGI gathers information of potential interest.**

FGI’s mission is to demand transparency and promote shared values and beliefs in a thriving economy, a healthy America, a strong and equitable workforce, and a safe and clean environment. As part of this mission, FGI engages in investigations and education initiatives around important issues, including high energy prices, the government’s COVID-19 response, and government transparency. These are topics of potentially broad public interest, as evidenced by the fact that multiple news outlets have written stories on FGI’s work. You can see several FGI’s media mentions at <https://functionalgovernment.org/category/media-mentions/>.

**B. FGI gathers information of interest to a segment of the public.**

As demonstrated above, the information that FGI gathers is of interest to a segment of the public. This includes but is not limited to the segment of the public concerned with government transparency. The size of the segment of the public interests in any particular information gathering project may vary, however, as the court has noted, “[a] newspaper reporter, for example, is a representative of the news media regardless of how much interest there is in the story for which he or she is requesting information.”<sup>16</sup> Moreover, as long as FGI “satisfies the five criteria as a general matter, it does not matter whether any of the individual FOIA requests does so.”<sup>17</sup>

As set forth above, FGI believes that this request is of interest to a reasonably broad segment of the public. Even if the agency disagrees, there can be no doubt, however, that other issues about which FGI gathers information, such as drivers of inflation in the United States, energy prices, government transparency and more, are of interest to a significant audience.

Accordingly, FGI is an organization that gathers information of interest to a segment of the population.

**C. FGI uses its editorial skills to turn raw materials into distinct works.**

As the D.C. Circuit Court has stated, “A substantive press release or editorial comment can be a distinct work based on the underlying material, just as a newspaper article about the same documents would be — and its composition can involve ‘a significant degree of editorial discretion.’”<sup>18</sup> Furthermore, “nothing in principle prevents a journalist from producing ‘distinct work’ that is based exclusively on documents obtained through FOIA.”<sup>19</sup>

FGI is an entity that uses its editorial skills to turn raw materials into distinct works. It routinely issues substantive press releases detailing its activities, posted at [functionalgovernment.org](https://functionalgovernment.org). These press releases have included substantive analysis of the information gathered by FGI with a

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<sup>15</sup> *Id.* at 1124.

<sup>16</sup> *Cause of Action*, 799 F.3d at 1121.

<sup>17</sup> *Id.*

<sup>18</sup> *Cause of Action*, 799 F.3d 1122 (quoting *Nat. Sec. Archive v. U.S. Dept. of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989)).

<sup>19</sup> *Id.*

significant degree of editorial discretion. FGI has also prepared detailed reports, posted on its website, and FGI provides substantive editorial comment to other journalists, with many news clips posted on the website, as well.

Like a newspaper or other media outlet, FGI uses its editorial skills to turn raw materials into distinct works and intends to do so for other subjects as it gathers additional information. Thus, FGI meets this test.

**D. FGI distributes its work to an audience.**

For purposes of FOIA, “posting content to a public website can qualify as a means of distributing it — notwithstanding that readers have to affirmatively access the content, rather than have it delivered to their doorsteps or beamed into their homes unbidden.”<sup>20</sup> Moreover, while “[t]here is no doubt that the requirement that a requester distribute its work to ‘an audience’ contemplates that the work is distributed to more than a single person . . . beyond requiring that a person or entity have readers (or listeners or viewers), the statute does not specify what size the audience must be.”<sup>21</sup> Additionally, “[t]he fact that [a media entity’s] readership is relatively small ... is irrelevant.”<sup>22</sup>

Assessing whether a media entity distributes its work to an audience includes consideration of “past record, current operations, and future plans jointly.”<sup>23</sup>

In addition, the court rejected “the suggestion that a public interest advocacy organization cannot satisfy the statute’s distribution criterion because it is ‘more like a middleman for dissemination to the media than a representative of the media itself,’” concluding “there is no indication that Congress meant to distinguish between those who reach their ultimate audiences directly and those who partner with others to do so, as some recognized journalistic enterprises do.”<sup>24</sup>

FGI will continue to use its website to distribute original editorial content, including press releases. FGI has email subscribers and intends to establish a greater social media presence to reach its audience directly. In addition, FGI has durable relationships with a broad network of reporters, bloggers, and media publications interested in its content and with whom FGI has partnered to distribute its distinct editorial commentary.

Accordingly, FGI distributes its work to an audience.

**E. FGI qualifies as a representative of the news media.**

Under the applicable law, a government accountability group qualifies as a media organization for purposes of FOIA when it gathers information of potential interest and uses it to create original content, which can be as simple as issuing a press release or comment to other media organizations, and distributes it, which can be as simple as posting it on a website with an audience greater than one. This is true even if an organization is new and does not have a long track record.

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<sup>20</sup> *Cause of Action*, 799 F.3d at 1123.

<sup>21</sup> *Id.* at 1124 (footnote omitted).

<sup>22</sup> *Id.* at 1124 (quoting *Tax Analysts v. Dept. of Justice*, 965 F.2d 1092, 1095 (D.C. Cir. 1992)).

<sup>23</sup> *Id.* at 1124.

<sup>24</sup> *Id.* at 1125 (citations omitted).



Accordingly, under the standard set forth in FOIA and interpreted in *Cause of Action*, FGI clearly qualifies as a representative of the news media.

FGI QUALIFIES FOR A FULL FEE WAIVER.

For all the foregoing reasons, FGI qualifies for a full fee waiver. At minimum, FGI qualifies as a representative of the news media that is exempt from search and production costs. We anticipate that you will promptly grant our 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. Records and any related correspondence should be sent to my attention to the email address below.

Sincerely,

Chris Stanley  
Director  
Functional Government Initiative  
6218 Georgia Avenue NW, Ste 1 - 1235  
Washington, DC 20011-5125  
[chris@functionalgovernment.org](mailto:chris@functionalgovernment.org)

# Exhibit B



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

**GLDS Support Services**

Stop 93A  
PO Box 621506  
Atlanta, GA 30362

Chris Stanley  
Functional Government Initiative  
6218 Georgia Avenue NW Ste 1 - 1235  
Washington, DC 20011-5125

**Date:**

February 21, 2023

**Employee name:**

Kimberly Hill

**Employee ID number:**

1001339342

**Telephone number:**

406-200-6070

**Fax number:**

855-205-9335

**Case number:**

2023-08286

Dear Chris Stanley:

This is an interim response to your Freedom of Information Act (FOIA) request dated February 10, 2023, received in our office on February 10, 2023.

You requested:

All records from IRS official Nikole Flax from January 1, 2022, to the date the search begins with the following search terms:

"87,000" "Lois Lerner" or "Lerner" "Holly Paz" or "Paz" "New agents" "Inflation Reduction Act" "Build Back Better" "American Rescue Plan" "Audit" + "middle income" "Audit" + "small business" "Audit scrutiny" "American Families Plan" "tax compliance agenda" "tax gap" "return on investing" "return on investment" "ROI" "80 billion" "misinformation" "disinformation" "malinformation" "mal-information" "army of auditors" "Venmo" + "reporting" "PayPal" + "reporting" "Zelle" + "reporting" "Facebook Pay" + "reporting" "Meta Pay" + "reporting" "Apple Pay" + "reporting" "Google Pay" + "reporting" "Western Union" + "reporting" "Crypto" + "reporting" "\$600" "\$400,000" "1099-K"

I have reviewed your requested items but cannot determine what, if anything, may be responsive to your request. Currently, we are unable to process your request as it does not meet the requirements of the FOIA or the applicable agency regulations.

The FOIA requires that requesters (1) "reasonably describe" the records sought and (2) be made in accordance with published agency rules. 5 U.S.C § 552(a)(3)(A). IRS regulations at Treas. Reg. § 601.702(c)(5)(i), require that the request describe the documents in sufficient detail to enable us to locate the records "without placing an unreasonable burden upon the IRS." The rationale behind this requirement is that the FOIA is not intended to reduce agency personnel to investigators on behalf of the requesters or to allow requesters to conduct "fishing expeditions" through agency files. Dale v. IRS, 238 F. Supp. 2d 99, 104-05 (D.D.C. 2002) (holding that a request seeking "any and all documents...that refer or relate in any way" to the requester failed to reasonably describe records sought and "amounted to an all-encompassing fishing expedition of files at [agency's] offices across the country, at taxpayer expense"). Additionally, FOIA does not require agencies to conduct legal research. See Lamb v. IRS, 871 F. Supp 301, 304 (E.D.

Mich. 1994) (finding that requests are outside the scope of FOIA when they require legal research, are unspecific, or seek answers to interrogatories).

We encourage you to consider revising your request such that a search could be conducted for specific and reasonably described records. Please contact the phone number at the top of this letter to further discuss your request and clarify the information you are seeking, if necessary. You may also find the IRS FOIA guide helpful in formulating your request. It is available at the following link: <https://www.irs.gov/privacy-disclosure/freedom-of-information-act-foia-guidelines>

You also requested a fee waiver for your request. Because you have not submitted a perfected FOIA request, your request is not considered constructively received. Therefore, we are not required to consider your request for a fee waiver and have made no determination regarding your request for a fee waiver at this time. We will consider your request for a fee waiver after you submit a perfected request in accordance with IRS regulations.

Send us your updated request, and a copy of your original request and a copy of this letter, within 35 calendar days, by March 27, 2023, or we'll close your request with no further action. The 20 business-day statutory response time does not begin until we receive the requested information per Title 5 USC Section 552 (a)(6)(A)(i)). Fax your response to 877-891-6035 or mail to:

Internal Revenue Service  
GLDS Support Services  
Stop 93A  
PO Box 621506  
Atlanta, GA 30362

If you have questions regarding the processing of your FOIA request, please contact the caseworker assigned to your case at the phone number listed at the top of this letter.

If you are not able to resolve any concerns you may have regarding our response with the caseworker, you have the right to seek dispute resolution services by contacting our FOIA Public Liaisons at 312-292-3297. The FOIA Public Liaison is responsible for assisting in reducing delays, increasing transparency, and assisting in the resolution of disputes with respect to the FOIA.

There is no provision for the FOIA Public Liaison to address non-FOIA concerns such as return filing and other tax-related matters or personnel matters.

If you need assistance with tax-related issues, you may call the IRS at 800-829-1040.

Sincerely,

A handwritten signature in black ink that reads "D. Fitti-Hafer". The signature is written in a cursive style with a large initial "D".

Deanna Fitti-Hafer  
Disclosure Manger  
Disclosure Office 13

# Exhibit C

**From:** Hill Kimberly Kimberly.Hill2@irs.gov  
**Subject:** 2023-08286 FOIA Request Clarification  
**Date:** March 1, 2023 at 6:10 PM  
**To:** Chris@functionalgovernment.org  
**Cc:** Hill Kimberly Kimberly.Hill2@irs.gov

HK

Chris:

Our position remains that you must provide a subject. Not keywords.

Thank you,  
Kimberly Hill  
Tax Law Specialist  
Disclosure Office 13

-----Original Message-----

From: Chris Stanley <[chris@functionalgovernment.org](mailto:chris@functionalgovernment.org)>  
Sent: Tuesday, February 28, 2023 4:25 AM  
To: Hill Kimberly <[Kimberly.Hill2@irs.gov](mailto:Kimberly.Hill2@irs.gov)>  
Subject: [EXT] Re: 2023-08286 FOIA Request for Contact

I want to thank you again for your phone calls to confirm that the search cannot be done by keywords, only by subject lines. Your extra effort to provide more information is appreciated

However, as we discussed, and after thinking further and discussing with colleagues, I remain confused as to how a search could work, unless I get lucky subject line. Also, I don't understand how it would work for the other types of records (text messages, virtual meeting logs, letters, etc.) that would not have subject lines.

I want to add more on the importance of the records that could be responsive to this request. My request is not a "fishing expedition" as your letter suggests. It does not "require legal research, are unspecific, or seek answers to interrogatories." Instead, it seeks existing records that have defined terms relating to important topics. The records could provide insight to Americans as the IRS ramps up hiring and enforcement efforts, as it is receiving a major increase in funding and implementing new enforcement provisions from the Inflation Reduction Act, among other actions. The senior IRS official identified in the request will have a major role in that work in her position as leader of the Large Business and International Division. The search terms represent a number of subjects on previous matters, tax enforcement efforts, and more.

In past roles, Ms. Flax, the sole IRS official whose records we request, was involved in tax exempt organizations and served as the chief of staff to the IRS during the time of scrutiny over how organizations of certain political persuasions were treated. The IRS was forced to pay a multi-million-dollar settlement on how it treated certain organizations, and some of the terms relate to those matters. There are also terms that relate to the Inflation Reduction Act, the tax enforcement efforts, how these efforts could yield more revenue with a return on the investment in the increased efforts, any work to counter "misinformation" about tax issues, new reporting thresholds for transactions on payment apps, and income and transaction levels that have been debated, all subjects about issues that could impact millions of taxpayers.

The public would gain a significantly greater understanding of the IRS's work with the

The public would gain a significantly greater understanding of the IRS's work with the ability to review responsive records to this FOIA request.

I would appreciate any other thoughts you have, but I still do not have enough to help revise the request beyond the specific words that relate to important topics.

Thank you again.

On Feb 21, 2023, at 3:36 PM, Chris Stanley <[chris@functionalgovernment.org](mailto:chris@functionalgovernment.org)> wrote:

Thank you. That number works. I was on another call. Could we talk in 15 mins so that I can finish something else pending? Thank you for the quick reply.

On Feb 21, 2023, at 3:19 PM, Hill Kimberly <[Kimberly.Hill2@irs.gov](mailto:Kimberly.Hill2@irs.gov)> wrote:

Dear Chris Stanley:

I tried to contact you by phone to discuss this.  
What number can I reach you on right now?

Kimberly Hill

-----Original Message-----

From: Chris Stanley [chris@functionalgovernment.org](mailto:chris@functionalgovernment.org)  
<<mailto:chris@functionalgovernment.org>>

Sent: Tuesday, February 21, 2023 12:53 PM

To: Hill Kimberly [Kimberly.Hill2@irs.gov](mailto:Kimberly.Hill2@irs.gov)  
<<mailto:Kimberly.Hill2@irs.gov>>

Subject: [EXT] Re: 2023-08286 FOIA Interim Response Letter  
Importance: High

Thank you for the letter. Can you please explain more on how this request is not reasonably described? I ask for a search of only one IRS official's records. I have a list of terms. I have a defined time range. What is missing so that a search of that one IRS employee's records could begin? How can that be described as you're being unable to ascertain what could be responsive with all those specifics in the request?

I would appreciate more information, and thank you for your work on this FOIA request.



Chris Stanley  
Director, Functional Government Initiative  
[chris@functionalgovernment.org](mailto:chris@functionalgovernment.org)  
<<mailto:chris@functionalgovernment.org>>  
(202) 302-3974 (mobile)

On Feb 21, 2023, at 1:18 PM, Hill Kimberly  
<[Kimberly.Hill2@irs.gov](mailto:Kimberly.Hill2@irs.gov) <<mailto:Kimberly.Hill2@irs.gov>> > wrote:

Dear Chris Stanley:

Please find attached an interim response letter for the  
above referenced request.

Thank you,  
Kimberly Hill  
Tax Law Specialist  
Disclosure Office 13  
<2023-08286 INTLTR.pdf>

# Exhibit D



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

**GLDS Support Services**

Stop 93A  
PO Box 621506  
Atlanta, GA 30362

Chris Stanley  
Functional Government Initiative  
6218 Georgia Avenue NW Ste 1 - 1235  
Washington, DC 20011-5125

**Date:**

March 14, 2023

**Employee name:**

Kimberly Hill

**Employee ID number:**

1001339342

**Telephone number:**

406-200-6070

**Fax number:**

855-205-9335

**Case number:**

2023-08286

Dear Chris Stanley:

This is a final response to your Freedom of Information Act (FOIA) request, dated February 10, 2023, we received on March 13, 2023.

Relevant to:

Records relating to the Administration of The American Rescue Plan Act of 2021

- IRS official Nikole Flax
- January 1, 2022, to February 10, 2023

Copies of:

All records which include letters, correspondence, emails with attachments, calendars, electronic meeting invitations w/ replies, facsimiles, memoranda, text messages (including messages encrypted on apps Signal or WhatsApp), notes from meeting and phone calls, minutes of meetings, agenda of meetings, comments, files, presentations, consultations, drawings, diagrams, graphs, charts, assessments, evaluations, telephone records and logs, virtual meeting logs (produced by Microsoft Teams and Zoom), papers (unpublished/published), reports, studies, photographs and other images, databases, data, maps or all other responsive records in draft or final form that fall within the agency definition of records subject to the FOIA.

A search was conducted, and no records were located in response to your request.

We also received your request for a fee waiver. Because your request will have no fees due, there was no need to consider a determination regarding a fee waiver.

If you have questions regarding the processing of your FOIA request, please contact the caseworker assigned to your case at the phone number listed at the top of this letter.

If you are not able to resolve any concerns you may have regarding our response with the caseworker, you have the right to seek dispute resolution services by contacting our FOIA Public Liaisons at 312-292-3297. The FOIA Public Liaison is responsible for assisting in reducing delays, increasing transparency, and assisting in the resolution of disputes with respect to the FOIA.

There is no provision for the FOIA Public Liaison to address non-FOIA concerns such as return filing and other tax-related matters or personnel matters. If you need assistance with tax-related issues, you may 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 in resolving your dispute does not extend the 90-day period in which you can file an appeal.

Sincerely,



Deanna Fitti-Hafer  
Disclosure Manager  
Disclosure Office 13

Enclosure:  
Notice 393



## Notice 393

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

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#### 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:

#### Independent Office of Appeals

Attn: FOIA Appeals  
M/Stop 55202  
3211 S. Northpointe Drive  
Fresno, California 93725

#### 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.
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# Exhibit E



June 12, 2023

Independent Office of Appeals  
Attn: FOIA Appeals  
M/Stop 55202  
3211 S. Northpointe Drive  
Fresno, CA 93727-5136

RE: Appeal of FOIA case 2023-08286, submitted by FGI on February 10, 2023  
Response sent March 14, 2023, by Deanna Fitti-Hafer, Disclosure Manager,  
Disclosure Office 13  
Staff contact Kimberly Hill

Dear FOIA Appeals Officer:

The Functional Government Initiative (FGI) appeals the no-records determination for FOIA case 2023-08286. This request seeks records from IRS official Nikole Flax on several topics reflected in a list of search terms. See the attached request letter for details.

The response letter from the IRS says, "A search was conducted, and no records were located in response to your request." In the attached email correspondence, I was told that a search could only be conducted on "subject lines." That cannot be considered a reasonable search. Also, it would automatically mean records that are not email cannot be searched, since text messages, letters, and other types of records subject to FOIA do not have subject lines.

Additionally, the response letter that only one topic from the list in the request letter was searched in the initial search. While "American Rescue Plan Act" was cited as an example in the opening of the request and also included in the list of terms for requested records, that list and subsequent clarification via email make clear that "American Rescue Plan" is not the only topic of the request.

With this appeal, FGI asks that the request be re-opened and that an adequate search be conducted for all the search parameters in the request letter. Thank you for your prompt attention to this appeal.

Sincerely,

Chris Stanley  
Director, Functional Government Initiative  
6218 Georgia Avenue NW, Ste 1 - 1235  
Washington, DC 20011-5125  
202-302-3974 (mobile)  
[chris@functionalgovernment.org](mailto:chris@functionalgovernment.org)

Attachments: FGI's original FOIA request  
Interim letter from the IRS  
Email chain with staff contact Kimberly Hill  
IRS's "no records" response



# Exhibit F



Department of the Treasury  
Internal Revenue Service  
Independent Office of Appeals  
178 S Rio Grande Street  
Suite 350A, Stop 8000-SLC  
Salt Lake City, UT 84101

Chris Stanley  
6218 Georgia Avenue NW,  
Ste. 1-1235  
Washington, DC 20011-5125

**Date:**  
07/20/2023  
**Person to Contact:**  
Jill Jude  
**Employee ID Number:**  
1000144258  
**Tel:** (801) 799-6820  
**Fax:** (866) 291-9281  
**Re:**  
FOIA Appeals Request  
**Tax periods ended:**  
12/2023  
**FOIA number:**  
2023-08286

Dear Chris Stanley:

This letter is in response to your Freedom of Information Act (FOIA) appeal dated June 12, 2023, in which you sought review of the Atlanta Disclosure Office's February 21, 2023 response to your FOIA requests dated February 10, 2023.

The question in this appeal is not whether there are documents that exists, but whether the IRS conducted a reasonably adequate search for documents. The standard of reasonableness does not require the agency to search to absolute exhaustion for the files. Instead, it requires a search reasonably calculated to cover the materials sought. See *Miller v. Dept. of State*, 779 F.2d 1378, 1383 (8<sup>th</sup> Cir.1985); *Becker*, 34 F.3d at 405-406.

We have reviewed the response of the Disclosure Office as well as the Disclosure database and believe the IRS has not substantiated a reasonably adequate search was completed.

**Therefore, we are remanding the request back to the disclosure office.**

Please allow sufficient time for the request to be returned to the Disclosure office, (possibly a month), you will be contacted by Disclosure once they completed the final review.

We are closing your case. If you have any question regarding the request, please contact the Disclosure Specialist assigned to your request.

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,

A handwritten signature in black ink, appearing to read 'Pauline Cox'.

Pauline Cox  
Appeals Team Manager