

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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**MICHAEL TODD WELTY** )  
 4279 Roswell Road NE. )  
 Atlanta, GA 30342, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
**U.S. DEPARTMENT OF THE** )  
**TREASURY** )  
 1500 Pennsylvania Avenue, N.W. )  
 Washington, D.C. 20220, )  
 )  
 Defendant. )

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Civil Action No.: 1:24-cv-1549

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

Plaintiff Michael Todd Welty (“Plaintiff”) brings this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, as amended, for declaratory, injunctive, and other appropriate relief against the Defendant, the U.S. Department of the Treasury (“Treasury”). Plaintiff challenges Treasury’s failure to make a timely decision concerning Plaintiff’s requests for public records, as well as its failure to release all responsive and non-exempt records. In support, the Plaintiff alleges as follows:

**INTRODUCTION**

1. Plaintiff seeks to compel the disclosure of records that were wrongfully withheld by Defendant relating to or referencing certain of Treasury’s contracts and communications with Jones Land LaSalle, Inc. (“JLL”), RER Solutions, Inc. (“RER”), and SRK Consulting (US) Inc. (“SRK”).

## JURISDICTION AND VENUE

2. This Court has jurisdiction over this case pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

3. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

## PARTIES

4. Plaintiff is an individual residing in Atlanta, Georgia.

5. Defendant is an agency of the United States government within the meaning of 5 U.S.C. § 552(f)(1), headquartered in Washington, D.C., that has possession and control over the public records that Plaintiff seeks under the Freedom of Information Act, 5 U.S.C. § 552. The Internal Revenue Service (the “IRS”) is a bureau of Treasury.<sup>1</sup>

## STATUTORY FRAMEWORK

6. The FOIA “was intended to pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny.” *Am. Civil Liberties Union v. U.S. Dep’t of Justice*, 655 F.3d 1, 5 (D.C. Cir. 2011) (citations omitted).

7. The FOIA “was enacted to facilitate public access to Government documents.” *U.S. Dep’t of State v. Ray*, 502 U.S. 164, 173 (1991). FOIA implements “a general philosophy of full agency disclosure” of government records. *U.S. Dep’t of Just. v. Repts. Comm. for Freedom of the Press*, 489 U.S. 749, 754 (1989).

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<sup>1</sup> *The agency, its mission and statutory authority*, Internal Revenue Serv. (Apr. 16, 2024), <https://www.irs.gov/about-irs/the-agency-its-mission-and-statutory-authority#:~:text=The%20IRS%20is%20a%20bureau,world's%20most%20efficient%20tax%20administrators> .

8. The FOIA accordingly specifies that “each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules ... shall make the records promptly available to any person.” 5 U.S.C. § 552(a)(3)(A).

9. An agency must disclose agency records, unless “the agency reasonably foresees that disclosure would harm an interest protected by an exemption described in [5 U.S.C § 552(b)]” or “disclosure is prohibited by law.” 5 U.S.C. § 552(a)(8)(A)(i); *see also U.S. Dep’t of Just. v. Tax Analysts*, 492 U.S. 136, 150-51 (1989).

10. Records created or obtained by an agency are subject to the FOIA if the agency controls them at the time the FOIA request is made. *U.S. Dep’t of Justice v. Tax Analysts*, 492 U.S. 136, 144-45 (1989).

11. An agency has 20 working days after receipt of a FOIA request to determine whether to comply. 5 U.S.C. § 552(a)(6)(A)(i).

12. If the agency fails to respond, this Court has jurisdiction upon receipt of a complaint to review, *de novo*, the agency’s failure to respond and order the production of any agency records improperly withheld from the requester. 5 U.S.C. § 552(a)(4)(B).

## STATEMENT OF FACTS

### A. Background

13. Between January 1, 2015 and June 28, 2023, the date of Plaintiff’s FOIA request, Treasury contracted and communicated with JLL, RER, and SRK.

14. The IRS is a bureau of the U.S. Department of the Treasury.<sup>2</sup>

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<sup>2</sup> *The agency, its mission and statutory authority*, Internal Revenue Serv. (Apr. 16, 2024), <https://www.irs.gov/about-irs/the-agency-its-mission-and-statutory-authority#:~:text=The%20IRS%20is%20a%20bureau,world's%20most%20efficient%20tax%20administrators> .

15. Treasury's relationships with each of these firms are substantial. The IRS has contracted with JLL, RER, and SRK, and Treasury is obligated under those contracts:

- a. to pay JLL over \$7 million, with a total potential contractual value exceeding \$11 million;
- b. to pay RER over \$83 million, with a total potential contractual value exceeding \$109 million; and
- c. to pay SRK over \$18 million, with a total potential contractual value exceeding \$24 million.

16. JLL's and RER's engagements are joint efforts between the firms to provide appraisal services to the IRS; a joint venture that evaluates about 30 to 40 appraisals a year on the IRS's behalf in ostensible "syndicated conservation easement" cases.

17. In 2022, RER was investigated by the U.S. Small Business Administration ("SBA") regarding a federal contract that violated the Federal Acquisition Regulation (FAR). RER was awarded a contract by the SBA for data analysis and loan recommendation services during the COVID-19 pandemic. The SBA Inspector General found that, in awarding the contract to RER, the SBA did not follow the proper procedures to ensure that contract provided the best value to the government. The SBA Inspector General also found that the SBA did not ensure that RER complied with established size standards to be eligible for a small business set-aside award. The SBA Inspector General moreover found that RER failed to comply with subcontracting limitations, exceeding the limit by \$13 million.<sup>3</sup>

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<sup>3</sup> SBA Inspector Report No. 22-10, *Evaluation of SBA's Disaster Assistance Loan Recommendation Services* (Apr. 14, 2022), [https://www.sba.gov/sites/default/files/2023-11/SBA%20OIG%20Report%2022-10\\_0.pdf](https://www.sba.gov/sites/default/files/2023-11/SBA%20OIG%20Report%2022-10_0.pdf).

**B. Plaintiff's Treasury FOIA Request**

18. Given the foregoing, on June 28, 2023, Plaintiff submitted a FOIA request to Treasury (the "Treasury FOIA request").<sup>4</sup> See Declaration of Daniel Rosen ("Rosen Decl."), Ex. I (Attachment 1 hereto). Plaintiff's FOIA request sought all records "related to or referencing" contracts and communications between Defendant and JLL, SRK, and RER.

19. Plaintiff was authorized to receive the records sought by the Treasury FOIA request.

20. Plaintiff's Treasury FOIA request was received by the appropriate Treasury office on July 26, 2023 and assigned Case Number 2023-20008. See Rosen Decl., Ex. I.

21. On August 1, 2023, Defendant sent Plaintiff a letter in connection with Plaintiff's Treasury FOIA request ("Defendant's August 1, 2023 Letter"). *Id.*

22. Defendant's August 1, 2023 Letter provided that the initial date of completion for the request was August 21, 2023. *Id.* at 1. Defendant, however, has not responded to Plaintiff's FOIA request as of the date of this complaint.

23. On August 10, 2023, Defendant sent Plaintiff a letter in connection with his FOIA request ("Defendant's August 10, 2023 Letter"). *Id.*

24. Defendant's August 10, 2023 Letter indicated—incorrectly—as follows: "You submitted an identical request dated June 28, 2023. Disclosure Office 05 is assigned your request, case number 2023-18244. They'll send you a response." *Id.*

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<sup>4</sup> The FOIA request to Treasury was submitted as a protective measure. Plaintiff also submitted a FOIA request on June 28, 2023 to the Internal Revenue Service that requested the same documents from the IRS to the extent such documents were held by the IRS (the "IRS FOIA request"). The IRS FOIA request was assigned case number 2023-18244. Plaintiff intends to file a complaint with respect to the IRS FOIA request prior to filing this complaint.

25. Notwithstanding statements in correspondence that “additional time [is needed] to obtain and review the records,” Treasury has already gathered a portion of the documents sought by the Treasury FOIA request related to JLL and SRK and submitted such documents to the Tax Court for *in camera* inspection. Upon information and belief, certain documents related to JLL, SRK, and/or RER have also been gathered and provided to the U.S. Department of Justice.

26. The Treasury FOIA request related to Case Number 2023-20008 was directed to relevant documents that may be held by Treasury, including the IRS. The IRS FOIA request related to Case Number 2023-18244 was directed to relevant documents that may be held by the IRS.

27. Treasury is required within 20 days of receipt to inform FOIA requestors whether it will comply with or deny the request. 5 U.S.C. § 552(a)(6)(A). Treasury received Plaintiff’s Treasury FOIA request on July 26, 2023. *Id.* Plaintiff did not receive any correspondence with respect to Case Number 2023-20008 that extended the timeline for a response by 10 working days pursuant to 5 U.S.C. § 522(a)(6)(B). However, even assuming the time were extended, Treasury has far exceeded the time allowed for a response to the Treasury FOIA request.

28. The statutory deadline for Defendant to respond to Plaintiff’s FOIA request has expired, and Defendant is not entitled to any further, unilateral delay.

29. Plaintiff has exhausted its administrative remedies under 5 U.S.C. § (a)(6)(C)(i).

## **CAUSE OF ACTION**

### **Production Under the FOIA**

30. Plaintiff incorporates by reference the preceding paragraphs 1 through 29 as if fully realleged herein.

31. Plaintiff submitted to Defendant a request for public records that reasonably described the records sought and fully conformed to Defendant's published FOIA regulations.

32. Plaintiff properly requested records within Defendant's control and possession in accordance with the FOIA.

33. Plaintiff is entitled under the FOIA to the requested records.

34. Defendant has withheld, and continues to withhold, non-exempt documents responsive to Plaintiff's FOIA request.

35. Accordingly, Defendant has unlawfully withheld, and continues to withhold, public records in violation of 5 U.S.C. § 552.

#### **PRAYER FOR RELIEF**

Wherefore, Plaintiff requests that this Court:

a. Order the Defendant to conduct an adequate search of all records responsive to Plaintiff's Treasury FOIA request and demonstrate the use of search methods reasonably likely to lead to the discovery of records responsive to Plaintiff's Treasury FOIA request;

b. Order the Defendant to produce, by a certain date, all non-exempt records responsive to Plaintiff's Treasury FOIA request and a *Vaughn* index of any responsive records withheld under claim of exemption;

c. Enjoin Defendant from withholding all non-exempt records responsive to Plaintiff's Treasury FOIA request;

d. Order the Defendant to disclose the requested records to Plaintiff, in accordance with 5 U.S.C. § 552(a)(4)(B);

e. Award Plaintiff his costs and reasonable attorney's fees, in accordance with 5 U.S.C. § 552(a)(4)(E); and

f. Grant such other and further relief as the Court may deem just and proper.

Dated: May 24, 2024

Respectfully submitted,

/s/ Macdonald "Mac" A. Norman

Macdonald A. Norman

D.C. Bar No. 1510617

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