

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

MICHAEL TODD WELTY)
 4279 Roswell Road NE.)
 Atlanta, GA 30342,)
)
 Plaintiff,)
)
 v.)
)
U.S. INTERNAL REVENUE SERVICE)
 1111 Constitution Avenue, N.W.)
 Washington, D.C. 20224,)
)
 Defendant.)
 _____)

Civil Action No.: 1:24-cv-1547

**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. Internal Revenue Service (“IRS” or the “Service”). Plaintiff challenges the IRS’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, wrongfully withheld by Defendant, which relate to or reference certain of Defendant’s contracts and communications with Jones Lang 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., which has possession and control over the public records that Plaintiff seeks under the Freedom of Information Act, 5 U.S.C. § 552.

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. Reps. Comm. for Freedom of the Press*, 489 U.S. 749, 754 (1989).

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. *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, the IRS contracted and communicated with JLL, RER, and SRK.

14. Defendant's relationships with each of these firms are substantial. Defendant has contracted with JLL, RER, and SRK, and Defendant 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.

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

16. 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.¹

B. Plaintiff’s IRS FOIA Request

17. Given the foregoing, on June 28, 2023, Plaintiff submitted a FOIA request to the IRS (the “IRS FOIA request”).² *See* Declaration of Daniel Rosen (“Rosen Decl.”), Ex. I (Ex. 1 hereto). Plaintiff’s IRS FOIA request sought certain records that relate to or reference certain of Defendant’s contracts and communications with JLL, RER, and SRK.

18. Plaintiff was authorized to receive the records sought by the IRS FOIA request.

19. Plaintiff’s IRS FOIA request was received by the appropriate IRS office on August 3, 2023, and assigned Case Number 2023-18244. *Id.*

¹ SBA Inspector Report No. 22-10, *Evaluation of SBA’s Disaster Assistance Loan Recommendation Services* (Apr. 14, 2022), available at https://www.sba.gov/sites/default/files/2023-11/SBA%20OIG%20Report%2022-10_0.pdf.

² As a protective measure, Plaintiff also submitted a FOIA request on June 28, 2023 to the U.S. Department of the Treasury that requested the same documents from Treasury to the extent the documents were held by Treasury (the “Treasury FOIA request”). The Treasury FOIA request was assigned case number 2023-20008. Plaintiff intends to file a complaint with respect to the Treasury FOIA request on the same date this complaint is filed.

20. On July 7, 2023, Defendant sent Plaintiff a letter in connection with his IRS FOIA request. *Id.*

21. Defendant's July 7, 2023 letter provided that the initial date of completion for Plaintiff's IRS FOIA request was August 1, 2023. *Id.* at 1. Defendant, however, has not responded to Plaintiff's IRS FOIA request as of the date of this complaint.

22. On November 7, 2023, Defendant sent Plaintiff another letter in connection with his IRS FOIA request. *Id.*

23. Defendant's November 7, 2023 letter indicated additional time was needed to complete the request and the final date of completion for the Plaintiff's IRS FOIA request was February 7, 2024. *Id.*

24. On February 6, 2024, Defendant sent Plaintiff another letter in connection with his IRS FOIA request. *Id.*

25. Defendant's February 6, 2024 letter indicated additional time was needed to complete the request and the final date of completion for the Plaintiff's IRS FOIA request was May 7, 2024. *Id.*

26. Most recently, on May 2, 2024, Defendant sent Plaintiff another letter in connection with his FOIA request requesting an additional extension to July 29, 2024 to provide a final response. *Id.* Defendant has not responded to Plaintiff's FOIA request as of the date of this complaint. *Id.*

27. Notwithstanding repeated statements by the IRS in correspondence that "additional time [is needed] to obtain and review the records," the IRS has already gathered a portion of the documents sought by the IRS 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.

28. Among other letters, Defendant's May 2, 2024 letter provided as follows: "However, you do have the right to file suit for a judicial review. You can file suit after August 24, 2023. File your suit in the U.S. District Court: Where you reside or have your principal place of business, Where the records are located, or In the District of Columbia." *Id.*

29. IRS 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). IRS received Plaintiff's FOIA request on July 3, 2023. *Id.* IRS extended the timeline for a response by 10 working days pursuant to 5 U.S.C. § 522(a)(6)(B). Accordingly, the IRS's response to the FOIA request was due on or about August 24, 2023. *Id.*

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

31. Plaintiff has exhausted its administrative remedies under 5 U.S.C § 552(a)(6)(C)(i).

CAUSE OF ACTION

Production Under the FOIA

32. Plaintiff incorporates by reference the preceding paragraphs 1 through 31 as if fully realleged herein.

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

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

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

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

37. Accordingly, Defendant has unlawfully withheld, and continues to unlawfully 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 for all records responsive to Plaintiff's IRS FOIA request and demonstrate the use of search methods reasonably likely to lead to the discovery of records responsive to Plaintiff's IRS FOIA request.

b. Order the Defendant to produce, by a certain date, all non-exempt records responsive to Plaintiff's IRS 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 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
TODD WELTY, P.C.
4279 Roswell Rd NE
Suite 208, #352
Atlanta, Georgia 30342
Telephone: (404) 239-2064
E-mail: mac@toddweltypc.com
Counsel for Plaintiff