

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

Sidney W. Jackson IV,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	CIVIL ACTION NO. _____
)	
U.S. Internal Revenue Service,)	
)	
<i>Defendant.</i>)	

**VERIFIED COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

Plaintiff Sidney W. Jackson IV (“Plaintiff” or “Plaintiff Jackson”) brings this action against Defendant, United States Internal Revenue Service, to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). As grounds therefore, Plaintiff alleges as follows:

INTRODUCTION

1. Plaintiff seeks to compel the disclosure of records unlawfully withheld by the Internal Revenue Service (“Defendant” or “IRS”).

JURISDICTION AND VENUE

2. FOIA states that an “agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published

rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.” 5 U.S.C. § 552(a)(3)(A).

3. The Court has subject matter jurisdiction and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

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

5. FOIA provides for venue in either: (1) the judicial district where the plaintiff resides or has her principal place of business, (2) the judicial district where the agency records are situated, or (3) the District of Columbia. 5 U.S.C. § 552(a)(4)(B).

6. Specifically, Plaintiff Jackson, the FOIA requester, resides and has his principal place of business in the district for the United States District Court for the Northern District of Alabama, Southern Division.

PARTIES

7. Plaintiff Jackson filed the FOIA request that is the subject of the litigation. Exhibit 1. Plaintiff Jackson’s principal place of business is located at 2311 Highland Avenue S., Suite 500, Birmingham, Alabama, 35205.

8. Defendant IRS is an agency of the U.S. Government and is headquartered at 1111 Constitution Avenue Northwest, Washington, D.C. 20224. The IRS is an agency within the meaning of 5 U.S.C. § 552(f).

STATUTORY FRAMEWORK

9. The FOIA's purpose is "to encourage public disclosure of information so citizens may understand what their government is doing." *Miccosukee Tribe of Indians of Fla. v. United States*, 516 F.3d 1235, 1244 (11th Cir. 2008) (internal quotations omitted).

10. FOIA requires federal government agencies to promptly release requested agency records to the public unless one or more specific statutory exemptions apply. 5 U.S.C. § 552(a)(3)(A).

11. Records are agency records subject to the FOIA if the agency created or obtained them and the agency controlled them at the time the FOIA request was made. *U.S. Dep't of Just. v. Tax Analysts*, 492 U.S. 136, 144-45 (1989).

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

13. In *Judicial Watch v. Rossotti*, the court reasoned:

Upon receipt of a FOIA request, an agency must determine within 20 days whether it will comply and “immediately notify the person making such request of such determination and the reasons therefor” “If the agency has not responded within the statutory time limit[], then, under 5 U.S.C. § 552(a)(6)(C), the requester may bring suit.”

285 F. Supp. 2d 19, 22 (D.D.C. 2003) (quoting 5 U.S.C. § 552(a)(6)(A)(i) and *Oglesby v. Dep't of the Army*, 920 F.2d 57, 62 (D.C. Cir.1990)).

14. The IRS has “the burden of demonstrating that the withheld documents [requested by the FOIA requester] are exempt from disclosure.” *Elec. Priv. Info. Ctr. v. Customs and Border Prot.*, 160 F. Supp. 3d 354, 357 (D.D.C. 2016) (quoting *Boyd v. U.S. Dep't of Just.*, 475 F.3d 381, 385 (D.C. Cir. 2007)).

15. An agency must prove that it “fully discharged its obligations under the FOIA, after the underlying facts and the inferences to be drawn from them are construed in the light most favorable to the FOIA requester.” *Id.* (citing *Friends of Blackwater v. U.S. Dep't of Interior*, 391 F. Supp. 2d 115, 119 (D.D.C. 2005)).

STATEMENT OF FACTS

16. By letter sent by facsimile on January 7, 2022, Plaintiff Jackson sent a FOIA request to the Internal Revenue Service’s Central Processing United at fax number (877) 891-6035. A true and correct copy of the Facsimile Cover Sheet and the FOIA request are attached hereto and incorporated herein as Exhibit 1. A true

and correct copy of the Fax Transmission Result, showing the fax was successfully sent, is attached hereto and incorporated herein as Exhibit 1A.

17. Plaintiff Sidney Jackson (“Plaintiff Jackson”) serves as outside legal counsel to American Diversified Development, LLC as Tax Matters Partner (“TMP”) of Alligator Holdings, LLC (“Alligator Holdings” or “Taxpayer”) since January of 2020. As set forth in Exhibit 1, Plaintiff Jackson’s FOIA request sought various documents related to the examinations of the Form 1065, US Return of Partnership Income, filed by Alligator Holdings, LLC (EIN: 82-1493412) (the “Taxpayer”) for the taxable year ended December 31, 2017 (the “Examinations”), including, but not limited to, the following:

1. The Examination Division Administrative File (the “Administrative File”) for the Examinations. The requested file includes any worksheets, work papers, notes, emails, documents, memoranda, letters, computations and other materials prepared or accumulated relative to the Audit by employees of the IRS and any other governmental agency. This request also includes internal documents, memoranda, memoranda of all interviews of persons regarding the charitable contributions by the Taxpayer, copies of all statements (sworn or otherwise) given by individuals in connection with the Audit, Case Activity record, written reports and recommendations concerning the proposed adjustment of partnership items and penalties, and any other information that is related to the determinations by the IRS as set forth in the Revenue Agent Audit Report.

2. Any documents (electronic or otherwise) relative to the Examination that may have been prepared by specialist agents, engineers, or valuation specialists, and materials created as specialty case files, desk files, or as group files, which are not otherwise included in the Administrative File. This request includes any emails, work papers, notes, documents, memoranda, transmittal letters, reports, documents describing

or recording interviews, or other materials prepared or accumulated relevant to the Examinations.

3. Any documents (electronic or otherwise) relative to the Examination that may have been prepared by persons not employed by the Internal Revenue Service, including consultants, appraisers, economists, engineers, and any other specialists retained for this case and which are not otherwise included in the Administrative File. This request includes any emails, work papers, notes documents, memoranda, transmittal letters, reports, documents describing or recording interviews, or other materials prepared or accumulated relevant to the Examination.

4. Any documents (electronic or otherwise) relative to the Examination that include information and documents obtained pursuant to summonses or third-party requests issued to third parties which are not otherwise included in the Administrative File.

5. Any communications concerning Alligator Holdings, LLC's Examination, Alligator Holdings, LLC's Administrative File, or Alligator Holdings, LLC between the Internal Revenue Service and federal legislative branch officials including the Senate Finance Committee, its staff, and its interns.

6. Any communications concerning Alligator Holdings, LLC's Examination, Alligator Holdings, LLC's Administrative File, or Alligator Holdings, LLC between the Internal Revenue Service and any state or federal agency or official therein.

See Exhibit 1.

18. By letter dated February 7, 2022, IRS Disclosure Manager, Sara Bien, confirmed receipt of Plaintiff Jackson's January 7, 2022 letter. A true and correct copy of Bien's letter dated February 7, 2022 is attached hereto and incorporated herein as Exhibit 2.

19. The February 7, 2022 letter confirmed that Bien was "unable to provide the information requested by February 9, 2022, which is the 20 business-day period

required by law.” *See* Exhibit 2. Bien noted that under certain circumstances, the FOIA allows for an additional 10-day statutory extension, and that she needed additional time to: “Search for, collect, and review a large volume of records.” Exhibit 2, p. 2.

20. The February 7, 2022 letter extended the IRS’s statutory response date to February 24, 2022, but acknowledged that Bien would still be unable to respond by the extended statutory response date and that a final response could be extended by April 25, 2022. Exhibit 2, p. 2.

21. By letter dated April 21, 2022, IRS Disclosure Manager, Sara Bien, sent a second letter to Plaintiff Jackson in response to Plaintiff Jackson’s January 7, 2022 FOIA request/letter. A true and correct copy of Bien’s second letter dated April 21, 2022, is attached hereto and incorporated herein as Exhibit 3.

22. In the April 21, 2022 letter from Bien, Bien stated that she needed additional time to search and review the records requested in Plaintiff Jackson’s Freedom of Information Act (FOIA) request. Bien further stated she expected to complete the request by June 24, 2022. Exhibit 3, p. 2.

23. By letter dated June 24, 2022, IRS Disclosure Manager, Sara Bien, sent a third letter to Plaintiff Jackson in response to Plaintiff Jackson’s January 7, 2022 FOIA request/letter. A true and correct copy of Bien’s third letter dated June 24, 2022, is attached hereto and incorporated herein as Exhibit 4.

24. In the June 24, 2022 letter from Bien, Bien again stated that she needed additional time to search and review the records requested in Plaintiff Jackson's Freedom of Information Act (FOIA) request. Bien further stated she expected to complete the request by August 23, 2022. Exhibit 4, p. 2.

25. By letter dated August 22, 2022, IRS Disclosure Manager, Sara Bien, sent a fourth letter to Plaintiff Jackson in response to Plaintiff Jackson's January 7, 2022 FOIA request/letter. A true and correct copy of Bien's fourth letter dated August 22, 2022, is attached hereto and incorporated herein as Exhibit 5.

26. In the August 22, 2022 letter from Bien, Bien again stated that she needed additional time to search and review the records requested in Plaintiff Jackson's Freedom of Information Act (FOIA) request. Bien further stated she expected to complete the request by October 21, 2022. Exhibit 5, p. 2.

27. By letter dated October 14, 2022, IRS Disclosure Manager, Sara Bien, sent a fifth letter to Plaintiff Jackson in response to Plaintiff Jackson's January 7, 2022 FOIA request/letter. A true and correct copy of Bien's fifth letter dated October 14, 2022, is attached hereto and incorporated herein as Exhibit 6.

28. In the October 14, 2022 letter from Bien, Bien again stated that she needed additional time to search and review the records requested in Plaintiff Jackson's Freedom of Information Act (FOIA) request. Bien further stated she expected to complete the request by December 20, 2022. Exhibit 6, p. 2

29. By letter dated December 14, 2022, IRS Disclosure Manager, Sara Bien, sent a sixth letter to Plaintiff Jackson in response to Plaintiff Jackson's January 7, 2022 FOIA request/letter. A true and correct copy of Bien's sixth letter dated December 14, 2022, is attached hereto and incorporated herein as Exhibit 7.

30. In the December 14, 2022 letter from Bien, Bien again stated that she needed additional time to search and review the records requested in Plaintiff Jackson's Freedom of Information Act (FOIA) request. Bien further stated she expected to complete the request by March 20, 2023. Exhibit 7, p. 2.

31. By letter dated March 10, 2023, IRS Disclosure Manager, Sara Bien, sent a seventh letter to Plaintiff Jackson in response to Plaintiff Jackson's January 7, 2022 FOIA request/letter. A true and correct copy of Bien's seventh letter dated March 10, 2023, is attached hereto and incorporated herein as Exhibit 8.

32. In the March 10, 2023 letter from Bien, Bien again stated that she needed additional time to search and review the records requested in Plaintiff Jackson's Freedom of Information Act (FOIA) request. Bien further stated she expected to complete the request by June 16, 2023. Exhibit 8, p. 2.

33. By letter dated May 25, 2023, IRS Disclosure Manager, Sara Bien, sent a letter to Plaintiff Jackson stating this letter is a final response to your Freedom of Information (FOIA) request dated January 7, 2022. A true and correct copy of

Bien's final response letter dated May 25, 2023, is attached hereto and incorporated herein as Exhibit 9.

34. In the May 25, 2023 letter from Bien, Bien stated we searched for, and located, 5,239 pages responsive to your request. Although the letter stated that it was releasing 3,959 pages without exemptions, it also stated that the IRS was withholding 28 pages in part, and withholding 1,257 pages in full. The letter cited the "deliberative process privilege, which it claimed protects documents that reflect the pre-decisional opinions and deliberations on legal or policy matters." Exhibit 9, p. 2.

35. By a second letter also dated May 25, 2023, IRS Disclosure Manager, Sara Bien, sent a letter to Plaintiff Jackson providing the password and instructions to open the electronic media providing the responsive documents. A true and correct copy of Bien's letter dated May 25, 2023, is attached hereto and incorporated herein as Exhibit 10.

36. As of the date of the filing of this complaint, more than two years have passed since the submission of the FOIA request, and Plaintiff Jackson has not received a complete production responsive to the substance of his FOIA Request.

37. Plaintiff Jackson has also not received a privilege log of the withheld items.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

38. As the IRS has admitted in its FOIA response letters, pursuant to 26 CFR § 601.702, there is no right to an administrative appeal for failure to meet the statutory 20 business-day, or additional 10 business-day, timeframes for response.”

39. Therefore, there were no administrative remedies to be exhausted prior to the filing of this Complaint pursuant to 5 U.S.C. § 552(a)(6)(C)(i).

CAUSE OF ACTION

Violation of the Freedom of Information Act, 5 U.S.C. § 552 for Failure to Disclose Responsive Records

40. Plaintiff re-alleges paragraphs 1 through 39 as are fully stated herein.

41. Defendant is unlawfully withholding records requested by Plaintiff pursuant to 5 U.S.C. § 552.

42. Plaintiff has a legal right to obtain such records, and no legitimate basis exists for Defendant’s failure to disclose them. Defendant has not objected to the requests nor asserted adequate grounds or bases for failing to respond and produce the requested records.

43. As Defendant has admitted, there are no applicable administrative remedies for Plaintiff to exhaust with respect to the IRS’s failure to meet the statutory 20 business-day, or additional 10 business-day timeframe for a response to a FOIA request.

44. Plaintiff is being irreparably harmed by reason of Defendant's unlawful withholding of requested records, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to conform its conduct to the requirements of the law.

45. Alligator Holdings, represented by Plaintiff Jackson, has a Petition for Readjustment of Partnership Items Under Code Section 6226 currently pending in United States Tax Court (Docket No. 26172-21 "the Action"). Plaintiff Jackson's FOIA request and the records being unlawfully withheld by Defendant are relevant and essential to the Action.

46. When documents are withheld based on the so-called deliberative process privilege under [USC §], the government must produce a privilege log sufficient to allow the requesting party to evaluate the privilege. *See Confidential Informant 59-05071 v. U.S.*, 108 Fed. Cl. 121, 131-32 (U.S. Ct. Fd. Clms. 2012).

47. The burden is on the IRS to show that the deliberative process privilege exists:

Invocation of the deliberative process privilege is a three-step process, and the burden is on the government to show that the privilege protects the documents that it seeks to withhold from discovery. *Walsky Constr. Co. v. United States (Walsky)*, 20 Cl. Ct. 317, 320 (1990). First, to invoke the privilege, the government must assert the privilege by declaration or affidavit. *Id.* at 320 n. 3. The privilege can be asserted by the head of the agency with control over the requested document, after personal consideration, or by one to whom such authority to invoke the deliberative process privilege on the agency's behalf has been

delegated. See *Marriott Int'l Resorts L.P. v. United States (Marriott Int'l)*, 437 F.3d 1302, 1308 (Fed.Cir.2006) (holding that assertion of the privilege can be delegated); cf. *Walsky*, 20 Cl.Ct. at 320 (discussing process of assertion). **Second, the officer invoking the privilege “must state with particularity what information is subject to the privilege.”** *Walsky*, 20 Cl.Ct. at 320; see also RCFC 26(b)(5) (“When a party withholds information otherwise discoverable by claiming that the information is privileged ..., the party must ... describe the nature of the documents ... not produced or disclosed—and do so in a manner that ... will enable other parties to assess the claim.”) Finally, “the agency must supply the court with precise and certain reasons for maintaining the confidentiality of the requested document.”⁶ *Walsky*, 20 Cl.Ct. at 320 (internal quotation marks omitted).

In addition to these procedural requirements, two substantive requirements also must be met. First, the documents for which the government seeks protection must be shown to “record pre-decisional agency conduct,” meaning that they are “antecedent to the adoption of an agency policy.” *Id.* (internal quotation marks omitted); *Dairyland Power Coop. v. United States (Dairyland)*, 77 Fed.Cl. 330, 337 (2007); see *In re United States*, 321 Fed.Appx. at 958–59 (stating that “subjective documents which reflect the personal opinions of the writer rather than the policy of the agency” are pre-decisional (internal quotation marks omitted)). Second, the government must show that the documents it seeks to protect “contain decisional information,” meaning that they “make[] recommendations or express[] opinions on legal or policy matters.” *Walsky*, 20 Cl.Ct. at 320 (internal quotation marks omitted); see also *In re United States*, 321 Fed.Appx. at 958–59; *Dairyland*, 77 Fed.Cl. at 337.

After the government has shown that both the procedural and substantive requirements of the deliberative process privilege have been met, the court must balance the competing interests of the parties to determine whether the plaintiff has overcome the privilege by a showing of compelling need. *Marriott Int'l*, 437 F.3d at 1307; see also *CACI*, 12 Cl.Ct. at 687 (“The executive privilege ... is a qualified one. The privilege can be overcome upon a showing of evidentiary need

weighed against the harm that may result from disclosure.” (internal citation omitted)).

Confidential Informant 59-05071, 108 Fed. Cl. at 131-32 (Emphasis added).

48. Without providing a privilege log that states with particularity what information is subject to the privilege, the objection to producing such privileged documents is not properly made. *Confidential Informant 59-05071*, 108 Fed. Cl. at 131-32.

49. The government failed to properly articulate and assert its privilege claims over the course of more than a year. It cannot now be allowed to do so. *See, e.g., Eden Isle Marina, Inc. v. U.S.*, 89 Fed. Cl. 480, 494 (U.S. Ct. Fed. Cl. 2009) (holding government waived objections and privileges when failing to make a proper objection to a document production request); *Marx v. Kelly, Hart & Hallman, P.C.*, 929 F.2d 8, 12 (1st Cir. 1991) (“If the responding party fails to make a timely objection, or fails to state the reason for an objection, he may be held to have waived any or all of his objections.”).

50. Here, no privilege log has been provided. The government’s reference to a privilege in the May 25, 2023 letter is insufficient to evaluate the claims of privilege.

51. Defendant’s failure and refusal to obey its statutory obligations frustrates the essential purpose of the Freedom of Information Act, are flagrant, and

without any legal excuse, and evidence a total disregard for the fundamental rights the legislation in question is designed to protect. Plaintiff has been forced to pursue this action in Court to protect and exercise his rights to documents and information which are being withheld.

RELIEF REQUESTED

WHEREFORE, Plaintiff Jackson respectfully requests this Court to:

- (1) Expedite this proceeding as provided for in 28 U.S.C. § 1657.
- (2) Declare Defendant is unlawfully withholding records requested by Plaintiff pursuant to 5 U.S.C. § 552.
- (3) Order Defendant to conduct a search for any and all responsive records to Plaintiff Jackson's January 7, 2022 FOIA request and to demonstrate that it employed search methods reasonably likely to lead to the discovery of records responsive to the request.
- (4) Order Defendant to produce, by a date certain, any and all non-exempt records responsive to Plaintiff's FOIA request and *Vaughn* indexes of any responsive documents withheld, citing the appropriate FOIA exception.
- (5) Enjoin Defendant from continuing to withhold any and all non-exempt records responsive to the FOIA request.
- (6) Grant Plaintiff an award of attorneys' fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E).
- (7) Grant Plaintiff such further and additional relief as the Court deems just and proper, to which Plaintiff may show himself to be justly entitled.

Respectfully submitted this the 24th day of May 2024.

/s/ Cheryl Howell Oswald

Gregory Rhodes (ASB-4351-G689)

Cheryl Howell Oswald (ASB-2975-E62O)

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VERIFICATION

Under the penalty of perjury under the laws of the United States, I declare I have read the foregoing and that the facts alleged therein are true and correct to the best of my knowledge and belief, excepting only those allegations which are identified as based on information and belief. Such allegations are based on a good faith belief. I understand that a false statement in this Verification will subject me to penalties of perjury.

By: Sidney W. Jackson, IV

Title: As Plaintiff and Legal Counsel for
American Diversified Development, LLC as
Tax Matters Partner (“TMP”) of Alligator
Holdings, LLC

Date: _____