

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

EXXON MOBIL CORPORATION,

Plaintiff,

v.

INTERNAL REVENUE SERVICE,

Defendant.

CIVIL ACTION NO.
3:17-cv-02318

COMPLAINT

Exxon Mobil Corporation, the common parent of an affiliated group of corporations (collectively, “**ExxonMobil**”), files this complaint for injunctive relief and damages against the Internal Revenue Service (the “**IRS**”) to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 (“**FOIA**”). ExxonMobil seeks records in the IRS’s control that relate to the IRS’s administrative audit of ExxonMobil’s federal income tax returns for its 2006 – 2011 tax years and imposition of penalties under 26 U.S.C. § 6676 (the “**Section 6676 Penalties**”) for ExxonMobil’s 2006 – 2009 tax years. Four separate FOIA requests are at issue. ExxonMobil submitted the first FOIA request on May 20, 2016 and the next three FOIA requests on July 1, 2016.

As of the date of this filing, the IRS has failed to provide all of the requested records in response to ExxonMobil’s FOIA requests. The IRS has not claimed that the records do not exist, that the IRS does not have control of them, or that ExxonMobil is not entitled to them. The IRS also has not claimed that any exemption allows such withholding. ExxonMobil brings this action to compel the IRS to disclose the records to which ExxonMobil is entitled.

I. PARTIES

1. Exxon Mobil Corporation is a New Jersey corporation with its global headquarters and principal place of business located at 5959 Las Colinas Boulevard, Irving, Texas 75039-2298.

2. The IRS is an agency of the United States government within the meaning of 5 U.S.C. § 552(f)(1) with its headquarters at 1111 Constitution Avenue NW, Washington, D.C. 20224. The IRS has possession and control over the records that ExxonMobil seeks under FOIA.

II. JURISDICTION AND VENUE

3. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

4. Venue is proper in the Northern District of Texas under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

III. STATUTORY FRAMEWORK

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

6. Records are agency records subject to 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 Justice v. Tax Analysts*, 492 U.S. 136, 144-45 (1989).

7. An agency has 20 business 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). The agency must then immediately notify the requester of its determination, the reasons for such determination, and the right of the requester to appeal an adverse determination to the agency's head. 5 U.S.C.

§ 552(a)(6)(A)(i). The statutory deadline may be extended for up to 10 business days for unusual circumstances. 5 U.S.C. § 552(a)(6)(B)(i).

8. If the agency fails to respond within the statutory deadline, the requester “shall be deemed to have exhausted his administrative remedies.” 5 U.S.C. § 552(a)(6)(C)(i).

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

IV. FACTUAL BACKGROUND

The 2006 – 2011 Administrative File FOIA Request

10. On May 20, 2016, ExxonMobil filed a FOIA request for any and all documents relating to the IRS’s audit of ExxonMobil’s U.S. federal income tax returns for its 2006 – 2011 tax years (the “**2006 – 2011 Administrative File FOIA Request**”). The 2006 – 2011 Administrative File FOIA Request sought (i) all records in the IRS’s examination administrative files, including any and all documents related to the issuance of audit notices, deficiency notices, claim disallowances, other adjustments, designation for litigation, penalties and/or any related matters for ExxonMobil’s 2006 – 2011 tax years; (ii) all communications involving any and all members of the IRS examination team involved in the audits of ExxonMobil’s 2006 – 2011 tax years; and (iii) all communications involving any IRS employee in the National Office, Area Counsel, or other division or unit of the IRS involved in the audits of ExxonMobil’s 2006 – 2011 tax years.

11. To facilitate the IRS’s search and disclosure, the 2006 – 2011 Administrative File FOIA Request included the names and titles of specific IRS employees that may have communications subject to the 2006 – 2011 Administrative File FOIA Request.

12. The IRS received the 2006 – 2011 Administrative File FOIA Request on May 24, 2016. The 20-day statutory deadline for responding to the request was June 22, 2016. By letter dated June 20, 2016, the IRS notified ExxonMobil that it would be unable to respond by the 20-day statutory deadline. The letter extended the deadline an additional 10 business days to July 7, 2016, but advised that the IRS would still be unable to locate and consider release of the records by July 7, 2016. The letter unilaterally extended the IRS's response time to September 30, 2016 and advised that ExxonMobil could file suit after July 7, 2016.

13. By letter dated September 27, 2016, the IRS again unilaterally extended the IRS's response deadline to December 23, 2016.

14. By letter dated December 20, 2016, the IRS again unilaterally extended the IRS's response deadline to March 15, 2017.

15. By letter dated March 13, 2017, the IRS again unilaterally extended the IRS's response deadline to June 30, 2017.

16. By letter dated June 30, 2017, the IRS provided an interim response with twelve (12) pages and again unilaterally extended the IRS's response deadline for the balance of the request to September 29, 2017—over sixteen (16) months after the request was first made.

17. By letter dated August 17, 2017, the IRS provided an interim response with three (3) CDs containing 1909 documents, of which 871 cannot be opened.

CCA FOIA Request No. 86

18. On July 1, 2016, ExxonMobil filed a FOIA request for any written communication or memorandum within the IRS pertaining to the facts or legal analysis behind a Chief Counsel Advice issued to ExxonMobil. The IRS assigned the case reference number F16183-0086 to the request (the “**CCA FOIA Request No. 86**”).

19. The IRS received the request on July 1, 2016. The 20-day statutory deadline for responding to the request was August 1, 2016. By letter dated August 1, 2016, the IRS notified ExxonMobil that the IRS would be unable to respond by the 20-day statutory deadline. The letter extended the deadline an additional 10 business days to August 15, 2016, but advised that the IRS would still be unable to locate and consider release of the records by August 15, 2016. The letter unilaterally extended the IRS's response time to November 4, 2016 and advised that ExxonMobil could file suit after August 15, 2016.

20. By letter dated November 4, 2016, the IRS again unilaterally extended the IRS's response deadline to March 6, 2017.

21. By letter dated March 6, 2017, the IRS again unilaterally extended the IRS's response deadline to June 6, 2017.

22. By letter dated June 6, 2017, the IRS again unilaterally extended the IRS's response deadline to September 12, 2017.

CCA FOIA Request No. 90

23. On July 1, 2016, ExxonMobil filed a FOIA request for any written communication or memorandum within the IRS pertaining to the facts or legal analysis behind a second Chief Counsel Advice issued to ExxonMobil. The IRS assigned the case reference number F16183-0090 to the request (the "**CCA FOIA Request No. 90**").

24. The IRS received the request on July 1, 2016. The 20-day statutory deadline for responding to the request was August 1, 2016. By letter dated July 26, 2016, the IRS notified ExxonMobil that the IRS would be unable to respond by the 20-day statutory deadline. The letter extended the deadline an additional 10 business days to August 15, 2016, but advised that the IRS would still be unable to locate and consider release of the records by August 15, 2016.

The letter unilaterally extended the IRS's response time to November 1, 2016 and advised that ExxonMobil could file suit after August 15, 2016.

25. By letter dated October 25, 2016, the IRS again unilaterally extended the IRS's response deadline to February 1, 2017.

26. By letter dated February 1, 2017, the IRS again unilaterally extended the IRS's response deadline to May 3, 2017.

27. By letter dated May 3, 2017, the IRS again unilaterally extended the IRS's response deadline to August 3, 2017.

CCA FOIA Request No. 83

28. On July 1, 2016, ExxonMobil filed a FOIA request for any written communication or memorandum within the IRS pertaining to the facts or legal analysis behind a third Chief Counsel Advice issued to ExxonMobil. The IRS assigned the case reference number F16183-0083 to the request (the "**CCA FOIA Request No. 83**" together with the CCA FOIA Request No. 86 and CCA FOIA Request No. 90, the "**CCA FOIA Requests**" and together with the 2006 – 2011 Administrative File FOIA Request, the "**FOIA Requests**").

29. The IRS received the request on July 1, 2016. The 20-day statutory deadline for responding to the request was August 1, 2016. By letter dated July 29, 2016, the IRS notified ExxonMobil that the IRS would be unable to respond by the 20-day statutory deadline. The letter extended the deadline an additional 10 business days to August 15, 2016, but advised that the IRS would still be unable to locate and consider release of the records by August 15, 2016. The letter unilaterally extended the IRS's response time to October 31, 2016 and advised that ExxonMobil could file suit after August 15, 2016.

30. By letter dated October 25, 2016, the IRS again unilaterally extended the IRS's response deadline to January 31, 2017.

31. By letter dated January 27, 2017, the IRS again unilaterally extended the IRS's response deadline to March 31, 2017.

32. By letter dated March 28, 2017, the IRS again unilaterally extended the IRS's response deadline to June 30, 2017.

33. By letter dated June 23, 2017, the IRS again unilaterally extended the IRS's response deadline to September 28, 2017.

The IRS's Failure to Respond

34. As of the date of this Complaint, the IRS has failed to disclose all of the documents requested by the FOIA Requests.

35. The statutory deadline for the IRS to respond to the FOIA Requests has expired.

36. ExxonMobil did not agree to any extension of time with respect to FOIA's statutory deadlines.

37. Because the IRS failed to comply with FOIA's statutory deadlines, ExxonMobil has exhausted its administrative remedies in accordance with 5 U.S.C. § 552(a)(6)(C)(i) with regard to the FOIA Requests.

38. ExxonMobil is entitled to reasonable attorney's fees and costs of maintaining this action pursuant to 5 U.S.C. § 552(a)(4)(E).

Related Case

39. The FOIA Requests are related to ExxonMobil's suit for a refund of taxes paid for its 2006 – 2009 tax years that is currently pending before this Court (*Exxon Mobil Corporation v. United States of America*, Civil Action No. 3:16-cv-2921) (the "**Related Case**").

40. The 2006 – 2011 Administrative File FOIA Request includes documents relating to the issues in the Related Case that have been requested in ExxonMobil's First Request for Production to Defendant United States of America but not produced to ExxonMobil.

41. ExxonMobil anticipates supplementing its complaint in the Related Case to assert a claim for refund of the Section 6676 Penalties and has advised the United States of America and the Court of its intention. The 2006 – 2011 Administrative File FOIA Request seeks documents related to the Section 6676 Penalties and requested in ExxonMobil's First Request for Production to Defendant United States of America but not produced to ExxonMobil. Such documents are relevant to ExxonMobil's supplemental complaint.

42. The CCA FOIA Requests seek documents regarding Chief Counsel Advice issued to ExxonMobil on the same facts and issues that are the subject of the Related Case.

V. CLAIMS FOR RELIEF

COUNT I – VIOLATION OF FOIA – ADMINISTRATIVE FILE

43. ExxonMobil incorporates by reference the allegations contained in the above paragraphs.

44. The IRS is subject to FOIA.

45. In the 2006 – 2011 Administrative File FOIA Request, ExxonMobil properly requested records within the IRS's control in accordance with FOIA.

46. Under FOIA, ExxonMobil is entitled to the records requested in the 2006 – 2011 Administrative File FOIA Request.

47. The IRS did not conduct an adequate search for records requested in the 2006 – 2011 Administrative File FOIA Request.

48. The IRS failed to comply with the statutory deadlines imposed by FOIA.

49. The IRS improperly withheld records requested in the 2006 – 2011 Administrative File FOIA Request in violation of FOIA.

50. ExxonMobil exhausted its administrative remedies with regard to the wrongfully withheld records requested in the 2006 – 2011 Administrative File FOIA Request.

COUNT II – VIOLATION OF FOIA – CCA FOIA REQUEST NO. 86

51. ExxonMobil incorporates by reference the allegations contained in the above paragraphs.

52. The IRS is subject to FOIA.

53. In the CCA FOIA Request No. 86, ExxonMobil properly requested records within the IRS's control in accordance with FOIA.

54. Under FOIA, ExxonMobil is entitled to the written communications or memorandums within the IRS pertaining to the facts or legal analysis behind the Chief Counsel Advice requested in the CCA FOIA Request No. 86.

55. The IRS did not conduct an adequate search for records requested in the CCA FOIA Request No. 86.

56. The IRS failed to comply with the statutory deadlines imposed by FOIA.

57. The IRS improperly withheld the records requested in the CCA FOIA Request No. 86 in violation of FOIA.

58. ExxonMobil exhausted its administrative remedies with regard to the wrongfully withheld records requested in the CCA FOIA Request No. 86.

COUNT III – VIOLATION OF FOIA – CCA FOIA REQUEST NO. 90

59. ExxonMobil incorporates by reference the allegations contained in the above paragraphs.

60. The IRS is subject to FOIA.

61. In the CCA FOIA Request No. 90, ExxonMobil properly requested records within the IRS's control in accordance with FOIA.

62. Under FOIA, ExxonMobil is entitled to the written communications or memorandums within the IRS pertaining to the facts or legal analysis behind the Chief Counsel Advice requested in the CCA FOIA Request No. 90.

63. The IRS did not conduct an adequate search for records requested in the CCA FOIA Request No. 90.

64. The IRS failed to comply with the statutory deadlines imposed by FOIA.

65. The IRS improperly withheld the records requested in the CCA FOIA Request No. 90 in violation of FOIA.

66. ExxonMobil exhausted its administrative remedies with regard to the wrongfully withheld records requested in the CCA FOIA Request No. 90.

COUNT IV – VIOLATION OF FOIA – CCA FOIA REQUEST NO. 83

67. ExxonMobil incorporates by reference the allegations contained in the above paragraphs.

68. The IRS is subject to FOIA.

69. In the CCA FOIA Request No. 83, ExxonMobil properly requested records within the IRS's control in accordance with FOIA.

70. Under FOIA, ExxonMobil is entitled to the written communications or memorandums within the IRS pertaining to the facts or legal analysis behind the Chief Counsel Advice requested in the CCA FOIA Request No. 83.

71. The IRS did not conduct an adequate search for records requested in the CCA FOIA Request No. 83.

72. The IRS failed to comply with the statutory deadlines imposed by FOIA.

73. The IRS improperly withheld the records requested in the CCA FOIA Request No. 83 in violation of FOIA.

74. ExxonMobil exhausted its administrative remedies with regard to the wrongfully withheld records requested in the CCA FOIA Request No. 83.

VI. CONDITIONS PRECEDENT

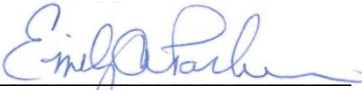
75. All conditions precedent have been satisfied.

VII. PRAYER FOR RELIEF

FOR ALL THESE REASONS, ExxonMobil prays that the Court:

- a. Order the IRS to conduct a reasonable search for all documents and records responsive to ExxonMobil's FOIA Requests;
- b. Enjoin the IRS from withholding and order the IRS to produce to ExxonMobil the documents and records that ExxonMobil's FOIA Requests seek, in accordance with 5 U.S.C. § 552(a)(4)(B);
- c. Assess against the IRS the reasonable attorneys' fees and other litigation costs ExxonMobil reasonably incurred in prosecuting this action, in accordance with 5 U.S.C. § 552(a)(4)(E); and
- d. Award ExxonMobil such other relief as this Court considers just and proper.

Respectfully submitted,

By: 

Emily A. Parker
Texas Bar No. 15482500
emily.parker@tklaw.com

Mary A. McNulty
Texas Bar No. 13839680
mary.mcnulty@tklaw.com

William M. Katz, Jr.
Texas Bar No. 00791003
william.katz@tklaw.com

J. Meghan Nylin
Texas Bar No. 24070083
meghan.nylin@tklaw.com

Leonora S. Meyercord
Texas Bar No. 24074711
lee.meyercord@tklaw.com

THOMPSON & KNIGHT LLP
One Arts Plaza
1722 Routh Street, Suite 1500
Dallas, Texas 75201
(214) 969-1700
FAX (214) 969-1751

**ATTORNEYS FOR PLAINTIFF
EXXON MOBIL CORPORATION**