

SCOTT STEWART, PLLC

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Fort Worth, Texas 76102

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sestewart1@earthlink.net
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May 20, 2013

Via Certified Mail, Return Receipt Requested

Ms. Stephanie Young
Disclosure Manager and FOIA Public Liaison
Internal Revenue Service
Disclosure Scanning Operation – Stop 93A
Post Office Box 621506
Atlanta, Georgia 30362-3006

**Re: Freedom of Information Act (FOIA) Request for
Motivating Graphics III, Inc. (subsequently Motivating Graphics, LLC)
Taxpayer Identification Numl
IRS Form 1120S, U.S. Income Tax Return for an S Corporation, for Its
2006 Tax Period**

Dear Ms. Young:

This letter is a request under the provisions of the Freedom of Information Act (5 U.S.C. Section 552) and Treasury Regulation Section 601.702, for copies of all of the documents relating to the IRS Form 1120S, U.S. Income Tax Return for an S Corporation, of Motivating Graphics III, Inc., Taxpayer Identification Number and subsequently Motivating Graphics, LLC (referred to herein as "Motivating Graphics"), for its 2006 tax period, the Internal Revenue Service examination thereof (referred to herein as the "examination"), and certain other matters. I have enclosed a copy of the properly executed IRS Form 2848, "Power of Attorney and Declaration of Representative," that has been duly filed with the Central Authorization File as proof of my identity and to establish my right to disclosure of the requested records pursuant to Treasury Regulation Section 601.702(c)(5)(iii)(C). When used herein, the term "document" or "documents" means any writings in any form whether of paper, electronic, or other medium, for example, memoranda, correspondence, opinion letters, e-mail, contracts, agreements, invoices, computations, billing records, bank records, ledgers, books, and records. This request includes, but is not limited to:

1. all documents, transmittal letters, descriptions or recordings of discussions, telephone call slips, or other material prepared or accumulated relative to the selection of Motivating Graphics for examination,
2. all documents, transmittal letters, descriptions or recordings of discussions, telephone call slips, or other material prepared or accumulated relative to requests from anyone outside of the Internal Revenue Service for documents regarding



Internal Revenue Service Disclosure Scanning Operation
May 20, 2013
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Motivating Graphics or the provision to anyone outside of the Internal Revenue Service of documents regarding Motivating Graphics,

3. all documents, transmittal letters, descriptions or recordings of discussions, telephone call slips, or other material prepared or accumulated relative to Motivating Graphics being singled out for threats, harassment, or intimidation by the Internal Revenue Service or other governmental organizations, political parties or groups, or organizations related to the Internal Revenue Service, other governmental organizations, or political parties or groups,
4. all documents, transmittal letters, descriptions or recordings of discussions, telephone call slips, or other material prepared or accumulated relative to another taxpayer, including (but not limited to) lists of donors to tax-exempt organizations or political parties or candidates, in connection with additional scrutiny of Motivating Graphics,
5. all documents, transmittal letters, descriptions or recordings of discussions, telephone call slips, or other material prepared or accumulated relative to Motivating Graphics (1) being discriminated against for the political affiliations or religious beliefs of any of its owners, officers, management, or other principals, (2) being intimidated, harassed, or threatened to suppress the freedom of speech rights of Motivating Graphics, or (3) otherwise being denied the exercise of its constitutional rights,
6. the Examination Division Administration File for the examination, including, but not limited to, all workpapers, notes, documents, transmittal letters, descriptions or recordings of interviews, telephone call slips, or other material prepared or accumulated relative to the examination,
7. any files relative to the examination that may have been retained by specialist agents, either as specialty case files, desk files, or as group files, which are not otherwise included in the Examination Division Administrative File, including any workpapers, notes, documents, memoranda, transmittal letters, descriptions or recordings of interviews, telephone call slips, or other materials prepared or accumulated relative to the examination,
8. any files relative to the examination that may have been prepared by independent consultants (including economists, engineers, and other independent specialists), which are not otherwise in the Examination Division Administrative File, including any workpapers, notes, documents, memoranda, transmittal letters, descriptions or recordings of interviews, telephone call slips, or other material prepared or accumulated relative to the examination,

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May 20, 2013
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9. any files relative to the examination that include information and documents obtained pursuant to summons issued to third parties which are not otherwise included in the Examination Division Administrative File,
10. a list of all information relative to the examination that is maintained electronically that identifies the information subject matter and format (*e.g.*, tape, disc, or CD ROM), and
11. all other workpapers, notes, documents, memoranda, transmittal letters, recordings, telephone call slips, and other material or information in your possession or control in connection with the assessment by the Internal Revenue Service of income tax or interest or penalty thereon against Motivating Graphics arising from the examination.

We are aware that the Internal Revenue Service has a destruction policy for documents of a certain age and, therefore, we request that appropriate measures be taken to ensure that the requested documents are not destroyed.

Pursuant to Treasury Regulation Section 601.702(f)(4), Scott Stewart, PLLC, Scott E. Stewart, and Motivating Graphics agree, without any further authorization from any of such parties, to pay and to be jointly and severally liable for the fees, charges, costs, or expenses determined in accordance with Treasury Regulation Section 601.702(f)(5), including (but not limited to) fees, charges, costs, or expenses for searching for, reviewing, making deletions from records, and copying documents.

If it is determined that any requested document or record or any portion thereof will not be disclosed, please provide me with the nonexempt records and with the nonexempt portions of the remaining records. If any requested record or portion thereof is not disclosed, also please provide me with an index and a detailed description of each record or portion thereof not disclosed and a statement describing the statutory basis for not disclosing each record or portion thereof.

Please send the requested records and other correspondence to me at the address in the letterhead of this letter. Please do not hesitate to let me know if I may provide further information regarding this request or otherwise be of assistance. Thank you for your prompt consideration of and attention to this Freedom of Information Act request.

Sincerely,


Scott E. Stewart

Enclosure



PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

June 25, 2013

Scott Stewart, PLLC
Suite 600
777 Main Street
Fort Worth, TX 76102

Dear Mr. Stewart:

I am responding to 11 Freedom of Information Act (FOIA) requests dated May 20, 2013, that we received on May 28, 2013, on behalf of:

Ray G. Clark and Judith A. Clark – Case #s: F13149-0142, F13149-0154,
F13149-0189, and F13149-0190

Motivating Graphics III – Case #s: F13149-0145, F13149-0152, F13149-0211,
F13149-0216

RCT Motivating, Inc. – Case #s: F13149-0135, F13149-0165, F13149-0185

I am unable to send the information you requested by June 25, 2013, which is the 20 business-day period allowed by law. I apologize for any inconvenience this delay may cause.

STATUTORY EXTENSION OF TIME FOR RESPONSE

The FOIA allows an additional ten-day statutory extension in certain circumstances. To complete your request I need additional time to search for, collect, and review responsive records from other locations. We have extended the statutory response date to July 10, 2013, after which you can file suit. An administrative appeal is limited to a denial of records, so it does not apply in this situation.

REQUEST FOR ADDITIONAL EXTENSION OF TIME

Unfortunately, we will still be unable to locate and consider release of the requested records by July 10, 2013. We have extended the response date to July 24, 2013, when we believe we can provide a final response.



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You do not need to reply to this letter if you agree to this extension. You may wish to consider limiting the scope of your request so that we can process it more quickly. If you want to limit your request, please contact the individual named below. If we subsequently deny your request, you still have the right to file an administrative appeal.

You may file suit if you do not agree to an extension beyond the statutory period. Your suit may be filed 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

You may file suit after July 10, 2013. Your complaint will be treated according to the Federal Rules of Civil Procedure applicable to actions against an agency of the United States. These procedures require that the IRS be notified of the pending suit through service of process, which should be directed to:

Commissioner of Internal Revenue
Attention: CC:PA: Br 6/7
1111 Constitution Avenue, NW
Washington, D.C. 20224

The FOIA provides access to existing records. Extending the time period for responding to your request will not delay or postpone any administrative, examination, investigation or collection action.

If you have any questions please call me at 314-612-4412 or write to: Internal Revenue Service, Disclosure Scanning Operation – Stop 93A, PO Box 621506, Atlanta, GA 30362. Please refer to case numbers listed above.

Sincerely,



JoAnn Johnson
Senior Disclosure Specialist
ID# 0246728
Disclosure Office 10



PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

July 24, 2013

Scott Stewart, PLLC
Suite 600
777 Main Street
Fort Worth, TX 76102

Dear Mr. Stewart:

I am responding to 11 Freedom of Information Act (FOIA) requests dated May 20, 2013, that we received on May 28, 2013, on behalf of:

Ray G. Clark and Judith A. Clark – Case #: F13149-0154

(Cases #'d: F13149-0142, F13149-0189, and F13149-0190 were closed and we will be responding to all 4 cases under F13149-0154.)

Motivating Graphics III – Case #: F13149-0152

(Cases #'d: F13149-0145 and F13149-0211 were closed and we will be responding to all 3 cases under F13149-0152.)

RCT Motivating, Inc. – Case #: F13149-0165

(Cases #'d: F13149-0135 and F13149-0185 were closed and we will be responding to all 3 cases under F13149-0165.)

In the future we will only reference the 3 case numbers **in bold** above.

On June 25, 2013, I asked for more time to obtain the records you requested. I am still working on your request and need additional time to review the responsive documents. I will contact you by August 21, 2013, if I am still unable to complete your request.

Once again, I apologize for any inconvenience this delay may cause.

If you have any questions please call me at 314-612-4412 or write to: Internal Revenue Service, Disclosure Scanning Operation – Stop 93A, PO Box 621506, Atlanta, GA 30362. Please refer to case numbers (**in bold**) listed above.

Sincerely,

A handwritten signature in cursive script that reads "JoAnn Johnson".

JoAnn Johnson
Senior Disclosure Specialist
ID# 0246728
Disclosure Office 10





PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

August 19, 2013

Scott Stewart, PLLC
Suite 600
777 Main Street
Fort Worth, TX 76102

Dear Mr. Stewart:

I am responding to 11 Freedom of Information Act (FOIA) requests dated May 20, 2013, that we received on May 28, 2013, on behalf of:

Motivating Graphics III – Case #: F13149-0152

(Cases #'d: F13149-0145 and F13149-0211 were closed and we will be responding to all 3 cases under F13149-0152.)

On July 24, 2013, I asked for more time to obtain the records you requested. I am still working on your request and need additional time to review the responsive documents. I will contact you by September 20, 2013, if I am still unable to complete your request.

Once again, I apologize for any inconvenience this delay may cause.

If you have any questions please call me at 314-612-4412 or write to: Internal Revenue Service, Disclosure Scanning Operation – Stop 93A, PO Box 621506, Atlanta, GA 30362. Please refer to case number F13149-0152.

Sincerely,

A handwritten signature in cursive script that reads "JoAnn Johnson".

JoAnn Johnson
Senior Disclosure Specialist
ID# 0246728
Disclosure Office 10





PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

September 20, 2013

Scott Stewart, PLLC
Suite 600
777 Main Street
Fort Worth, TX 76102

Dear Mr. Stewart:

I am responding to 11 Freedom of Information Act (FOIA) requests dated May 20, 2013, that we received on May 28, 2013, on behalf of:

Motivating Graphics III – Case #: F13149-0152

(Cases #'d: F13149-0145 and F13149-0211 were closed and we will be responding to all 3 cases under F13149-0152.)

On August 19, 2013, I asked for more time to obtain the records you requested. I am still working on your request and need additional time to review the responsive documents. Per our telephone conversation today, I will contact you by September 30, 2013, if I am still unable to complete your request.

Once again, I apologize for any inconvenience this delay may cause.

If you have any questions please call me at 314-612-4412 or write to: Internal Revenue Service, Disclosure Scanning Operation – Stop 93A, PO Box 621506, Atlanta, GA 30362. Please refer to case number F13149-0152.

Sincerely,

A handwritten signature in cursive script that reads "JoAnn Johnson".

JoAnn Johnson
Senior Disclosure Specialist
ID# 0246728
Disclosure Office 10





PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

September 26, 2013

Scott Stewart, PLLC
Scott E. Stewart, Attorney
Ste. 600
777 Main St.
Ft. Worth, TX 76102

Dear Mr. Stewart:

This responds to your Freedom of Information Act (FOIA) of May 20, 2013, received May 28, 2013, on behalf of Motivating Graphics III for tax years 2006 through 2009.

You asked for copies of all documentation, documents, and files relative to the examination of Motivating Graphics for tax years 2006 through 2009.

We located 5,718 pages in response to your request. Of those 5,718 pages, I am enclosing 5,397 pages. I am withholding 321 pages in full and 125 pages in part for the following reasons:

- FOIA exemption (b)(3) - This portion of FOIA requires us to withhold information that is specifically exempted from disclosure by another law. The law supporting this exemption is Internal Revenue Code section 6103(a), (b)(2), and (e)(7).
- P-FOIA-Exemption (b)(5) - This portion of FOIA exempts from disclosure 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. There are three primary privileges covered by this exemption:
 - The deliberative process privilege protects documents that reflect the pre-decisional opinions and deliberations that play a direct part in the process of making recommendations on legal or policy matters.
 - The attorney work product privilege protects documents prepared by an attorney or other Service employee during litigation or in reasonable contemplation of litigation, and
 - The attorney-client privilege protects confidential communications between an attorney and a client relating to a legal matter for which the client has sought professional advice.



- FOIA (b)(7)(A) - This portion of FOIA exempts from disclosure records or information compiled for law enforcement purposes, but only to the extent that production of such records could interfere with enforcement proceedings.

Disclosure of this information is also exempt under FOIA subsection (b)(3) supported by Internal Revenue Code section IRC Section 6103(e)(7), because release would impair federal tax administration.

- FOIA (b)(7)(C) - This portion of FOIA exempts from disclosure personal information in law enforcement records that if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.
- FOIA (b)(7)(E) - This portion of FOIA exempts from disclosure records or information compiled for law enforcement purposes to the extent their production would reveal:
 - Techniques and procedures for law enforcement investigations or prosecutions.
 - Guidelines for law enforcement investigations or prosecutions, if release could reasonably be expected to risk circumvention of the law.
- I deleted the Discriminant Information Function (DIF) score from the enclosed records. Release of the DIF score would seriously impair IRS assessment, collection, and enforcement proceedings. FOIA exemption (b)(3), supported by Internal Revenue Code section 6103(b)(2) and (e)(7) exempts this information from release. Disclosure of this information would also reveal law enforcement techniques, procedures and guidelines protected by FOIA exemption (b)(7)(E).

The redacted portions of each page are marked by the applicable FOIA exemptions.

Our office implemented a new procedure for responding to a FOIA request. We are providing your documents in electronic format (CD), at a charge of \$25.00. The enclosed CD contains your documents and is password protected. The password necessary to access the documents will be provided in a separate letter. If it is determined that you need us to provide a printed copy of the documents please call Senior Disclosure Specialist JoAnn Johnson at the phone number shown below. At that time you will be charged \$.20 per page after an allowance of 100 pages at no charge for printed documents.

Please send your check or money order in the amount of \$25.00 payable to the Treasury of the United States to the address below with the enclosed Fee Payment stub. We must receive your payment within 35 days from the date of this letter. Fees paid are reimbursement for services performed and are not refundable. If you fail to pay the fees, your name and your client's names will be added to the FOIA Non-Payment list, and no future requests will be processed until all fees are paid in full.

This constitutes a partial denial of your request. I have enclosed Notice 393 explaining your appeal rights.

If you have questions about this response, please call Senior Disclosure Specialist JoAnn Johnson, ID #0246728, at (314) 612-4390 or write to: Internal Revenue Service, Disclosure Scanning Operation, Stop 93A, PO Box 621506, Atlanta, GA 30362. Please refer to case numbers F13149-0145, F13149-0152, and F13149-0211.

Sincerely,



Melba Tyson
Disclosure Manager
Disclosure Office 10

Enclosures (3)
Responsive Documents (CD)
Notice 393
Payment Voucher



PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

September 26, 2013

Scott Stewart, PLLC
Scott E. Stewart, Attorney
Ste. 600
777 Main St.
Ft. Worth, TX 76102

Dear Mr. Stewart:

This responds to your Freedom of Information Act (FOIA) of May 20, 2013, received May 28, 2013, on behalf of Motivating Graphics III for tax years 2006 through 2009.

You asked for copies of all documentation, documents, and files relative to the examination of Motivating Graphics III for tax years 2006 through 2009.

We separately provided the requested documents in an electronic format on a CD. The Internal Revenue Service selected GuardianEdge Removable Storage (GERS) to comply with an OMB mandate for the encryption of data removed from all computers. You will need a GERS password to enable you to decrypt the documents you requested.

Your GERS password is:

To access the information on the CD, please follow the steps below:

1. Select the File you want to access.
2. Double click on the file.
3. Enter password FOla0152jj!

If you have questions about this response, please call me at (314) 612-4390 or write to: Internal Revenue Service, Disclosure Scanning Operation, Stop 93A, P.O. Box 621506, Atlanta, GA. 30362. Please refer to case numbers F13149-0145, F13149-0152, and F13149-0211.

Sincerely,

A handwritten signature in cursive script that reads "JoAnn Johnson".

JoAnn Johnson
Senior Disclosure Specialist
ID# 0246728
Disclosure Office 10



SCOTT STEWART, PLLC

777 Main Street, Suite 600
Fort Worth, Texas 76102

Phone: 817-887-8467
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sestewart1@earthlink.net
Mobile: 817-715-6188

October 10, 2013

Via Federal Express

IRS Appeals
Attention: FOIA Appeals
M/Stop 55202
5045 E. Butler Avenue
Fresno, California 93727-5136

**RE: Motivating Graphics, LLC (formerly Motivating Graphics III, Inc.),
Employer Identification Number , Case Number F13149-0145,
F13149-0152, and F13149-0211**

Dear Sir or Madam:

This letter is to exercise appeal rights under the Freedom of Information Act, 5 U.S.C. 552, due to the denial of access to records in whole and in part. Enclosed is a duly prepared and executed IRS Form 2848, Power of Attorney and Declaration of Representative, to evidence my authority to make this appeal on behalf of Motivating Graphics, LLC. In regards to your required information for this appeal:

Taxpayer's name and address: Motivating Graphics, LLC,
formerly Motivating Graphics III, Inc.
3100 Eagle Parkway
Fort Worth, Texas 76177

Description of requested records: 321 pages withheld in full and 125 pages withheld in part
as further described in enclosed letter.

Date of the requests: May 20, 2013 – Please see enclosed requests

**Identity of the office and
contact on the response letter:** Internal Revenue Service, Disclosure Scanning Operation,
Stop 93A, P.O. Box 621506, Atlanta, GA 30362, Senior
Disclosure Specialist JoAnn Johnson, ID #0246728



STEWART, PLLC

IRS Appeals
October 10, 2013
Page 2 of 2

Date of the letter denying request: September 26, 2013 – Please see enclosed response

Please note that your response withholds 321 pages in full and 125 pages in part without providing a description of the documents that were withheld in full or the analysis for withholding the 125 pages that were withheld in part. Without a description of the 321 pages that were withheld in full or an explanation of how a statutory exception applies to the 125 pages that were withheld in part, it is not possible to challenge with further particularity or specificity your denial of the withheld records. Please provide sufficient particularity and specificity in regards to the three hundred twenty-one (321) pages that were withheld in full and the reasons that they were withheld and analysis as to why you withheld the one hundred twenty-five (125) pages that were withheld in part.

Please do not hesitate to let me know if I may provide further information or otherwise be of assistance with any issues. Thank you for your prompt attention to this matter.

Sincerely,



Scott E. Stewart

Enclosures

Internal Revenue Service
Appeals Office M/S 55203
Fresno, CA 93888-0700

Date: NOV 06 2013

STEWART, SCOTT E.
SCOTT STEWART, PLLC
777 MAIN STREET, SUITE 600
FORT WORTH TX 76102

Department of the Treasury

Person to Contact:

Agnes J. Smith
Employee ID Number: 1000157554
Tel: 559-253-4810
Fax: 559-253-4890

Refer Reply to:

AP;CO;FRC;AJS

In Re:

Freedom of Information Act
CASE NUMBER F13149-0152

Tax Period(s) Ended:

12/2007

Dear Mr. Stewart:

This letter is in response to your October 10, 2013 Freedom of Information Act (FOIA) appeal of the September 26, 2013 response by the Disclosure Specialist to your May 20, 2013 request. The request was for documents regarding examination of Motivating graphics for tax year 2007.

The Disclosure Specialist consolidated her response with those for 2006 through 2009 requests. She provided 5,397 pages of 5,718 responsive documents. She noted that 125 pages were withheld in part and 321 pages in full. She cited 5 U.S.C. 552(b)(3) in conjunction with 26 U.S.C. 6103(a), (b)(2) and (e)(7), and FOIA exemptions (b)(5), (b)(7)(A), (b)(7)(C) and (b)(7)(E).

Your appeal requests specific description of the fully withheld documents and the reasons withheld as well as an analysis of why the 125 pages were partially withheld. As noted in the Disclosure Specialist's letter, all redacted portions of documents were marked with the applicable FOIA exemptions. If you are seeking a Vaughn Index of the withheld documents, it is well settled that a requester is not entitled to receive a Vaughn index during the administrative process as the courts do not require the submission of such an index prior to the time when a dispositive motion is filed. See, e.g., Edmond v. U.S. Attorney, 959 F. Supp. 1, 5 (D.D.C. 1997) (rejecting, as premature, request for Vaughn Index when agency had not processed plaintiff's request), Tannehill v. Dept. of the Air Force, No. 87-1335, slip op. at 1 (D.D.C. Aug. 20, 1987) (noting that standard practice is to await filing of agency's dispositive motion before deciding whether additional indexes will be necessary); Miscavige, 2 F.3d at 369 ("The plaintiff's early attempt in litigation of this kind to obtain a Vaughn Index... is inappropriate until the government has first had a chance to provide the court with the information necessary to make a decision on the applicable exemptions."). Therefore, any effort to compel an agency to prepare a Vaughn Index prior to the filing of the agency's dispositive motion is typically denied as premature.

The Disclosure Specialist noted that documents withheld were done so under 5 U.S.C. 552(b)(3) in conjunction with 26 U.S.C. 6103(a), 6103(b) and 6103 (e)(7). Exemption 3 was asserted in conjunction with I.R.C. Section 6103(a) and 6103(e)(7) to withhold any third party return information. The information redacted is the return information of a third party taxpayer. "Return information" is defined in I.R.C. Section 6103(b)(2)(A) as: a taxpayer's identity ... or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability [under the Internal Revenue Code]... To the extent that such information exists, the Service is prohibited under I.R.C. Section 6103(a) from providing a copy of that



information without authorization. Section 6103(a) provides that returns and return information are confidential. FOIA exemption 3 provides that the disclosure provisions of the FOIA do not apply to matters that are specifically exempted from disclosure by statute ... provided that such statute (A) requires that the matters be withheld ... 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.

The Disclosure Specialist also asserted FOIA exemption (b)(5). Exemption (b)(5) of the FOIA protects inter- and intra-agency memoranda or letters which would not be available by law to a party in litigation with the agency. 5 U.S.C. Section 552(b)(5). As such, it has been interpreted to exempt from disclosure those documents that are normally privileged in the civil discovery context. *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975). Thus, "[t]his language contemplates that the public will not be entitled to government documents which a private party could not discover in litigation with the agency." *Schell v. U.S. Dept of Health & Human Services*, 843 F.2d 933, 939 (6th Cir. 1988). Exemption 5 has been interpreted as preserving to the agencies such recognized evidentiary privileges as the attorney client privilege, the attorney work product privilege and the deliberative process privilege. *Parke, Davis & Co. v. Califano*, 623 F.2d 1, 5 (6th Cir. 1980).

The primary purpose of the deliberative process privilege is to protect the integrity of the decision making process and preventing the "disrobing of an agency decision-maker's judgment." *Russell v. Dept. of the Air Force*, 682 F.2d 1045, 1049 (D.C. Cir. 1982). Because exemption 5 is concerned with protecting the deliberative process itself, 'the key question in exemption 5 cases is whether disclosure of material would expose an agency's decision making process in such a way as to discourage discussion within the agency and thereby undermine the agency's ability to perform its functions.' *Schell v. HHS*, 843 F.2d at 940, citing *Dudman Communications Corp. v. Dept. of Air Force*, 815 F.2d 1565, 1568 (D.C. Cir. 1987). Specifically, three policy purposes have been held to constitute the basis for this privilege: (1) to encourage frank, open discussions on matters of policy between subordinates and superiors; (2) to protect against the premature disclosure of proposed policies before they are finally adopted; and (3) to protect the public from confusion that might result from the disclosure of reasons and rationales that were not the ultimate ground for the agency action. *Russell*, 682 F.2d at 1048. See also *Coastal States Gas Corp. v. Dept. of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980).

The attorney work-product privilege protects documents and other memoranda prepared by an attorney in contemplation of litigation. *Hickman v. Taylor*, 329 U.S. 495, 509-10 (1947). See also Fed. R. Civ. Proc. 26(b)(3). Its purpose is to protect the adversarial trial process by insulating the attorney's preparation from scrutiny and ordinarily arises when some articulable claim, which is likely to lead to litigation, has arisen. *Coastal States*, 617 F.2d at 865. The privilege is not limited to civil proceedings, but rather extends to administrative proceedings and criminal proceedings as well. See *Martin v. Office of Special Counsel*, 819 F.2d 1181, 1187 (D.C. Cir. 1987) (applying Privacy Act 5 U.S.C. Section 552a(d)(5)).

Additionally, the attorney-client privilege protects "confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice." *Mead Data Central, Inc. v. U.S. Dept. of Air Force*, 566 F.2d 242, 252 (D.C. Cir. 1977). While it fundamentally encompasses facts divulged to the attorney by the client, it also encompasses the advice given to the client by the attorney based on those facts.

FOIA subsection (b)(7)(A) exempts from disclosure records or information compiled for law enforcement purposes if the production of such law enforcement records could reasonably be

expected to interfere with pending or prospective law enforcement proceedings. The term "law enforcement" refers to enforcement through civil, criminal, or regulatory proceedings. Subsection (7)(A) applies "whenever the government's case in court would be harmed by the premature release of the evidence or information," NLRB v. Robbins Tire & Rubber Co., 473 U.S. 214, 232 (1978), or where the disclosure would impede any necessary investigation prior to the proceeding, National Public Radio v. Bell, 431 F. Supp. 509, 514-15 (D. D.C. 1977).

Exemption (b)(7)(C) exempts from disclosure records or information compiled for law enforcement purposes to the extent that disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy. See United States Dep't of Justice v. Reporters Committee, 459 U.S. 749 (1989). Exemption (b)(7)(C) requires a balancing of the public interest in the disclosure of third party identities with the privacy interests of those individuals.

We have determined that the release of even portions of the material would permit the identification of the individuals. Accordingly, we have withheld the information in full. An individual privacy interest is not extinguished because the requester may be able to piece together the identities of third parties. Weisberg v. U.S. Dept. of Justice, 745 F.2d 1476 (D.C. Cir. 1984).

In addition, FOIA exemption (b)(7)(E) provides for the exemption of records or information compiled for law enforcement purposes, but only to the extent that disclosure of such information could reasonably be expected to 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.

Discriminant Information Function scores were redacted. DIF scores constitute standards used for the selection of returns for examination. It has been determined that release of DIF scores would seriously impair assessment, collection, or enforcement under the internal revenue laws, by permitting, through analysis of the data to which the scores relate, identification of the particular data items used to develop standards used by the I.R.S. in selecting returns for examination. Accordingly, FOIA exemption (b)(3) in conjunction with I.R.C. Section 6103(b)(2), provides statutory authority for withholding this material. Long v. IRS, 742 F.2d 1173 (9th Cir. 1984). See also, Gillin v. IRS, 980 F.2d 819 (1st Cir. 1992) (per curiam).

Release of DIF scores would enable taxpayers to analyze the returns to which the scores relate. Coupled with publicly available information about the Service's use of the Discriminant function statistical methodology, such analysis could lead to the identification of those line items on the return likely to be significant variables in the formulae used to arrive at DIF scores. By manipulating these line item entries to other less important line items, taxpayers could circumvent the internal revenue laws by lowering their DIF scores and reducing the likelihood of audits of their returns. Consequently, DIF scores are exempt pursuant to exemption (b)(7)(E). Naranjo v. IRS, 1988-2 USTC & 9537 (E.D. Ky. 1988); Kanar v. Commissioner, No. 86-60243-AA (E.D. Mich., July 1, 1987).

We are satisfied that an extensive search for records was performed and that to the extent that the records were available at the time of your request, they were obtained, reviewed, and provided if appropriate. We believe that the Disclosure Specialist has met her burden in regard to the adequacy of the search and the documents provided.

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.

As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and the Office of Disclosure as a non-exclusive alternative to litigation. The Office of Appeals is not a part of this mediation process. Using OGIS services does not affect your right to pursue litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. If you disagree with the Appeals determination and wish to pursue mediation, you may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001E-mail: ogis@nara.gov
Telephone: 301-837-1996
Facsimile: 301-837-0348
Toll-free: 1-877-684-6448

Sincerely,

A handwritten signature in dark ink, appearing to read "Tom W. Mitchell", with a horizontal line extending to the right.

Thomas W. Mitchell
Appeals Team Manager

STEWART, PLLC

777 Main Street, Suite 600
Fort Worth, Texas 76102
817-887-8467

Scott E. Stewart
Email: sestewart1@earthlink.net

Facsimile: 817-887-8001
Mobile: 817-715-6188

May 14, 2014

Via Certified Mail, Return Receipt Requested

Ms. Pamela S. Tompkins
Disclosure Manager and FOIA Public Liaison
Internal Revenue Service
Disclosure Scanning Operation – Stop 93A
Post Office Box 621506
Atlanta, Georgia 30362-3006

**Re: Freedom of Information Act (FOIA) Request for
Motivating Graphics III, Inc. (subsequently Motivating Graphics, LLC)
Taxpayer Identification Number
IRS Form 1120S, U.S. Income Tax Return for an S Corporation, for Its
2010 Tax Period**

Dear Ms. Tompkins:

This letter is a request under the provisions of the Freedom of Information Act (5 U.S.C. Section 552) and Treasury Regulation Section 601.702, for copies of all of the documents relating to the IRS Form 1120S, U.S. Income Tax Return for an S Corporation, of Motivating Graphics III, Inc., Taxpayer Identification Number _____ and subsequently Motivating Graphics, LLC (referred to herein as "Motivating Graphics"), for its 2010 tax period, the Internal Revenue Service examination thereof (referred to herein as the "examination"), and certain other matters. I have enclosed a copy of the properly executed IRS Form 2848, "Power of Attorney and Declaration of Representative," that has been duly filed with the Central Authorization File as proof of my identity and to establish my right to disclosure of the requested records pursuant to Treasury Regulation Section 601.702(c)(5)(iii)(C). When used herein, the term "document" or "documents" means any writings in any form whether of paper, electronic, or other medium, for example, memoranda, correspondence, opinion letters, e-mail, contracts, agreements, invoices, computations, billing records, bank records, ledgers, books, and records. This request includes, but is not limited to:

1. all documents, transmittal letters, descriptions or recordings of discussions, telephone call slips, or other material prepared or accumulated relative to the selection of Motivating Graphics for examination,
2. all documents, transmittal letters, descriptions or recordings of discussions, telephone call slips, or other material prepared or accumulated relative to requests from anyone outside of the Internal Revenue Service for documents regarding Motivating Graphics or the provision to anyone outside of the Internal Revenue Service of documents regarding Motivating Graphics,



STEWART, PLLC

Internal Revenue Service Disclosure Scanning Operation

May 14, 2014

Page 2 of 3

3. all documents, transmittal letters, descriptions or recordings of discussions, telephone call slips, or other material prepared or accumulated relative to Motivating Graphics being singled out for threats, harassment, or intimidation by the Internal Revenue Service or other governmental organizations, political parties or groups, or organizations related to the Internal Revenue Service, other governmental organizations, or political parties or groups,
4. all documents, transmittal letters, descriptions or recordings of discussions, telephone call slips, or other material prepared or accumulated relative to another taxpayer, including (but not limited to) lists of donors to tax-exempt organizations or political parties or candidates, in connection with additional scrutiny of Motivating Graphics,
5. all documents, transmittal letters, descriptions or recordings of discussions, telephone call slips, or other material prepared or accumulated relative to Motivating Graphics (1) being discriminated against for the political affiliations or religious beliefs of any of its owners, officers, management, or other principals, (2) being intimidated, harassed, or threatened to suppress the freedom of speech rights of Motivating Graphics, or (3) otherwise being denied the exercise of its constitutional rights,
6. the Examination Division Administration File for the examination, including, but not limited to, all workpapers, notes, documents, transmittal letters, descriptions or recordings of interviews, telephone call slips, or other material prepared or accumulated relative to the examination,
7. any files relative to the examination that may have been retained by specialist agents, either as specialty case files, desk files, or as group files, which are not otherwise included in the Examination Division Administrative File, including any workpapers, notes, documents, memoranda, transmittal letters, descriptions or recordings of interviews, telephone call slips, or other materials prepared or accumulated relative to the examination,
8. any files relative to the examination that may have been prepared by independent consultants (including economists, engineers, and other independent specialists), which are not otherwise in the Examination Division Administrative File, including any workpapers, notes, documents, memoranda, transmittal letters, descriptions or recordings of interviews, telephone call slips, or other material prepared or accumulated relative to the examination,

STEWART, PLLC

Internal Revenue Service Disclosure Scanning Operation
May 14, 2014
Page 3 of 3

9. any files relative to the examination that include information and documents obtained pursuant to summons issued to third parties which are not otherwise included in the Examination Division Administrative File,
10. a list of all information relative to the examination that is maintained electronically that identifies the information subject matter and format (*e.g.*, tape, disc, or CD ROM), and
11. all other workpapers, notes, documents, memoranda, transmittal letters, recordings, telephone call slips, and other material or information in your possession or control in connection with the assessment by the Internal Revenue Service of income tax or interest or penalty thereon against Motivating Graphics arising from the examination.

We are aware that the Internal Revenue Service has a destruction policy for documents of a certain age and, therefore, we request that appropriate measures be taken to ensure that the requested documents are not destroyed.

Pursuant to Treasury Regulation Section 601.702(f)(4), Scott Stewart, PLLC, Scott E. Stewart, and Motivating Graphics agree, without any further authorization from any of such parties, to pay and to be jointly and severally liable for the fees, charges, costs, or expenses determined in accordance with Treasury Regulation Section 601.702(f)(5), including (but not limited to) fees, charges, costs, or expenses for searching for, reviewing, making deletions from records, and copying documents.

If it is determined that any requested document or record or any portion thereof will not be disclosed, please provide me with the nonexempt records and with the nonexempt portions of the remaining records. If any requested record or portion thereof is not disclosed, also please provide me with an index and a detailed description of each record or portion thereof not disclosed and a statement describing the statutory basis for not disclosing each record or portion thereof.

Please send the requested records and other correspondence to me at the address in the letterhead of this letter. Please do not hesitate to let me know if I may provide further information regarding this request or otherwise be of assistance. Thank you for your prompt consideration of and attention to this Freedom of Information Act request.

Sincerely,


Scott E. Stewart

Enclosure



PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

June 16, 2014

Scott Stewart
777 Main Street, Suite 600
Fort Worth, TX 76102

In Re: Motivating Graphics

Dear Mr. Stewart:

I am responding to your Freedom of Information Act (FOIA) request dated May 14, 2014 that we received on May 19, 2014.

I am not able to send the information you requested by June 17, 2014, which is the 20 business-day period allowed by law. The FOIA allows an additional ten-day statutory extension in certain circumstances. To complete your request I require the additional time to:

- Search for and collect the requested records from other locations
- Search for, collect, and review a large volume of records
- Consult with another agency or Treasury component
- Consult with business submitters

We have extended the statutory response date to July 1, 2014, after which you can file suit. An administrative appeal is limited to a denial of records, so it does not apply in this situation. I apologize for any inconvenience caused by this delay.

You may file suit after July 1, 2014. Your complaint will be treated according to the Federal Rules of Civil Procedure applicable to actions against an agency of the United States. These procedures require that the IRS be notified of the pending suit through service of process, which should be directed to:

Commissioner of Internal Revenue
Attention: CC:PA: Br 6/7
1111 Constitution Avenue, NW
Washington, DC 20224



The FOIA process provides access to existing records. Extending the time period for responding to your request will not delay or postpone any administrative, examination, investigation or collection action.

If you have any questions please call Senior Disclosure Specialist Jean Pelzl ID # 1000729874, at 605-377-1608 or write to: Internal Revenue Service, Centralized Processing Unit – Stop 93A, PO Box 621506, Atlanta, GA 30362. Please refer to case number F14140-0077.

Sincerely,

A handwritten signature in black ink, appearing to read "Jean Pelzl", written in a cursive style.

Jean Pelzl
Senior Disclosure Specialist
Disclosure Office 12



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

July 1, 2014

Scott Stewart
777 Main Street, Suite 600
Fort Worth, TX 76102

In Re: Motivating Graphics

Dear Mr. Stewart:

I am responding to your Freedom of Information Act (FOIA) request dated May 14, 2014 that we received on May 19, 2014.

On June 16, 2014 I asked for more time to obtain the records you requested. I am still working on your request and need additional time to review the records. I will contact you by August 1, 2014 if I am still unable to complete your request.

Once again, I apologize for any inconvenience this delay may cause.

If you have any questions please call Senior Disclosure Specialist Jean Pelzl ID # 1000729874, at 605-377-1608 or write to: Internal Revenue Service, Centralized Processing Unit – Stop 93A, PO Box 621506, Atlanta, GA 30362. Please refer to case number F14140-0077.

Sincerely,

A handwritten signature in black ink, appearing to read "Jean Pelzl".

Jean Pelzl
Senior Disclosure Specialist
Disclosure Office 12





PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

July 31, 2014

Steward, PLLC
Attn: Scott Stewart
777 Main Street, Suite 600
Fort Worth, TX 76102

In Re: Motivating Graphics III, Inc.

Dear Scott Stewart:

I am responding to your Freedom of Information Act (FOIA) request dated May 14, 2014 that we received on May 19, 2014.

On July 1, 2014 Senior Disclosure Specialist Jean Pelzl asked for more time to obtain the records you requested. We are still working on your request and need additional time to review the responsive records. We will contact you by August 15, 2014 if we are still unable to complete your request.

Once again, I apologize for any inconvenience this delay may cause.

If you have any questions please call me ID # 1000142358, at (801) 620-7620 or write to: Internal Revenue Service, Centralized Processing Unit – Stop 93A, PO Box 621506, Atlanta, GA 30362. Please refer to case number F14140-0077.

Sincerely,

Debra S Huerta
Debra S Huerta
Senior Disclosure Specialist
Disclosure Office 12





PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

August 5, 2014

Stewart, PLLC
Attn: Scott Stewart
777 Main Street, Suite 600
Fort Worth, TX 76102

Re: Motivating Graphics

Dear Mr. Stewart:

I am responding to your Freedom of Information Act (FOIA) request dated May 14, 2014 that we received on May 19, 2014.

I am providing your documents in electronic format. The enclosed CD contains your documents and is encrypted. The password to open the files is being mailed separately. The fee for copying the released documents is \$25.00 (minimum fee for electronic media over 1,000 pages).

Please send your check or money order in the amount of \$25.00 payable to the Treasury of the United States to the address below with the enclosed Fee Payment stub. We must receive your payment within 35 days from the date of this letter. Fees paid are reimbursement for services performed and are not refundable. If you fail to pay the fees, your name and your client's names will be added to the FOIA Non-Payment list, and no future requests will be processed until all fees are paid in full.

You asked for a copy of the IRS examination administrative file for 2010 tax year and listed 11 specific items which would be included in the administrative file. Our records indicate you submitted a FOIA request for the 2008 and 2009 tax years on May 20, 2013. We are providing documents dated and/or created after that date. These documents also include information for the 2008 and 2009 tax years. You submitted FOIAs for three related entities at this time. Due to the amount of e-mail traffic for these entities, e-mails for all three entities (Motivating Graphics, Mr. and Mrs. Clark, and RCT Motivating) are included in this response.

Of the 3,828 pages located in response to your request, I am enclosing 3,466 pages. I am withholding 320 pages in part and 362 pages in full for the following reasons (some may have more than one exemption):



I withheld information under FOIA exemption (b)(3). The withheld portions are the tax information of other taxpayer(s). FOIA exemption (b)(3) requires us to withhold information that is specifically exempted from disclosure by another law. The law supporting this exemption is Internal Revenue Code section 6103(a). I removed information that is outside the scope of your power of attorney/authorization/request from the enclosed documents.

I withheld information under FOIA exemption (b)(7)(A). This portion of FOIA exempts from disclosure records or information compiled for law enforcement purposes, but only to the extent that production of such records could interfere with enforcement proceedings.

Disclosure of this information is also exempt under FOIA subsection (b)(3) supported by Internal Revenue Code section IRC Section 6103(e)(7), because release would impair federal tax administration.

I deleted the Discriminant Information Function (DIF) score from the enclosed records. Release of the DIF score would seriously impair IRS assessment, collection, and enforcement proceedings. FOIA exemption (b)(3), supported by Internal Revenue Code section 6103 (b)(2) and (e)(7) exempts this information from release. Disclosure of this information would also reveal law enforcement techniques, procedures and guidelines protected by FOIA exemption (b)(7)(E).

I withheld information under FOIA exemption (b)(7)(E). This portion of FOIA exempts from disclosure records or information compiled for law enforcement purposes to the extent their production would reveal:

- Techniques and procedures for law enforcement investigations or prosecutions
- Guidelines for law enforcement investigations or prosecutions, if release could reasonably be expected to risk circumvention of the law.

I withheld information under FOIA (b)(7)(C). This portion of FOIA exempts from disclosure personal information in law enforcement records that if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

I withheld information under FOIA (b)(5). This portion of FOIA exempts from disclosure 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. There are three primary privileges covered by this exemption:

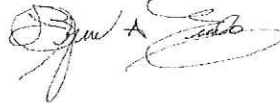
- The deliberative process privilege protects documents that reflect the pre-decisional opinions and deliberations that play a direct part in the process of making recommendations on legal or policy matters.

- The attorney work product privilege protects documents prepared by an attorney or other Service employee during litigation or in reasonable contemplation of litigation, and
- The attorney-client privilege protects confidential communications between an attorney and a client relating to a legal matter for which the client has sought professional advice.

The redacted portions of each page are marked by the applicable FOIA exemptions. This constitutes a partial denial of your request. I have enclosed Notice 393 explaining your appeal rights.

If you have any questions please call Senior Disclosure Specialist Jean Pelzl ID # 1000729874, at 605-377-1608 or write to: Internal Revenue Service, Centralized Processing Unit – Stop 93A, PO Box 621506, Atlanta, GA 30362. Please refer to case number F14140-0077.

Sincerely,

A handwritten signature in black ink, appearing to read "Byron D. Endo", written over a faint circular stamp or watermark.

Byron D. Endo
Disclosure Manager
Disclosure Office 12

Enclosure
Responsive Records
Notice 393
Fee Payment Stub

Please return this enclosure with your payment for **Freedom of Information Act (FOIA)** fees to:

Internal Revenue Service
Disclosure Scanning Operation – Stop 93A
Post Office Box 621506
Atlanta, GA 30362

Please make check or money order payable to the Treasury of the United States. Include the word **FOIA** in the memo portion of your payment.

Title: Payment
Case #: F14140-0077
SSN/EIN: _____
Name Control: MOTI

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

Appeal Rights

You may file an appeal with the Internal Revenue Service (IRS) within 35 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: **IRS Appeals**
Attention: FOIA Appeals
M/Stop 55202
5045 E. Butler Ave.
Fresno, California 93727-5136

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.



PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

August 5, 2014

Stewart, PLLC
Attn: Scott Stewart
777 Main Street, Suite 600
Fort Worth, TX 76102

Re: Motivating Graphics

Dear Mr. Stewart:

I am responding to your Freedom of Information Act (FOIA) request dated May 14, 2014, that we received on May 19, 2014.

You asked for a copy of the IRS examination administrative file for 2010 tax year and listed 11 specific items which would be included in the administrative file. I am sending you a password protected CD with the requested information in a separate letter.

Your password for the CD is
follow the steps below:

To access the information on the CD, please

1. Select GuardianEdge Removal Storage Access on your CD.
2. Select the file in the top left.
3. Select "open" file.
4. Select the file and decrypt.
5. Enter the password.

If the above does not work, Windows Explorer is opened by holding down the "windows flag" and the "e" key at the same time. Click on the drive with the CD in it and then select the appropriate file "disclosure request." The files will then be listed. Double click on the first file and you will be prompted for the password and the documents should open.

If you have any questions please call Senior Disclosure Specialist Jean Pelzl ID # 1000729874, at 605-377-1608 or write to: Internal Revenue Service, Disclosure Scanning Operation – Stop 93A, P. O. Box 621506, Atlanta, GA 30362-3006. Please refer to case number F14140-0077.

Sincerely,

A handwritten signature in black ink, appearing to read "Jean Pelzl".

Jean Pelzl
Senior Disclosure Specialist
Disclosure Office 12



STEWART, PLLC

777 Main Street, Suite 600
Fort Worth, Texas 76102
817-887-8467

Scott E. Stewart
Email: sestewart1@earthlink.net

Facsimile: 817-887-8001
Mobile: 817-715-6188

September 5, 2014

Via Federal Express

IRS Appeals
Attention: FOIA Appeals
M/Stop 55202
5045 E. Butler Avenue
Fresno, California 93727-5136

**RE: Motivating Graphics, LLC (formerly Motivating Graphics III, Inc.),
Employer Identification Number Case Number F14140-0077**

Dear Sir or Madam:

This letter is to exercise appeal rights under the Freedom of Information Act, 5 U.S.C. 552, due to the denial of access to records in whole and in part. Enclosed is a duly prepared and executed IRS Form 2848, Power of Attorney and Declaration of Representative, to evidence my authority to make this appeal on behalf of Motivating Graphics, LLC. In regards to your required information for this appeal:

Taxpayer's name and address: Motivating Graphics, LLC,
formerly Motivating Graphics III, Inc.
3100 Eagle Parkway
Fort Worth, Texas 76177

Description of requested records: 362 pages withheld in full and 320 pages withheld in part as further described in my enclosed FOIA request letter dated May 14, 2014, your response dated August 5, 2014, and herein.

Date of the request: May 14, 2014 – Please see enclosed request.

Identity of the office and contact on the response letter: Senior Disclosure Specialist Jean Pelzl, ID #1000729874, Phone Number 605-377-1608, Internal Revenue Service, Centralized Processing Unit - Stop 93A, P.O. Box 621506, Atlanta, GA 30362.

Date of the letter denying request: August 5, 2014 – Please see enclosed response.



STEWART, PLLC

IRS Appeals
September 5, 2014
Page 2 of 2

Please note that your response withholds 362 pages in full and 320 pages in part without providing a description of the documents that were withheld in full or the analysis for withholding the 320 pages that were withheld in part. Without a description of the 362 pages that were withheld in full or an explanation of how a statutory exception applies to the 320 pages that were withheld in part, it is not possible to challenge with further particularity or specificity your denial of the withheld records. Please provide sufficient particularity and specificity in regards to the three hundred sixty-two (362) pages that were withheld in full and the reasons that they were withheld and analysis as to why you withheld the three hundred twenty (320) pages that were withheld in part.

Please do not hesitate to let me know if I may provide further information or otherwise be of assistance with any issues. Thank you for your prompt attention to this matter.

Sincerely,


Scott E. Stewart

Enclosures

From: (817) 887-8000
Scott Stewart
Law Office of Scott E Stewart
777 Main Street
Suite 600
Fort Worth, TX 76102

Origin ID: GLEA



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Ship Date: 05SEP14
ActWgt: 1.0 LB
CAD: 3149348/INET3550

Delivery Address Bar Code



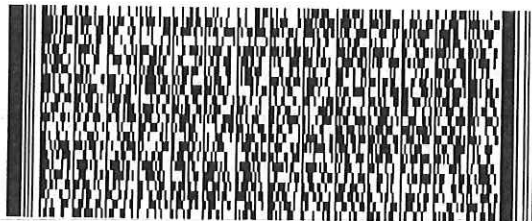
Ref #
Invoice #
PO #
Dept #

SHIP TO: (817) 887-8467
FOIA Appeals
IRS Appeals
5045 E BUTLER AVE
MStop 55202
FRESNO, CA 93727

BILL SENDER

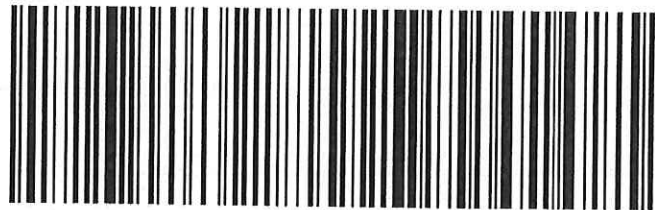
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STANDARD OVERNIGHT

TRK# 7710 5492 1792
0201



SB TRMA

93727
CA-US
FAT



522G1/CDB4/8AC9

After printing this label:

1. Use the 'Print' button on this page to print your label to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

Warning: Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number.

Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com. FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$1,000, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.

Appeals Office
P.O. Box 24018
Fresno, CA 93779-4018

Person to Contact:
Ennie Harrison
Employee ID Number: 1000157537
Tel: 559-500-7071
Fax: 559-497-5918

Date: OCT 1 2014

Refer Reply to:
AP:CO:FRC:EMH

SCOTT STEWART
777 MAIN ST SUITE 600
FORT WORTH TX 76102

In Re:
Freedom of Information Act
Tax Period(s) Ended:
FOIA# F14140-0077
Motivating Graphics

SCOTT STEWART:

This letter is in response to your appeals request dated September 5, 2014 for Freedom of Information Act (FOIA) information. Your original FOIA request was dated May 14, 2014. You asked for a copy of the IRS examination administrative file for the 2010 tax year and listed 11 specific items which would be included in the administrative file.

We have reviewed the response of the Senior Disclosure Specialist Jean Pelzl and have determined that it is appropriate under the circumstance. Appeals responsibility concerning the appeal of FOIA cases is limited to a de novo review to ensure the documents withheld or redacted for the specific requester and documents requested fall within the FOIA exemption(s) cited. Appeals only have jurisdiction over the denial of documents in response to a FOIA request. We address the adequacy of the search, the appropriateness of the redactions and documents withheld through determined FOIA exemptions. Our written notice is your determination that the redacted information was properly withheld through the FOIA exemptions cited. Our sole responsibility is to determine if the documents were properly withheld under the FOIA.

There were 3,828 pages located in response to your request, and the Senior Disclosure Officer Jean Pelzl enclosed 3,466 pages; withheld are 320 pages in part and 362 pages in full, for reasons stated on the letter dated August 5, 2014. Some of the pages withheld had more than one exemption.

On your Appeals Request Letter dated September 5, 2014 you requested we provide you with sufficient particularity and specificity in regards to three hundred sixty two (362) pages that was withheld in full and the reasons they were withheld and analysis as to why the three hundred twenty (320) pages that were withheld in part were withheld. This request describes the Vaughn Index.

You are not entitled to receive a Vaughn index during the administrative process as the courts do not require the submission of such an index prior to the time when a dispositive motion is filed. See, e.g., Edmond v. U.S. Attorney, 959 F. Supp. 1, 5 (D.D.C. 1997) (rejecting, as premature, request for Vaughn Index when agency had not processed plaintiff's request), Tannehill v. Dept. of the Air Force, No. 87-1335, slip op. at 1 (D.D.C. Aug. 20, 1987) (noting that standard practice is to await filing of agency's



dispositive motion before deciding whether additional indexes will be necessary); Miscavige, 2 F.3d at 369 ("The plaintiff's early attempt in litigation of this kind to obtain a Vaughn Index...is inappropriate until the government has first had a chance to provide the court with the information necessary to make a decision on the applicable exemptions."). Therefore, any effort to compel an agency to prepare a Vaughn Index prior to the filing of the agency's dispositive motion is typically denied as premature.

As a courtesy to you, we reviewed the redacted documents and found the exemptions appropriate.

FOIA subsection (b)(3) states that the disclosure provisions of the FOIA do not apply to matters specifically exempted by statute from disclosure, provided that such 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.

I.R.C. Section 6103 has been held to be a subsection (b)(3) statute under the FOIA. Church of Scientology v. IRS, 484 U.S. 9 (1987); Chamberlain v. Kurtz, 589 F.2d 827 (5th Cir. 1979), cert. denied, 444 U.S. 842 (1979). When disclosure of return information will seriously impair Federal tax administration, it may be withheld. Chermack v. IRS, 81-1 USTC Paragraph 9337 (N.D. Tex. 1981). It has been determined that the disclosure of some of the information withheld would impair Federal tax administration by interfering with the pending administrative proceedings; and, therefore, this information is exempt from disclosure pursuant to exemption (b)(3) in conjunction with I.R.C. Section 6103(e)(7).

FOIA subsection (b)(5) exempts "inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency." The Supreme Court has held that the attorney work-product and the attorney-client privileges fall within the ambit of the (b)(5) exemption of the FOIA. NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 149 (1975).

The attorney work-product privilege protects documents and other memoranda prepared by an attorney in contemplation of litigation. See Hickman v. Taylor, 329 U.S. 495, 509-10 (1947). Its purpose is to protect the adversarial trial process by insulating the attorney's preparation from scrutiny. See Jordan v. Department of Justice, 591 F.2d 753, 775 (1978) (en banc).

The attorney-client privilege concerns "confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice." Mead Data Cent., Inc. v. Department of the Air Force, 566 F.2d 242, 252 (D.C. Cir. 1977).

FOIA subsection (b)(7)(A) exempts from disclosure records or information compiled for law enforcement purposes if the production of such law enforcement records could reasonably be expected to interfere with pending or prospective law enforcement proceedings. The term "law enforcement" refers to enforcement through civil, criminal, or regulatory proceedings. Subsection (7)(A) applies "whenever the government's case in court would be harmed by the premature release of the evidence or information,"

NLRB v. Robbins Tire & Rubber Co., 473 U.S. 214, 232 (1978), or where the disclosure would impede any necessary investigation prior to the proceeding, National Public Radio v. Bell, 431 F. Supp. 509, 514-15 (D. D.C. 1977). In the instant case, disclosure would interfere with the pending administrative proceedings.

FOIA Exemption (b)(7)(C) provides that an agency may withhold "records or information compiled for law enforcement purposes" to the extent that the production of the records "could reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U.S.C. Section 552(b)(7)(C). An agency's investigation of its own employee is for a law enforcement purpose "if it focuses directly on specifically alleged illegal acts of particular identified officials, acts which could, if proved, result in civil or criminal sanctions." *Kimberlin*, 139 F.3d at 947.

With respect to the balancing of public and private interests, it should be noted that "public employees have an expectation that information gathered in the course of internal investigations will remain private." *Beck v. Dept. of Justice*, 997 F.2d 1489, 1494 (D.C. Cir. 1993). While acceptance of government employment may somewhat diminish a government employee's privacy interest, it does not result in the surrender of all rights of personal privacy. *Quinon v. FBI*, 86 F.3d 1222, 1230 (D.C. Cir. 1996). As noted above with respect to exemption 6, for the public interest, the Supreme Court noted in *Reporters Committee*, 489 U.S. at 774, that the main purpose of the FOIA is to open agency action to the light of public scrutiny. While the agency's investigation into alleged Civil Service and EEO violations may be of interest to the individuals involved, it does not shed light on the Service's procedures or policy with respect to the treatment of all such allegations. Accordingly, we have determined that the individual complainant's rights to privacy outweighs the public interest in the documents.

FOIA Exemption (b)(7)(E) affords protection to all law enforcement information which "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." 5 U.S.C. 552(b)(7)(E). See also *Becker v. IRS*, 34 F.3d at 405; *PHE, Inc. v. Dept. of Justice*, 983 F.2d 248, 251 (D.C. Cir. 1993) ("Release of FBI guidelines as to what sources of information are available to its agents might encourage violators to tamper with those sources of information and thus inhibit investigative efforts."). The redacted data would disclose a law enforcement technique utilized by the Service.

FOIA Exemption 3 is being asserted in conjunction with I.R.C. Section 6103(b)(2) to withhold the DIF scores. Section 6103 of the Internal Revenue Code has been determined to be a (b)(3) statute. Church of Scientology v. IRS, 484 U.S. 9 (1987); Chamberlain v. Kurtz, 589 F.2d 827 (5th Cir. 1979), cert. denied, 444 U.S. 842 (1979). Subsection 6103(b)(2), in relevant part, provides:

Nothing in the preceding sentence, or in any other provision of law, shall be construed to require the disclosure of standards used or to be used for the selection of returns for examination, or data used or to be used for determining such standards, if the Secretary determines that such disclosure will seriously impair assessment, collection, or enforcement under the internal revenue laws.

DIF scores constitute standards used for the selection of returns for examination. It has been determined that release of DIF scores would seriously impair assessment, collection, or enforcement under the internal revenue laws, by permitting, through analysis of the data to which the scores relate, identification of the particular data items used to develop standards used by the Internal Revenue Service in selecting returns for examination. Accordingly, FOIA exemption (b)(3) in conjunction with I.R.C. Section 6103(b)(2), provides statutory authority for withholding this material. Long v. IRS, 742 F.2d 1173 (9th Cir. 1984). See also, Gillin v. IRS, 980 F.2d 819 (1st Cir. 1992) (per curiam).

As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and the Office of Disclosure as a non-exclusive alternative to litigation. The Office of Appeals is not a part of this mediation process. Using OGIS services does not affect your right to pursue litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. If you disagree with the Appeals determination and wish to pursue mediation, you may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001
E-mail: ogis@nara.gov
Telephone: 301-837-1996
Facsimile: 301-837-0348
Toll-free: 1-877-684-6448
Facsimile: 301-837-0348
Toll-free: 1-877-684-6448

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 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,

P. Perez
Appeals Team Manager