

SCOTT STEWART, PLLC

777 Main Street, Suite 600
Fort Worth, Texas 76102

Phone: 817-887-8467
Facsimile: 817-887-8001

sestewart1@earthlink.net
Mobile: 817-715-6188

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
RCT Motivating, Inc.
Taxpayer Identification Number
IRS Form 1120S, U.S. Income Tax Return for an S Corporation, for Its
2008 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 RCT Motivating, Inc., Taxpayer Identification Number (referred to herein as "RCT Motivating"), for its 2008 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 RCT Motivating 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

Page 2 of 3

RCT Motivating or the provision to anyone outside of the Internal Revenue Service of documents regarding RCT Motivating,

3. all documents, transmittal letters, descriptions or recordings of discussions, telephone call slips, or other material prepared or accumulated relative to RCT Motivating 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 RCT Motivating,
5. all documents, transmittal letters, descriptions or recordings of discussions, telephone call slips, or other material prepared or accumulated relative to RCT Motivating (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 RCT Motivating, 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,

Internal Revenue Service Disclosure Scanning Operation
May 20, 2013
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 RCT Motivating 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 RCT Motivating 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

SCOTT STEWART, PLLC

777 Main Street, Suite 600
Fort Worth, Texas 76102

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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
RCT Motivating, Inc.
Taxpayer Identification Number
IRS Form 1120S, U.S. Income Tax Return for an S Corporation, for Its
2009 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 RCT Motivating, Inc., Taxpayer Identification Number (referred to herein as "RCT Motivating"), for its 2009 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 RCT Motivating for examination,
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Internal Revenue Service Disclosure Scanning Operation
May 20, 2013
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3. all documents, transmittal letters, descriptions or recordings of discussions, telephone call slips, or other material prepared or accumulated relative to RCT Motivating 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 RCT Motivating,
 5. all documents, transmittal letters, descriptions or recordings of discussions, telephone call slips, or other material prepared or accumulated relative to RCT Motivating (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 RCT Motivating, 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,
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Internal Revenue Service Disclosure Scanning Operation
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 RCT Motivating 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 RCT Motivating 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

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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
RCT Motivating, Inc.
Taxpayer Identification Number
IRS Form 1120S, U.S. Income Tax Return for an S Corporation, for Its
2010 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 RCT Motivating, Inc., Taxpayer Identification Number (referred to herein as "RCT Motivating"), 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:

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SCOTT STEWART, PLLC

Internal Revenue Service Disclosure Scanning Operation
May 20, 2013
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SCOTT STEWART, PLLC

Internal Revenue Service Disclosure Scanning Operation
May 20, 2013
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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 RCT Motivating arising from the examination.

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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 #s: 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





DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

August 19, 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 RCT Motivating, Inc. for tax years 2008 through 2010.

You asked for copies of all documentation, documents, and files relative to the examination of RCT Motivating, Inc. for tax years 2008 through 2010.

We located 244 pages in response to your request. Of those 244 pages, I am enclosing 212 pages. I am withholding 32 pages in full and 12 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).
- 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).
- 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.

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

Additional responsive documents may be located in the replies you have or will receive for F13149-0154 and/or F13149-0152, as these items may have been comingled.



Our office implemented a new procedure for responding to a FOIA request. We are providing your documents in electronic format (CD), at no charge since there are under 1,000 responsive documents. 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.

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 number F13149-0135, F13149-0165, and F13149-0185.

Sincerely,



Melba Tyson
Disclosure Manager
Disclosure Office 10

Enclosure
Notice 393

**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.



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

PRIVACY, GOVERNMENTAL
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August 19, 2013

Scott Stewart, PLLC
Scott E. Stewart, Attorney
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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 RCT Motivating, Inc. for tax years 2008 through 2010.

You asked for copies of all documentation, documents, and files relative to the examination of RCT Motivating, Inc. for tax years 2008 through 2010.

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 FOIA0165jj!

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 F13149-0135, F13149-0165, and F13149-0185.

Sincerely,

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

JoAnn Johnson
Senior Disclosure Specialist
ID# 0246728
Disclosure Office 10



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777 Main Street, Suite 600
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Phone: 817-887-8467
Facsimile: 817-887-8001

sestewart1@earthlink.net
Mobile: 817-715-6188

September 24, 2013

Via Federal Express

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

**RE: RCT Motivating, Inc., Taxpayer Identification Number Case
Number F13149-0135, F13149-0165, and F13149-0185**

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 or in part and, in regards to your required information:

Taxpayer's name and address: RCT Motivating, Inc.
1007 Orange Street, Suite 3800
Fort Worth, Texas 76102-5304

Description of requested records: 32 pages withheld in full and 12 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

Date of the letter denying request: August 19, 2013 – Please see enclosed response

Please note that your response withholds 32 pages in full and 12 pages in part without providing a description of the documents that were withheld in full or the analysis for why the 12



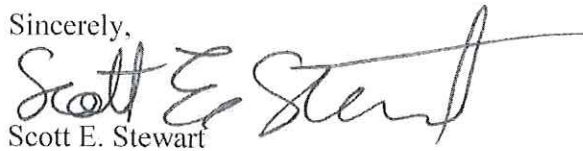
SCOTT STEWART, PLLC

IRS Appeals
September 24, 2013
Page 2 of 2

pages that were withheld in part were withheld. Without a description of the documents that were withheld in full or an explanation of how a statutory exception applies to the 12 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 thirty-two (32) pages that were withheld in full and the reasons that they were withheld and analysis as to why the twelve (12) pages that were withheld in part were withheld.

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

Sincerely,

A handwritten signature in black ink that reads "Scott E. Stewart". The signature is written in a cursive style with a long horizontal stroke extending to the right.

Scott E. Stewart

Enclosures

Internal Revenue Service
Appeals Office M/S 55203
5045 E Butler Ave
Fresno, CA 93727-5136

Department of the Treasury

Person to Contact:

Diane Ambriz
Employee ID

Number: 1000157666
Tel: (559) 253-4840
Fax: (559)-253-4880

Refer Reply to:

AP:CO:FRC:DMA

In Re:

Freedom of Information Act
Disclosure Case Number(s):
F #13149-0135, F13149-0185,
F13149-0165

Tax Period(s) Ended:

2008 Thru 2010

Date: OCT 22 2013

SCOTT STEWART, (MOTIVATING INC)
777 MAIN ST, SUITE 600
FORT WORTH, TX 76102

RTE

Dear Scott Stewart,

This letter is in reply to your Freedom of Information Act (FOIA) appeal dated September 24, 2013. Your letter was postmarked and received September 25, 2013. The Area 12 Disclosure Specialist replied to your FOIA request on August 19, 2013.

Your purported appeal was not received by the Service within the 35 day mandatory period for filing an FOIA appeal, and, is therefore untimely. 26 C.F.R. Section §601.702(c)(10)(i). An administrative appeal under the FOIA must be filed within the time limits set forth in an agency's regulations. See *Oglesby v. Department of the Army*, 920 F.2d 57 (D.C. Cir. 1990).

As a courtesy, we reviewed the Disclosure Specialist response and your original request and found that the Disclosure Specialist responded to you appropriately. You were not denied any responsive documents under the FOIA.

Because there is no jurisdiction for an administrative appeal under these circumstances, we are closing our file in regard to this matter.

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
Email: ogis@nara.gov
Telephone: 301-837-1996
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 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.

Sincerely,



Thomas 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
RCT Motivating, Inc.
Taxpayer Identification Number
IRS Form 1120S, U.S. Income Tax Return for an S Corporation, for Its
2008 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 RCT Motivating, Inc., Taxpayer Identification Number (referred to herein as "RCT Motivating"), for its 2008 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 RCT Motivating 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 RCT Motivating or the provision to anyone outside of the Internal Revenue Service of documents regarding RCT Motivating,



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 RCT Motivating 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 RCT Motivating,
5. all documents, transmittal letters, descriptions or recordings of discussions, telephone call slips, or other material prepared or accumulated relative to RCT Motivating (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 RCT Motivating, 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,
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,

STEWART, PLLC

Internal Revenue Service Disclosure Scanning Operation

May 14, 2014

Page 3 of 3

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 RCT Motivating 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 RCT Motivating 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

99TS 2029 0000 U20E E102 7013 3029 8702 5166

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

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Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark
Here

5/14/2014

Sent To MS Pamela S Tompkins
 Street, Apt. No.,
 or PO Box No. P.O. Box 621506
 City, State, ZIP+4 Atlanta, GA 30362-3006

PS Form 3800, August 2006

See Reverse for Instructions



PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

June 16, 2014

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

In Re: RCT Motivating, Inc.

Dear Mr. Stewart:

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

You submitted three separate requests in which you asked for copies of files for the 2008, 2009, and 2010 tax years. We have combined the requests and will provide one response for the 2008, 2009, and 2010 tax years under case number **F14140-0075**.

If you have any questions, please call Senior Disclosure Specialist Gail Minauro, ID # 1000259377, at 313-234-1866 or write to: Internal Revenue Service, Disclosure Scanning Operation – Stop 93A, PO Box 621506, Atlanta, GA 30362. Please refer to case number F14140-0074 (2009) and F14140-0116 (2008).

Sincerely,

A handwritten signature in black ink, appearing to read "Ron Mele".

Ron Mele
Disclosure Manager
Disclosure Office 1



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 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, 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 Senior Disclosure Specialist Gail Minauro, ID #1000259377, at 313-234-1866 or write to: Internal Revenue Service, Disclosure Scanning Operation – Stop 93A, PO Box 621506, Atlanta, GA 30362. Please refer to case number F14140-0075.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron Mele", with a long horizontal flourish extending to the right.

Ron Mele
Disclosure Manager
Disclosure Office 1



PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

June 16, 2014

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

In Re: RCT Motivating, Inc.

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 unable to send the information you requested by June 17, 2014, 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 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.

REQUEST FOR ADDITIONAL EXTENSION OF TIME

Unfortunately, we will still be unable to locate and consider release of the requested records by July 1, 2014. We have extended the response date to July 31, 2014 when we believe we can provide a final response.

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.

EXHIBIT

J

tabbles

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 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, 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 Senior Disclosure Specialist Gail Minauro, ID #1000259377, at 313-234-1866 or write to: Internal Revenue Service, Disclosure Scanning Operation – Stop 93A, PO Box 621506, Atlanta, GA 30362. Please refer to case number F14140-0075.

Sincerely,



Ron Mele
Disclosure Manager
Disclosure Office 1



PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

July 30, 2014

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

In Re: RCT Motivating, Inc.

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 September 2, 2014. I will contact you by September 2, 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 Gail Minauro, ID #1000259377, at 313-234-1866 or write to: Internal Revenue Service, Centralized Processing Unit – Stop 93A, PO Box 621506, Atlanta, GA 30362. Please refer to case number F14140-0075.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron Mele".

Ron Mele
Disclosure Manager
Disclosure Office 1





PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

August 29, 2014

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

In RE: RCT Motivating, Inc.

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 and July 30, 2014, I asked for more time to obtain the records you requested. I am still working on your request and need additional time to September 26, 2014. I will contact you by September 26, 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 Gail Minauro, ID #1000259377, at 313-234-1866 or write to: Internal Revenue Service, Centralized Processing Unit – Stop 93A, P.O. Box 621506, Atlanta, GA 30362. Please refer to case number F14140-0075.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron Mele".

Ron Mele
Disclosure Manager
Disclosure Office 1





PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

September 23, 2014

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

In RE: RCT Motivating, Inc.

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, July 30, 2014, and August 29, 2014, I asked for more time to obtain the records you requested. I am still working on your request and need additional time to October 6, 2014. I will contact you by October 6, 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 Gail Minauro, ID #1000259377, at 313-234-1866 or write to: Internal Revenue Service, Centralized Processing Unit – Stop 93A, P.O. Box 621506, Atlanta, GA 30362. Please refer to case number F14140-0075.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron Mele".

Ron Mele
Disclosure Manager
Disclosure Office 1





PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

October 1, 2014

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

In RE: RCT Motivating, Inc.

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. We previously wrote to you on June 16, 2014, July 30, 2014, August 29, 2014 and September 23, 2014 to extend the time to respond to your request.

You requested a complete copy of the Examination file which pertains to the above named entity for the 2008 through 2010 tax years.

Of the 1835 pages located in response to your request, we are providing 1404 pages. We are 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. If you determine you need a printed copy of the documents, please call Senior Disclosure Specialist Gail Minauro at the phone number shown below. You will be charged \$.20 per page after an allowance of 100 pages at no charge for printed documents. I am withholding 431 pages in full and 86 pages in part for the following reasons:

I withheld three pages in full and six pages in part as the information is the tax information of other taxpayers. 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 redacted the Discriminant Information Function (DIF) score from 20 pages of 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 have withheld 220 pages in full and 39 pages in part under FOIA exemption (b)(7)(E) which 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 have withheld 66 pages in full and 11 pages in part which is out of the scope of your request.

I have withheld 128 pages in full under FOIA exemption (b)(5) which 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.

I have withheld 14 pages in full and 10 pages in part under FOIA exemption (b)(6) which exempts from disclosure files that, if released, would clearly be an unwarranted invasion of personal privacy. These include medical, personnel, and similar files. We base the determination to withhold on a balancing of interests between the protection of an individual's right to privacy and the public's right to access government information.

The Supreme Court ruled that Congress intended the "similar files" provision to be construed broadly, so that all information which applies to a particular individual qualifies for consideration under exemption (b)(6).

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

The fee for processing your request is \$25.00. 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 clients names will be added to the Freedom of Information Act Non-Payment list, and no future requests will be processed until all fees are paid in full.

If you have any questions, please call Senior Disclosure Specialist Gail Minauro, ID #1000259377, at 313-234-1866 or write to: Internal Revenue Service – Centralized Processing Unit – Stop 93A, P.O. Box 621506, Atlanta, GA 30362. Please refer to case number F14140-0075

Sincerely,

A handwritten signature in black ink, appearing to read "Ron Mele", with a long horizontal flourish extending to the right.

Ron Mele
Disclosure Manager
Disclosure Office 1

Enclosures
Responsive Documents
Notice 393
Payment Stub

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

Internal Revenue Service
Centralized Processing Unit – 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 #: F14140-0075
SSN/EIN: _____
Name Control: RCTM

**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.

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

October 30, 2014

Via Certified Mail, Return Receipt Requested

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

RE: RCT Motivating, Inc., Taxpayer Identification Number Case
Number F14140-0075

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 or in part and, in regards to your required information:

Taxpayer's name and address: RCT Motivating, Inc.
1007 Orange Street, Suite 3800
Fort Worth, Texas 76102-5304

Description of requested records: 431 pages withheld in full and 86 pages withheld in part as further described in enclosed letter.

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

Identity of the office and contact on the response letter: Internal Revenue Service, Centralized Processing Unit, Stop 93A, P.O. Box 621506, Atlanta, GA 30362, Senior Disclosure Specialist Gail Minauro, ID #1000259377

Date of the letter denying request: October 1, 2014 – Please see enclosed response

Please note that your response withholds 431 pages in full and 86 pages in part without providing a description of the documents that were withheld in full or the analysis for why the 86 pages that were withheld in part were withheld. Without a description of the documents that were withheld in full or an explanation of how a statutory exception applies to the 86 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 four hundred thirty-one (431) pages that were withheld in full and the reasons that they



STEWART, PLLC

IRS Appeals – FOIA Appeals
October 30, 2014
Page 2 of 2

were withheld and analysis as to why eighty-six (86) pages that were withheld in part were withheld by you.

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

Sincerely,



Scott E. Stewart

Enclosures

Internal Revenue Service
Appeals Office M/S 55203
5045 E Butler Ave
Fresno, CA 93727-5136

Date: DEC 18 2014

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

Department of the Treasury

Person to Contact:

Diane Ambriz
Employee ID Number: 1000157666
Tel: (559) 500-7062
Fax: (559) 497-5907

Refer Reply to:

AP:CO:FRC:DMA

In Re:

Freedom of Information Act

Disclosure Case Number(s):

F14140-0075

Tax Period(s) Ended:

2008-2010

Dear Mr. Stewart,

This letter is in response to your appeals request dated 10/30/2014 for Freedom of Information Act (FOIA) information. According to your letter you are appealing the response of 10/01/2014 from the Disclosure Specialist of your request for information dated 5/14/2014.

You requested a complete copy of the Examination file for RCT Motivating Inc. for tax years 2008 through 2010.

The Disclosure Specialist located 1835 pages, they provided 1404 pages.

The Disclosure Specialist withheld 3 pages in full and 6 pages in part as the information is the tax information of other taxpayers per FOIA exemption (b)(3).

Disclosure Specialist redacted the DIF score from 20 pages of the records sent per FOIA exemption (b)(3) supported by IRC section 6103(b)(2) and (e)(7) which exempts the information from release. Disclosure of the information would reveal law enforcement techniques, procedures and guidelines protected by FOIA exemption (b)(7)(E).

The Disclosure Specialist withheld 220 in full and 39 pages in part under FOIA exemption (b)(7)(E). 128 pages were withheld in full under FOIA exemption (b)(5) which 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. 14 pages were withheld in full and 10 pages in part per FOIA exemption (b) (6) because of unwarranted invasion of person privacy

You appealed the Disclosure Specialist's determination. You stated that of the 431 pages withheld in full and 86 pages withheld in part did not provide a description of the documents that were withheld in full or the analysis of why the 86 pages were withheld. Without description of the documents that were withheld in full or an explanation of how a statutory exception applies to the 86 pages that were withheld in part, it is not possible to challenge with further particularity or specificity the denial of the withheld records. You requested Disclosure to provide sufficient particularity and specificity in regards to the 431 pages withheld in full and reasons that they were withheld and analysis as to why 86 pages were withheld in part.



The 3 pages that were withheld in full and 6 pages in part were withheld per FOIA exemption (b)(3) supported by Internal Revenue Code Section 6103(a) explained as follows:

The information you are seeking 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 you with 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.

Exemption 3 is being asserted in conjunction with I.R.C. Section 6103(a) to withhold any third party return information. Section 6103 of the Internal Revenue Code has been determined to be an exemption 3 statute. Church of Scientology v. IRS, 484 U.S. 9 (1987).

The Disclosure Specialist redacted the Discriminant Information Function (DIF) score from 20 pages from the records sent to you per FOIA exemption (b)(3), supported by Internal Revenue Code Section 6103(b)(2) and (e)(7) protected by FOIA exemption (b)(7)(E), explained as follows:

FOIA exemption (b)(3) in conjunction with I.R.C. Section 6103(b)(2) and FOIA exemption (b)(7)(E) to withhold the Discriminant Function (DIF) scores contained in 20 of the pages released in part. FOIA subsection (b)(3) exempts from disclosure documents that are specifically exempted from disclosure by statute, provided that the statute:

(A) requires withholding in such a manner so 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.

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 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).

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:

(E) 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.

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).

The Disclosure Specialist withheld 220 pages in full and 39 pages in part per FOIA e exemption (b)(7)(E), explained as follows:

Exemption 7 allows for the withholding of "information compiled for law enforcement purposes." 5 U.S.C. Section 552(b)(7). The law to be enforced within the meaning of "law enforcement purposes" includes both civil and criminal statutes as well as statutes authorizing administrative proceedings. See e.g., Ortiz v. HHS, 70 F.3d 729, 732 (2d Cir. 1995) (record at issue which launched criminal investigation of plaintiff, properly withheld even though no charges were brought); Kay v. FCC, 867 F. Supp. 11 (D.D.C. 1994) (FCC regulations implementing the Communications Act).

There is little doubt that the Service is tasked with the responsibility of enforcing the internal revenue laws. See generally I.R.C. Section 7801 (administration of this title performed by or under direction of Secretary of Treasury), I.R.C. Section 7802 (creating position of Commissioner of Internal Revenue). The enforcement of the internal revenue laws through the collection of taxes involves a law enforcement proceeding. See e.g. Becker v. IRS, 34 F.3d 398, 407 (7th Cir. 1994) (IRS has law enforcement purpose in investigating potential illegal tax protestor activity); Church of Scientology Intern. v. IRS, 995 F.2d 916, 919 (9th Cir. 1993) ("EO [Exempt Organization Division of the IRS] performs a law enforcement function by enforcing the provisions of the federal tax code that relate to qualification for exempt status"), Lewis v. IRS, 823 F.2d 375, 379 (9th Cir. 1987) (documents generated during ongoing criminal tax investigation meet law enforcement threshold); Holbrook v. IRS, 914 F. Supp. 314 (S.D. Iowa 1996) (documents gathered during IRS criminal investigation compiled for law enforcement

purposes). *But see, Author Services v. IRS*, 1992 U.S. Dist. Lexis 11907 (C.D. Cal. July 30, 1992) (records compiled after investigation completed not for law enforcement purposes).

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.

The Disclosure Specialist withheld 128 pages in full per 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).

With respect to encouraging candid communications between subordinates and superiors, the privilege "serves to assure that subordinates will feel free to provide the decision maker with their uninhibited opinions and recommendations without fear of later being subject to public ridicule or criticism. . . ." *Coastal States*, 617 F.2d at 866. The deliberative process privilege applies to documents that are both "predecisional" and "deliberative." *Norwood v. FAA*, 993 F.2d 570, 576 (6th Cir. 1993). "A document is predecisional when it is received by the decision maker on the subject of the decision prior to the time the decision is made, and deliberative when it reflects the give-and-take of the consultative process." *Id.* (Citations omitted.)

The 128 pages meet the "deliberative" requirement of the privilege because they demonstrate the consultative process between the District Counsel and the Regional Counsel or Assistant Regional Counsel (GLS) with respect to the handling of your personnel grievance matters. These pages meet the "predecisional" requirement of the privilege because the issue remains open, and therefore subject to change, with respect to the matters on appeal. Additionally, 94 pages involve the deliberative process involved in the investigation of Rule 6(e) violation which is also subject to the law enforcement privilege (b)(7)(C). See *discussion infra*.

We are asserting the attorney work product privilege as an additional basis for withholding pages from release. 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)). Accordingly, the documents created by the District Counsel and/or Regional Counsel with respect to the preparation of the government's response to your personnel grievance claims falls within this privilege.

The Disclosure Specialist withheld 14 pages in full and 10 pages in part per FOIA exemption (b)(6):

FOIA exemption (b)(6) exempts from disclosure files that, if released, would clearly be an unwarranted invasion of personal privacy. These include medical, personnel and similar files. The determination of whether a disclosure constitutes a clearly unwarranted invasion of personal privacy is based on a "balancing of interests between the protection of an individual's privacy from unnecessary public scrutiny, and the preservation of the public's right to governmental information." Department of the Air Force v. Rose, 425 U.S. 352 (1976). The Supreme Court has redefined the nature of the public and private interests that are to be balanced. Department of Justice v. Reporters Committee for Freedom of Press, 489 U.S. 749 (1989). The Supreme Court reviewed the legislative history of the FOIA to conclude that the central purpose of the statute is to "contribut[e] significantly to public understanding of the operations or activities of the government." 489 U.S. at 775 (emphasis in original). Reporters Committee requires a balancing of the public interest in the disclosure of information which will add to "the public understanding of the operations or activities of the government" with the countervailing privacy interests of the affected individuals. Because the data you are seeking has no public interest and a strong privacy interest, it is exempt under subsection (b)(6).

We have reviewed the response of the Disclosure Specialist, the Disclosure database, as well as the documents withheld and have determined that the response was appropriate. The Appeals office 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. We address the adequacy of the search and the appropriateness of the pages withheld in full, the redactions and the exemptions cited. Our sole responsibility is to determine if the documents were properly withheld under the FOIA.

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
Email: ogis@nara.gov
Telephone: 301-837-1996
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 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.

Sincerely,

N. Laub
Appeals Team Manager