



INSPECTOR GENERAL
FOR TAX
ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20005

May 16, 2017

Roy D. Oppenheim
Oppenheim Law
2500 Weston Road, Suite 404
Weston, Florida 33331

Dear Mr. Oppenheim:

This is in response to your April 20, 2017 Freedom of Information Act (FOIA) request seeking access to records maintained by the Treasury Inspector General for Tax Administration (TIGTA). We received your request on April 20, 2017. Specifically, you state:

It is the purpose of this letter to seek documents and information regarding TIGTA Claim #54-1609-0023-C, as well as all documents and information concerning the previous unacknowledged submission made on April 10, 2014, concerning the same matter. This request seeks all documents in the possession of the Treasury Inspector General for Tax Administration's Office that provide information on or meet the following criteria:

All communications generated and received by the Treasury Inspector General for Tax Administration's Office including, but not limited to, both electronic media and actual paper documents of mail, e-mails, charts, graphs, memorandums, reports, agendas of meetings, minutes of meetings, notes from conversations and any other documents within the possession of the Treasury Inspector General Tax Administration's Office that discuss TIGTA Claim #54-1609-0023C, as well as the previous submission made on April 10, 2014.

As we had already responded to the requested records on January 31, 2017, we contacted you telephonically on April 24, 2017 to seek clarification. You indicated your firm had contacted TIGTA recently with additional information pertaining to your previous complaint. You then responded via e-mail on the same date, stating "This e-mail shall serve to supplement the FOIA request made on April 20, 2017 regarding the above reference complaint number. The Special Agents with we spoke are SA Chad Stenbeg and SA Elisa Germano. It was at their suggestion that we seek further information on the processing/status of Complaint No 54-1609-0023-C via a FIOA

EXHIBIT

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request.” In our e-mail response to that e-mail, same day, we sought to confirm that you were seeking “any and all information pertaining to your recent contact with TIGTA that occurred in 2017 that relates to your previous Complaint #54-1609-0023-C.” You responded via e-mail, on the same day, with “Yes that is what we are seeking.”

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

An indices search located three (3) complaints that are responsive to your request: TRN-1703-0634, TRN-1703-0635, and TRN-1703-0636.

TRN-1703-0634 consists of fifty-four (54) pages. We are releasing nineteen (19) pages in full and eight (8) pages in part. A copy is enclosed. We are withholding twenty-seven (27) page in full. We are asserting FOIA subsections (b)(3) in conjunction with I.R.C. § 6103(a), (b)(6), and (b)(7)(C) as the justification for withholding. Please note that page 16 of the enclosed record contains information blacked out by someone other than TIGTA.

TRN-1703-0635 consists of fifty-four (54) pages. We are releasing nineteen (19) pages in full and eight (8) pages in part. A copy is enclosed. We are withholding twenty-seven (27) page in full. We are asserting FOIA subsections (b)(3) in conjunction with I.R.C. § 6103(a), (b)(6), and (b)(7)(C) as the justification for withholding. Please note that page 16 of the enclosed record contains information blacked out by someone other than TIGTA.

TRN-1703-0636 consists of fifty-four (54) pages. We are releasing nineteen (19) pages in full and eight (8) pages in part. A copy is enclosed. We are withholding twenty-seven (27) page in full. We are asserting FOIA subsections (b)(3) in conjunction with I.R.C. § 6103(a), (b)(6), and (b)(7)(C) as the justification for withholding. Please note that page 16 of the enclosed record contains information blacked out by someone other than TIGTA.

We have withheld information from the documents responsive to your request pursuant to FOIA subsection (b)(3) in conjunction with I.R.C. § 6103(a). The responsive documents contain return information, as that term is defined in I.R.C. § 6103(b)(2), of individuals other than yourself. The information pertaining to the third parties was collected by the Secretary of the Treasury with respect to determining the liability of individuals under Title 26, and therefore is exempt from disclosure to you in response to

your FOIA request. Accordingly, we are withholding this material pursuant to FOIA subsection (b)(3) in conjunction with I.R.C. § 6103(a).

FOIA subsection (b)(6) permits the withholding of records and information about individuals when disclosure of the information could result in a clearly unwarranted invasion of personal privacy. The withheld information consists of identifying information compiled with regard to individuals other than you. Releasing the withheld information would not shed any light into the Agency's performance of its official functions, but instead could result in an invasion into the personal privacy of the individuals whose names and personal information have been withheld. As a result, the privacy interests of the third parties outweigh the public's interest in having the information released.

FOIA subsection (b)(7)(C) permits an agency to withhold "information compiled for law enforcement purposes the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy." The withheld information consists of identifying information of individuals other than you. Releasing the withheld information would not shed any light into the Agency's performance of its official functions, but instead could result in an invasion into the personal privacy of the individuals whose names and personal information have been withheld. The information was compiled for law enforcement purposes and the privacy interests of the third parties outweigh the public's interest in releasing the information released. As a result, this information has been withheld in response to your request.

To the extent you are requesting documents pertaining to a third party, TIGTA can neither admit nor deny the existence of responsive records. Your request seeks access to the types of documents for which there is no public interest that outweighs the privacy interests established and protected by the FOIA (5 U.S.C. §§ 552(b)(7)(C) and (b)(6)). This response should not be taken as an indication that such records exist; rather it is our standard response to requesters seeking records on third parties.

We have enclosed an Information Sheet that explains the subsections cited above as well as your administrative appeal rights. Your appeal must be in writing, signed by you, and postmarked or electronically transmitted within ninety (90) days from the date of this letter. You should address the envelope as follows:

Freedom of Information Act Appeal
Treasury Inspector General for Tax Administration
Office of Chief Counsel
City Center Building
1401 H Street, NW, Suite 469
Washington, DC 20005

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Since the cost incurred to process your FOIA request was less than \$25.00, the threshold set by Treasury's FOIA regulation, no fees were assessed.

If you have any questions, please contact Diane Bowers, Government Information Specialist, at (202) 927-7043 or Diane.Bowers@tigta.treas.gov and reference Disclosure Case #2017-FOI-00168.

Also, you may contact our FOIA Public Liaison at (202) 622-4068 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,



Diane K. Bowers
(For) Amy P. Jones
Disclosure Officer and
FOIA Public Liaison

Enclosures

Information on a TIGTA 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 Treasury Inspector General for Tax Administration (TIGTA) within 90 days after we (1) determine to withhold records, (2) determine that no records exist, or (3) deny a fee waiver or a favorable fee category. If some records are released at a later date, you may file an appeal within 90 days from the date the last records were released. The appeal must be in writing, signed by you, and postmarked or electronically transmitted within 90 days from the date of the response letter. You must provide the following information: your name and address; description of the requested records; date of the initial request (and a copy, if possible); date of the letter denying the request (and a copy, if possible). You should mail your appeal to:

Freedom of Information Act Appeal
Treasury Inspector General for Tax Administration
Office of Chief Counsel
City Center Building
1401 H Street, NW, Suite 469
Washington, DC 20005

Judicial Review

If we deny your appeal, or if we do not send you a reply within 20 days (not counting Saturdays, Sundays, or legal public holidays) after the date we receive the appeal, you may file a complaint with the U.S. District Court in the district where (1) you reside, (2) your principal place of business is located, or (3) the records are located. You may also file in the District Court for the District of Columbia.

Any proceedings in district court will be governed by the Federal Rules of Civil Procedure. Under Rule 4(i)(1) and (2), service on the Department of the Treasury may be effected by delivering copies of the summons and complaint: (a) personally, upon the U.S. Attorney (or his designee) for the district where the lawsuit is brought; (b) via registered or certified mail, upon the Attorney General of the United States at Washington, D.C.; and (c) via registered or certified mail to:

Treasury Inspector General for Tax Administration
Office of Chief Counsel
City Center Building
1401 H Street, NW, Suite 469
Washington, DC 20005

In such a court case, the burden is on the Treasury Inspector General for Tax Administration to justify withholding the requested records, determining that no records exist, or denying a fee waiver or a favorable fee category. The court may assess against the United States reasonable attorney fees and other litigation costs incurred by the person who takes the case to court and who substantially prevails. You will have substantially prevailed if the court determines, among other factors, that you had to file the lawsuit to obtain the records you requested and that the Treasury Inspector General for Tax Administration had no reasonable grounds to withhold the records.

Exemptions

Not all records can be released under the FOIA. Congress established certain categories of information that are not required to be released in response to a FOIA request because release could be harmful to a government or private interest. These categories are called "exemptions" from disclosures. There are nine categories of exempt information and each is described below.

- (b)(1) (A) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to 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), if that statute--
 - (A) (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or
 - (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld; and
 - (B) if enacted after the date of enactment of the OPEN FOIA Act of 2009, specifically cites to this paragraph.
- (b)(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) Inter-agency or intra-agency memorandums or letters which that would not be available by law to a party other than an agency in litigation with the agency, provided that the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested;
- (b)(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:
 - (A) could reasonably be expected to interfere with enforcement proceedings,
 - (B) would deprive a person of a right to a fair trial or an impartial adjudication,
 - (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy,
 - (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,
 - (E) 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, or
 - (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) Geological and geophysical information and data, including maps, concerning wells.