

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

Daniel T. Hartnett,

Plaintiff,

v.

Internal Revenue Service,

Defendant.

**COMPLAINT FOR DECLARATIVE AND INJUNCTIVE RELIEF**

Plaintiff, Daniel T. Hartnett, for his complaint against Defendant, Internal Revenue Service, states as follows:

**NATURE OF ACTION**

1. “Deeds, not words” runs the Roman aphorism. The IRS has that ancient wisdom backwards in connection with the FOIA request at issue here. It says much, but does nothing:

- It has repeatedly failed to furnish a meaningful FOIA response either within the statutorily-established deadline or the self-selected “final response” deadlines its representatives later set;
- It obtained from Plaintiff a \$1,300 processing fee, yet it has processed nothing;

- It has provided rote, opaque, content-free responses to reasonable requests for information as to the status of processing Plaintiff's FOIA request; and
- It supplies letter and email communications offering the illusion of compliance with the statutory disclosure scheme, but not the performance required under the law.

As a result of the IRS's repeated delays and failures to genuinely communicate, Plaintiff has lost confidence in the agency's ability to comply with the law. He requests this Court's Order compelling that compliance.

#### **JURISDICTION AND VENUE**

2. This is an action for declarative and injunctive relief under the Freedom of Information Act ("FOIA"), as amended, 5 U.S.C. § 552.

3. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

4. Venue in the United States District Court for the Northern District of Illinois is proper pursuant to 5 U.S.C. § 555(a)(4)(B).

#### **THE PARTIES**

5. The Plaintiff is a citizen of the United States. He is employed as an attorney. His business address is Clark Hill PLC, 130 East Randolph Street, Suite 3900, Chicago, Illinois 60601.

6. The Plaintiff resides in the Northern District of Illinois.

7. Plaintiff made the request for the records at issue here.

8. Defendant Internal Revenue Service (“IRS”) is an agency of the United States and has possession and control of the records at issue here.

#### FACTUAL ALLEGATIONS

##### The FOIA Request

9. By letter dated July 24, 2018, Plaintiff requested that Defendant provide the following records:

- a. All documents that describe duties and responsibilities of a Fraud Technical Advisor employed by the Internal Revenue Service.
- b. All documents that describe how many Fraud Technical Advisors are employed by the Internal Revenue Service.
- c. All documents that describe what division the Fraud Technical Advisor is under control of at the Internal Revenue Service.
- d. All documents describing the Fraud Technical Advisor’s role during an examination.
- e. All documents that give the definition of what a Fraud Technical Advisor is.
- f. All documents that describe what the function of a Fraud Technical Advisor is at the Internal Revenue Service.
- g. All documents that describe what division the Fraud Technical Advisor is assigned to at the Internal Revenue Service.

A true and correct copy of the request is attached as Exhibit 1.

**The IRS Repeatedly Promises a Proper FOIA Response, but Never Performs**

10. On August 20, 2018 Plaintiff inquired of the Internal Revenue Service Tax Law Specialist handling the Plaintiff's FOIA request whether the Tax Law Specialist had a sense of when a response might be provided.

11. By a letter dated August 21, 2018 the IRS FOIA Public Liaison acknowledged receipt of the Plaintiff's FOIA request on the day it was made, July 24, 2018. The letter reported that the Internal Revenue Service would be unable to send the information requested by August 21, 2018, which is the 20-business day period allowed by law. The letter reported a need for additional time to "search for, collect and review responsive records from other locations." The letter also stated, "We have extended the statutory response dated to September 9, 2018, after which you can file suit." A true and correct copy of the letter is attached as Exhibit 2.

12. Under the heading "Request for Additional Extension of Time" the August 21, 2018 letter observed, "Unfortunately, we will still be unable to locate and consider release of the requested records by September 9, 2018. We have extended the response date to October 24, 2018, when we believe we can provide a final response."

13. On August 24, 2018, the Tax Law Specialist handling Plaintiff's request responded to his inquiry as to when a response might be provided. She said the IRS "business units have started their research, but do not have a full idea of what might be available in each business unit. As I get a clearer idea I will contact you again."

14. In a letter dated September 28, 2018, an IRS Disclosure Manager noted Plaintiff's FOIA request of July 24, 2018 and informed Plaintiff that the estimated cost to process the request was \$1,319. Plaintiff promptly paid \$1,319.00 by submitting a check in that amount to the address supplied by the Disclosure Manager.

15. On November 6, 2018, having heard nothing further from the Internal Revenue Service regarding his FOIA request, Plaintiff communicated with the Tax Law Specialist handling his request. Plaintiff inquired as to the status of the request. On November 7, 2018, the Tax Law Specialist responded, "I am waiting for the responsive documents from the function."

16. On December 7, 2018, having heard nothing further from the Internal Revenue Service regarding his FOIA request, Plaintiff sent a message to the Tax Law Specialist indicating that he was "becoming concerned about the absence of meaningful information - I've been waiting a long time and I promptly paid a considerable fee." Plaintiff asked, "What is the status as of today?" The Tax Law Specialist handling his FOIA request reported, "I have not opened and reviewed the information but I received some responsive documents last night. I cannot give you a determination on the completeness at this point. But it is in process."

17. In response to this communication from the IRS Tax Law Specialist, Plaintiff on December 7, 2018 asked, "Will your workload allow you to start looking at the material soon? Is it possible for you to produce the material on a rolling basis, that is, as soon as you determine that disclosure of a portion of the universe is not prohibited?" The Internal

Revenue Service Tax Law Specialist handling Plaintiff's FOIA request responded, "I have one biggish case which is in front of you, so next week is blocked but starting the following week if not sooner, I can do rolling responses to you."

18. On February 4, 2019, having heard nothing further from the Internal Revenue Service regarding his FOIA request, Plaintiff sent a message to the IRS Tax Law Specialist handling his request asking, "Can you please give me an update on this request?" Plaintiff received no response to this message.

19. On February 22, 2019, having received no response from the IRS to his FOIA request or to his message of February 2, 2019 inquiring as to the status of processing, Plaintiff sent a message to the IRS Tax Law Specialist handling his request to ask, "What is the status of the request?"

20. In a letter dated February 15, 2019 an IRS Disclosure Manager reported to Plaintiff that she was "responding to your Freedom of Information Act (FOIA) request dated October 19, 2018 that we received on October 24, 2018." In truth and in fact, however, Plaintiff did not tender a Freedom of Information Act request dated October 19, 2018 and the Internal Revenue Service received his request not on October 24, 2018 but rather on July 24, 2018. The Disclosure Manager stated that on "November 20, 2019 (sic), I asked for more time to obtain the records you requested. I am still working on your request and need additional time to review you records." In truth and in fact, however, Plaintiff received no request from the Disclosure Manager on about November 20, 2018 asking for more time to obtain the records Plaintiff requested.

21. On March 6, 2019 the Tax Law Specialist handling Plaintiff's request responded to Plaintiff's February 22, 2019 status inquiry. The Tax Law Specialist reported that she "should have at least a partial response out sometime within the next week."

22. On March 18, 2019 the IRS Disclosure Manager who signed the letter of February 15, 2019 referred to in Paragraph 20, sent Plaintiff a letter stating that she was "still working on your request and need additional time to review your records. I will contact you by June 20, 2019, if I am still unable to complete your request."

23. Plaintiff has not received any records in response to his request.

24. Under the circumstances here, Plaintiff has constructively exhausted his administrative remedies.

25. Defendant is improperly withholding records required to be disclosed under the Freedom of Information Act.

26. Plaintiff has a legal right to the records he seeks, and there is no basis in law for Defendant's refusal to provide them to Plaintiff.

27. Plaintiff lacks an adequate remedy at law and is entitled to injunctive relief.

#### RELIEF SOUGHT

WHEREFORE, Plaintiff Daniel T. Hartnett respectfully prays that this Court:

- (a) Declare that Defendant's withholding of records he seeks is unlawful;
- (b) Order Defendant to make the requested records available to Plaintiff;
- (c) Make an award to Plaintiff of attorneys' fees and costs under 5 U.S.C. § 552(a)(4)(E); and

(d) Grant such other and further relief as the Court may deem just and proper.

April 8, 2019

Respectfully submitted,

By: /s/ Daniel T. Hartnett

DANIEL T. HARTNETT

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Complaint for Declarative and  
Injunctive Relief  
Page 8 of 8