

EXHIBIT 6

Department of the Treasury
Internal Revenue Service
Independent Office of Appeals
701 B Street
Suite 900
San Diego, Ca. 92101

Date: **OCT 23 2020**

Person to Contact:
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Refer Reply to:
AP:EX:SAC:GS

In Re:
Freedom of Information Act
FOIA Case Number:
2020-03237
FOIA Request Date:
June 22, 2020

Clint E. Massengill
Cooley LLP
55 Hudson Yards
New York, NY 10001-2157

Dear Mr. Massengill,

This letter is in response to your appeals request dated October 05, 2020 for Freedom of Information Act (FOIA) information. According to your letter you are appealing the response of August 19, 2020 from the Disclosure Office of your request for information dated June 22, 2020.

On August 19, 2020 Disclosure Specialist, J. Carpenter, responded that your request for a complete copy of the Case Activity Record since February 22, 2019, with respect to the examination of Stanley D. Crow under 26 U.S.C. §§ 6700, 6707, and 6708 was partially denied because of the 22 pages located in response to your request, 21 pages were enclosed and redacted, in part, under FOIA exemptions:

- FOIA exemption (b)(3) requires us to withhold information that is specifically exempted from disclosure by another law. The law supporting this exemption is Title 26 United States Code section 6103(a).
- FOIA exemption (b)(5) 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. The specific privileges covered by this exemption is:
 - The attorney-client privilege protects confidential communications between an attorney and a client relating to a legal matter for which the client has sought professional advice.
- FOIA exemption (b)(7)(E) 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.

Your appeal argues that you challenge the documents provided because disclosure failed to adequately detail the applications of FOIA exemptions (b)(3), (b)(5), and (b)(7) as they pertain to redactions made.

We have reviewed the response from the Disclosure Office and have determined that it was appropriate under the circumstances regarding the adequacy of search and the identification of documents.

Regarding the material withheld, we sustain its redaction under FOIA exemption (b)(3) in conjunction with Internal Revenue Code § 6103. To the extent that such information exists, the Service is prohibited under I.R.C. § 6103(a) from providing you with a copy of that information. 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. § 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).

Additionally, 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 an agency 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).

Lastly, 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).

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 (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
8601 Adelphi Road - OGIS
College Park, MD 20740
E-mail: ogis@nara.gov
Web: <https://ogis.archives.gov>
Telephone: 202-741-5770
Facsimile: 202-741-5769
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,



D. Hudson
Appeals Team Manager

Digitally signed by Daniel J.
Hudson
Date: 2020.10.20 09:51:50
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