



April 8, 2013

**VIA E-MAIL AND CERTIFIED MAIL**

Steven T. Miller, Acting Commissioner  
Internal Revenue Service Appeals  
Attention: FOIA Appeals  
M/Stop 55202  
5045 East Butler Avenue  
Fresno, California 93727-5136

**RE: FREEDOM OF INFORMATION ACT REQUEST (F13286-0081)**

Dear Acting Commissioner Miller:

Cause of Action (CoA) is a nonprofit, nonpartisan government accountability organization that fights to protect economic opportunity when federal regulations, spending, and cronyism threaten it. Pursuant to the provisions of the Freedom of Information Act (FOIA)<sup>1</sup> and the rules and regulations of the Internal Revenue Service (IRS),<sup>2</sup> CoA hereby submits its appeal of the decision of the IRS to withhold certain documents, in part and in full, that are responsive to CoA's October 9, 2012 FOIA request.<sup>3</sup> The IRS improperly withheld certain records and portions therein under FOIA exemptions (b)(5) and (b)(6). The IRS also improperly categorically denied aspects of CoA's FOIA request under exemption (b)(3). Finally, CoA appeals the IRS's FOIA response because it appears that the IRS's search was deficient.

**Procedural History**

Section 6103 of the Internal Revenue Code (IRC) requires that tax returns and return information be confidential. In addition to the IRC's confidentiality requirements, no officer or employee of the United States "shall disclose any return or return information obtained by him in any manner[.]" The IRC defines "return information" to include a taxpayer's identity and the nature, source, or amount of his or her income.

However, the IRS is authorized to disclose tax return information to the President of the United States. IRC § 6103(g) states:

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<sup>1</sup> 5 U.S.C. § 552(a)(6) (2013).

<sup>2</sup> 26 C.F.R. § 601.702 (2013).

<sup>3</sup> FOIA Request from Karen Groen, Chief Oversight Counsel, Cause of Action, to Ava Littlejohn, Public Liaison, Internal Revenue Service (Oct. 9, 2012) [hereinafter "CoA's FOIA Request"].

Upon written request by the President, signed by him personally, the Secretary shall furnish to the President, or to such employee or employees of the White House Office as the President may designate by name in such request, a return or return information with respect to any taxpayer named in such request.

In accordance with FOIA, Cause of Action requested in an October 9, 2012 FOIA request that the IRS provide the following information from the time period of January 1, 2009, to October 9, 2012:

- 1) All documents, including but not limited to emails, letters, and telephone logs or other telephone records, constituting communications to and/or from any employee of the IRS concerning any FOIA request or lawsuit that relates to I.R.C. § 6103(g);
- 2) All documents, including notes and emails, referring or relating to any communication described in request #1;
- 3) Any communications by or from anyone in the Executive Office of the President constituting requests for taxpayer or "return information" within the meaning of § 6103(a) that were not made pursuant to § 6103(g);
- 4) All documents, including notes and emails, referring or relating to any communication described in request #3;
- 5) All requests for disclosure by any agency pursuant to IRC §§ 6103(i)(1), (i)(2), and (i)(3)(A);
- 6) All documents, including communications not limited to notes, emails, letters, memoranda and telephone logs or other telephone records, referring or relating to records described in request #5;
- 7) All documents, including but not limited to emails, letters, telephone logs, and reports pertaining to any investigation by the Treasury Inspector General for Tax Administration into the unauthorized disclosure of § 6103 "return information" to anyone in the Executive Office of the President; and
- 8) From the time period of March 27, 2012, to the present, all documents, including e-mail communications, constituting or relating to a request by the President or anyone designated by the President in his Executive Office for tax records under §6103(g)(1).<sup>4</sup>

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<sup>4</sup> *Id.* at 2.

Mr. Steven T. Miller  
April 8, 2013  
Page 3

On October 31, 2012, the IRS acknowledged receipt of the request, assigned the request case number F13286-0081, and requested an extension of the response date to January 31, 2013.<sup>5</sup> On December 11, 2012, the IRS issued an interim response to CoA, denying Items 3-6 on the basis of FOIA exemption (b)(3) and IRC section 6103(a), and denying Item 8 on the basis that the IRS found no “specifically responsive” documents.<sup>6</sup> The IRS also informed CoA that it had transferred Item 7 to the Treasury Inspector General for Tax Administration (TIGTA).<sup>7</sup> In this same letter, the IRS granted CoA a complete fee waiver.<sup>8</sup>

On January 30, 2013, the IRS again requested an extension of the response date to March 15, 2013.<sup>9</sup> The IRS issued a final response on March 4, 2013 (received by CoA on March 15, 2013), informing CoA that it had located 796 pages of records responsive to Items 1 and 2 of CoA’s October 9, 2012 FOIA request.<sup>10</sup> The IRS withheld 289 of these pages in part and six of these pages in full under FOIA exemptions (b)(5) and (b)(6).<sup>11</sup> This production marks the final response to CoA’s October 9, 2012 FOIA request. CoA is entitled to seek an administrative appeal within 35 days of the final response.<sup>12</sup>

### **The IRS Improperly Withheld and Redacted Responsive Documents**

The IRS improperly withheld in full six documents that are responsive to Items 1 and 2 of CoA’s FOIA Request, claiming FOIA Exemptions 5 and 6. It also improperly redacted 289 documents that it produced as responsive to Items 1 and 2, claiming those same exemptions. While the redacted documents contain an indication of the particular exemption claimed for each redaction, the IRS’s response does not specify how many of the six withheld-in-full documents are withheld under Exemption 5 and how many are withheld under Exemption 6. Accordingly, CoA has no choice but to assume, for purposes of this appeal, that all six documents were withheld under both exemptions. As explained below, the IRS has improperly relied on FOIA Exemptions 5 and 6 as a basis for its withholdings and redactions, and its refusal to produce the requested records in full violates FOIA.

FOIA mandates “a general philosophy of full agency disclosure”<sup>13</sup> and “creates a liberal disclosure requirement, limited only by specific exemptions which are to be narrowly construed.”<sup>14</sup> Exemptions to FOIA are “limited” in nature and must “not obscure the basic

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<sup>5</sup> Letter from Denise Higley, Tax Law Specialist, Internal Revenue Service, to Karen Groen, Chief Oversight Counsel, Cause of Action (Oct. 31, 2012).

<sup>6</sup> Letter from Bertrand Tzeng, Acting Disclosure Manager, Internal Revenue Service, to Brandon Sherman, Cause of Action, at 1-2 (Dec. 11, 2012) [hereinafter “IRS Interim Response”].

<sup>7</sup> *Id.* at 2.

<sup>8</sup> *Id.*

<sup>9</sup> Letter from Denise Higley, Tax Law Specialist, Internal Revenue Service, to Karen Groen, Chief Oversight Counsel, Cause of Action (Jan. 30, 2013).

<sup>10</sup> Letter from Bertrand Tzeng, Disclosure Manager, Internal Revenue Service, to Karen Groen, Chief Oversight Counsel, Cause of Action, at 1 (Mar. 4, 2013) [hereinafter “IRS Final Response”].

<sup>11</sup> *Id.*

<sup>12</sup> 26 C.F.R. § 601.702(c)(10).

<sup>13</sup> *Dep’t of the Air Force v. Rose*, 425 U.S. 352, 360-61 (1976) quoting S. Rep. No. 813, at 3 (1965).

<sup>14</sup> *Bristol-Myers Co. v. Fed. Trade Comm’n*, 424 F.2d 935, 938 (D.C. Cir. 1970).

Mr. Steven T. Miller  
April 8, 2013  
Page 4

policy that disclosure, not secrecy, is the dominant objective of the Act.”<sup>15</sup> President Obama emphasized the significance of FOIA’s regime of open disclosure when he stated:

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA . . . . The presumption of disclosure should be applied to all decisions involving FOIA.<sup>16</sup>

#### *The IRS Improperly Applied Exemption 5*

FOIA Exemption 5 protects “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.”<sup>17</sup> To assert this exemption, the agency must provide sufficient specificity to permit CoA (and the IRS Office of Appeals) to understand its rationale for withholding the responsive information.<sup>18</sup> Not only must the agency identify the particular privilege invoked, it must identify the particular issue or policy to which the redacted information contributed.<sup>19</sup> The IRS has failed to meet this standard and has instead provided a general, conclusory statement invoking Exemption 5, stating only that “there are three primary privileges covered by this exemption...”<sup>20</sup>

#### *The IRS Improperly Applied Exemption 6*

Exemption 6 of FOIA exempts “personnel and medical files and similar files” (PMSF) the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.”<sup>21</sup> However, to assert this exemption, “the threshold question is whether the requested information is contained in a personnel, medical, or similar file.”<sup>22</sup> The D.C. Circuit has explained that this exemption was designed to shield individuals from the disclosure of “intimate personal details.”<sup>23</sup>

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<sup>15</sup> *Rose*, 425 U.S. at 361.

<sup>16</sup> President Barack Obama, *Memorandum for the Heads of Executive Departments and Agencies, Subject: Freedom of Information Act* (Jan. 21, 2009) available at <http://www.whitehouse.gov/the-press-office/freedom-information-act>; see also Memorandum from Attorney General Eric Holder for Heads of Exec. Dep’ts and Agencies (Mar. 19, 2009) (“The [FOIA], 5 U.S.C. § 552, reflects our nation’s fundamental commitment to open government . . . . As President Obama instructed in his January 21 [2009] FOIA Memorandum, ‘The [FOIA] should be administered with a clear presumption: In the face of doubt, openness prevails.’ This presumption has two important implications. First, an agency should not withhold information simply because it may do so legally. . . . Second, whenever an agency determines that it cannot make full disclosure of a requested record, it must consider whether it can make partial disclosure.”).

<sup>17</sup> 5 U.S.C. § 552(b)(5).

<sup>18</sup> See generally *Citizens for Responsibility and Ethics in Washington*, Case No. FIA-13-0010, at 2-3 (Dep’t of Energy Mar. 20, 2013), available at <http://energy.gov/sites/prod/files/FIA-13-0010.pdf>.

<sup>19</sup> See *Judicial Watch v. USPS*, 297 F.Supp.2d 252, 259 (D.D.C. 2004) (when invoking the deliberative process privilege, an agency must also either “pinpoint an agency decision or policy to which the document contributed,” or “identify a decisionmaking process to which a document contributed.”) (internal citations omitted).

<sup>20</sup> IRS Final Response, *supra* note 10, at 1.

<sup>21</sup> 5 U.S.C. § 552 (b)(6) (2006).

<sup>22</sup> *Nat’l Ass’n of Home Builders v. Norton*, 309 F.3d 26, 32 (D.C. Cir. 2002).

<sup>23</sup> *Bd. of Trade v. Commodity Futures Trading Comm’n*, 627 F.2d 392, 399 (D.C. Cir. 1980); *Rural Hous. Alliance v. U.S. Dep’t of Agric.*, 162 U.S. App. D.C. at 126, 498 F.2d at 77 (1974).

Cause of Action seeks information related to unauthorized and statutorily authorized requests by the President and executive agencies for taxpayer information. Information about such requests is categorically different from the information contained in PMSF. Thus, information responsive to our FOIA request would not be found in PMSF, as described in the FOIA statute. Moreover, even if the information we requested was contained in PMSF as set forth in Exemption 6, its disclosure would not “constitute a clearly unwarranted invasion of personal privacy.”<sup>24</sup> The Supreme Court has noted that a simple invasion of personal privacy is insufficient to withhold materials responsive to a FOIA request:

[N]onconfidential matter [is] not to be insulated from disclosure merely because it was stored by an agency in its “personnel” files. Rather, Congress sought to construct an exemption that would require a balancing of the individual’s right of privacy against the preservation of the basic purpose of the Freedom of Information Act “to open agency action to the light of public scrutiny.”<sup>25</sup>

In asserting this exemption, the IRS has improperly weighed the interests between disclosure and individuals’ personal privacy. Cause of Action is requesting documents that relate to the unauthorized and statutorily authorized requests for taxpayer information by the President and executive agencies and the public has a very strong interest in knowing when such information has been requested. Therefore, release of information regarding authorized and unauthorized requests for taxpayer information does not constitute a clearly unwarranted invasion of personal privacy and strongly tips the balance in favor of disclosure.

### **The IRS’s Search Was Deficient**

CoA requested all communications to and/or from any employee of the IRS “concerning any FOIA request or lawsuit that relates to I.R.C. § 6103(g)” and all documents “referring or relating to [those] communication[s]” between the dates of January 1, 2009, to October 9, 2012.<sup>26</sup> Upon analyzing the final production transmitted by the IRS, it became clear that the IRS improperly withheld, in full, documents concerning a FOIA request relating to IRC section 6103(g) that was submitted by Citizens for Responsibility and Ethics in Washington (CREW) in 2012.<sup>27</sup>

The IRS either failed to undertake an adequate search “reasonably calculated to uncover all relevant documents,”<sup>28</sup> or failed to disclose that it withheld responsive documents—both of which are impermissible under the law.<sup>29</sup> In accordance with FOIA, the IRS must provide the

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<sup>24</sup> 5 U.S.C. § 552(b)(6) (2006).

<sup>25</sup> *Bd. of Trade v. Commodity Futures Trading Comm’n*, 627 F.2d 392, 399 (D.C. Cir. 1980).

<sup>26</sup> CoA’s FOIA Request, *supra* note 3, at 2 (emphasis added).

<sup>27</sup> Email from A.M. Gulas, Senior Counsel, Internal Revenue Service, to Deborah Lambert-Dean, Attorney, Internal Revenue Service (Oct. 4, 2012) (“I don’t have the request in front of me, but Jenny Black and I had the same problem [section 6103(g) data] with the CREW FOIA request earlier this year...”), *Ex. 1*.

<sup>28</sup> *Weisberg v. Dep’t of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983).

<sup>29</sup> 5 U.S.C. § 552(a)(6)(F) (“In denying a request for records, in whole or in part, an agency shall make a reasonable effort to estimate the volume of any requested matter the provision of which is denied”); *Juda v. U.S. Customs*

Mr. Steven T. Miller  
April 8, 2013  
Page 6

withheld documents as they are clearly within the scope of CoA's October 9, 2012 FOIA request.

### **The IRS Improperly Limited the Scope of Its Search**

The IRS improperly limited the scope of its search for documents responsive to Items 3 and 4 of CoA's October 9, 2012 FOIA Request. CoA requested any communications by or from the Executive Office of the President requesting taxpayer or "return information" that were "not made pursuant to I.R.C. § 6103(g)," as well as all documents "referring or relating to [those] communication[s]," between the dates of January 1, 2009, to October 9, 2012.<sup>30</sup> However, upon review of the IRS's final response, it is apparent that the agency construed CoA's request to apply to statutorily authorized requests—namely "tax checks" authorized by IRC section 6103(c).<sup>31</sup> The IRS did not indicate that it searched for unauthorized requests by the White House for taxpayer or return information, which would clearly be covered by the plain language of CoA's request.

The IRS failed to undertake an adequate search "reasonably calculated to uncover all relevant documents."<sup>32</sup> While "[n]othing in the law requires the agency to document the fate of documents it cannot find,"<sup>33</sup> the agency cannot impose restrictions on its search that inaccurately reflect the request submitted.<sup>34</sup> In the present matter, the IRS conducted an unreasonably narrow search given the language of CoA's request, and the search was not reasonably calculated to uncover all White House requests made outside the scope of IRC section 6103(g), including any requests not authorized by statute. In accordance with FOIA, the IRS must revise its search such that it is reasonably calculated to uncover all documents within the scope of Items 3 and 4 of CoA's FOIA request.

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*Service*, 2000 WL 1093326 (D.C. Cir. 2000) (agency improperly limited search where it "fail[ed] to pursue clear leads to other existing records"); 5 U.S.C. § 552(a)(6)(A)(i) (agency must notify requestor "of such determination and the reasons therefor"); 10 C.F.R. § 1004.7(b)(1) (agency must reference the specific exemption authorizing withholding, provide a brief explanation of its application to the records withheld, and provide a statement of why discretionary release is not appropriate); *Mead Data Cent., Inc. v. Dep't of the Air Force*, 566 F.2d 242 (D.C. Cir. 1977).

<sup>30</sup> CoA's FOIA Request, *supra* note 3, at 2 (emphasis added).

<sup>31</sup> IRS Final Response, *supra* note 10, at 2-3.

<sup>32</sup> *Weisberg v. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983).

<sup>33</sup> *Roberts v. U.S. Dep't of Justice*, No. 92-1707, 1993 U.S. Dist. LEXIS 1249, at \*5 (D.D.C. Jan. 28, 1993).

<sup>34</sup> *See, e.g., Charles v. Office of Armed Forces Medical Examiner*, 730 F. Supp. 2d 78 (D.D.C. 2010) (improper narrowing of search can render that search unreasonable); *Utahamerican Energy, Inc. v. Mine Safety and Health Admin.*, 725 F. Supp. 2d 78 (D.D.C. 2010) (search inadequate if limited to a more narrow category than requester specified).

### **The IRS Improperly Claimed Exemption Three**

The IRS improperly relied on FOIA exemption (b)(3) to withhold records responsive to Items 3-6 of CoA's FOIA request, claiming that all responsive documents are "taxpayer specific" and therefore subject to the "confidentiality provisions of IRC section 6103..."<sup>35</sup>

FOIA exemption (b)(3) allows an agency to withhold information that is prohibited from disclosure by another federal statute, so long as one of two requirements is met: the statute either "(A) requires 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."<sup>36</sup> It is well settled that IRC section 6103(a), in conjunction with FOIA exemption (b)(3), exempts taxpayer returns and return information from disclosure.<sup>37</sup> However, not all tax-related information is protected from disclosure under section 6103(a).<sup>38</sup> The *specific* information sought by FOIA must fall within the scope of the statutory exemption.<sup>39</sup>

In this instance, the IRS has claimed that IRC section 6103(a) exempts (1) all documents relating to White House requests for taxpayer or return information, and (2) all documents relating to Executive Branch requests for taxpayer or return information pursuant to IRC section 6103(i)(1), (i)(2) or (i)(3). Section 6103(a) protects the confidentiality of "return[s]" and "return information," limiting the definition of "return information" to:

[A] taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, 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 (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense.<sup>40</sup>

In this context, a communication requesting return information does not itself constitute return information. The purpose of section 6103(a) is to protect tax information. Yet a request by the White House or the Executive Branch does not include the nature or source of any tax-

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<sup>35</sup> IRS Final Response, *supra* note 10, at 3.

<sup>36</sup> 5 U.S.C. §552(b)(3) (2012).

<sup>37</sup> See, e.g., *Church of Scientology of Cal. v. IRS*, 792 F.2d 146, 150 (D.C. Cir. 1986), *aff'd*, *Maxwell v. Snow*, 409 F.3d 354 (D.C. Cir. 2005).

<sup>38</sup> *Tax Analysts & Advocates v. IRS*, 505 F.2d 350 (excludes letter rulings); *Fruehauf Corp. v. IRS*, 566 F.2d 574 (6th Cir.) (excludes letter rulings and background files of those rulings); *Arthur Anderson, Inc. v. IRS*, 514 F. Supp. 1173 (D.D.C. 1983) (copies of deposit slips and checks); *Stephenson v. IRS*, 629 F.2d 1140 (5th Cir. 1980) (computer tapes IRS prepared for tax compliance measures); *Tax Analysts v. IRS*, 117 F.3d 607 (D.C. Cir. 1997) (Field Service Memoranda IRA prepares).

<sup>39</sup> See *C.I.A. v. Sims*, 471 U.S. 159, 167 (1985) (for an agency to properly withhold documents under Exemption 3, the statute itself must qualify as an Exemption 3 statute, and the records in question must fall within the scope of the statute).

<sup>40</sup> IRC § 6103(a)(b)(2) (emphasis added).

Mr. Steven T. Miller  
April 8, 2013  
Page 8

related information; it is not for the processing of the return or for tax investigation; and it is not data with respect to a return or liability. Rather, an authorized "tax check" by the White House is made for the sole purpose of considering the employment of a prospective Presidential appointee,<sup>41</sup> and any request by the Executive Branch under section 6103(i) is made in the context of non-tax criminal investigations and prosecutions.<sup>42</sup> Cause of Action has no interest in any underlying return information that the IRS provided to the President or the Executive Branch. Since it is the IRS, not the President or his Administration, that is charged with the administration and enforcement of our nation's tax laws, any requests that the White House or Executive Branch made could not possibly relate to "the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title," or to "whether the taxpayer's return was, is being, or will be examined."

The IRS improperly categorically denied these portions of CoA's FOIA request under FOIA exemption (b)(3) since CoA's FOIA Request does not seek "return information" protected by the confidentiality provisions of IRC section 6103. In accordance with FOIA, the IRS must provide the withheld documents as they are clearly responsive to Items 3-6 of CoA's FOIA request.

### Segregability

The IRS failed to release reasonably segregable portions of the records responsive to Items 1-6 of CoA's FOIA Request. FOIA requires that all non-exempt information be disclosed, and that agencies conduct a segregability review of responsive records to determine if any portions of the records withheld may be disclosable:

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions of which are exempt under this subsection. The amount of information deleted shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in this subsection under which the deletion is made. If technically feasible, the amount of information deleted shall be indicated at the place in the record where such deletion is made.<sup>43</sup>

Agencies cannot justify withholding an entire document simply by showing that it contains some exempted material.<sup>44</sup> In determining segregability agencies must construe the exemptions narrowly, with the emphasis on disclosure.<sup>45</sup> Yet, in the present matter, many of the documents are withheld in their entirety. Other documents have redactions covering all but minor portions of the documents. It is highly likely that non-exempt material is contained within the documents currently withheld in their entirety.

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<sup>41</sup> Final Response Letter, *supra* note 10, at 2; *see also* IRC § 6103(g)(2).

<sup>42</sup> Final Response Letter, *supra* note 10, at 3.

<sup>43</sup> 5 U.S.C. § 552(b).

<sup>44</sup> *See Wightman v. Bureau of Alcohol, Tobacco & Firearms*, 755 F.2d 979, 982-83 (1st Cir. 1985).

<sup>45</sup> *Id.* at 982.

Mr. Steven T. Miller  
April 8, 2013  
Page 9

The IRS also failed to provide adequate justification for failing to segregate the non-exempt materials from the exempt materials. An agency must adequately describe the exempted material, "correlating the claimed exemptions to particular pages in the documents."<sup>46</sup> The withholding agency must supply a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.<sup>47</sup> In the present matter, the only description provided to CoA was the exemption number listed on certain partially redacted documents. No other explanation was provided. Without further information, CoA and the public at large will not enjoy the government "sunshine" which FOIA was fundamentally intended to encourage.

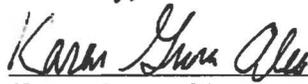
Both the segregability requirements and the requirement to provide adequate justification for withholding non-exempt materials are not satisfied the IRS's final response.

### **Conclusion**

Because the IRS improperly withheld responsive documents, in part and in full, CoA asks the IRS to produce all documents, without redactions, that are responsive to CoA's October 9, 2012 FOIA request. If the IRS maintains that certain materials within such documents remain exempt, CoA asks the IRS to segregate and disclose the non-exempt material contained within such documents or otherwise provide adequate justification for withholding such non-exempt materials. The IRS must also revise its search such that it would be reasonably calculated to uncover all of the relevant documents. Finally, CoA asks that the IRS waive all fees associated with production in response to this letter.<sup>48</sup>

In the event that this appeal is denied, the IRS is required to provide a written response describing the reasons for the denial, names and titles of each person responsible for the denial, and the procedures required to invoke judicial assistance in this matter.<sup>49</sup> Time is of the essence; if this appeal is denied or the IRS's response is not forthcoming within 20 working days,<sup>50</sup> Cause of Action reserves its rights under FOIA to seek judicial review, including the award of attorney's fees. We await your prompt reply.

Sincerely,

  
\_\_\_\_\_  
Karen Groen Olea  
CHIEF OVERSIGHT COUNSEL

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<sup>46</sup> *Schiller v. NLRB*, 964 F.2d 1205, 1209 (D.C. Cir. 1992).

<sup>47</sup> *Id.* at 1210.

<sup>48</sup> See IRS Final Response, *supra* note 10, at 4 (granting CoA's fee waiver request for F13286-0081).

<sup>49</sup> 5 U.S.C. § 552(a)(6)(A)(ii); 26 C.F.R. § 601.702(c)(10)(iii).

<sup>50</sup> *Id.*

# EXHIBIT 1:

Email from A.M. Gulas, Senior Counsel, IRS, to Deborah Lambert-Dean, Attorney, IRS

Dated October 4, 2012

**From:** Lambert-Dean Deborah C  
**To:** Gulas A M;  
**Subject:** RE: lawsuit inquiry (Cause of Action)  
**Date:** Thursday, October 04, 2012 9:17:51 AM

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Yes, I noticed the press release too. [REDACTED]

out of scope

Deborah Lambert-Dean  
Attorney, Branch 6  
Procedure & Administration  
202-622-4684 (phone)  
202-622-4520 (fax)

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**From:** Gulas A M  
**Sent:** Thursday, October 04, 2012 11:16 AM  
**To:** Lambert-Dean Deborah C  
**Subject:** RE: lawsuit inquiry (Cause of Action)

I don't have the request in front of me, but Jenny Black and I had the same problem with the CREW FOIA request earlier this year. [REDACTED]

(b)(5)

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**From:** Lambert-Dean Deborah C  
**Sent:** Thursday, October 04, 2012 11:11 AM  
**To:** Gulas A M  
**Subject:** RE: lawsuit inquiry (Cause of Action)

Excellent, thank you. Carmen hasn't tried to resend me the exhibits yet. But from looking at the letter, don't you think they are just asking for g data. (I know you said Sarah thought it would capture the (c) tax check info).....But looking at the wording in page 2, paragraph 2, they talk about all info sent to the director, GLD--those are procedures listed in the IRM on (g).

Deborah Lambert-Dean  
Attorney, Branch 6  
Procedure & Administration  
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