

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CAUSE OF ACTION)
 1919 Pennsylvania Ave., NW, Suite 650)
 Washington, D.C. 20006,)
)
 Plaintiff,)
)
 v.)
)
TREASURY INSPECTOR GENERAL FOR)
TAX ADMINISTRATION)
 City Center Building)
 1401 H Street, NW, Suite 469)
 Washington, D.C. 20005,)
)
 Defendant.)
 _____)

Case No.: _____

Judge: _____

COMPLAINT

This is an action under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA), seeking the release of records requested by Cause of Action from the Treasury Inspector General for Tax Administration (TIGTA).

JURISDICTION AND VENUE

1. This Court has personal and subject matter jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B), 5 U.S.C. § 552(a)(6)(E)(iii), and 28 U.S.C. § 1331.
2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e)(1)(C) and 5 U.S.C. § 552(a)(4)(B).

PARTIES

3. Cause of Action is a nonprofit, nonpartisan organization that educates the public on how government transparency and accountability protects economic opportunities for the American taxpayers. In furtherance of its public education mission, Plaintiff regularly requests

access to the public records of federal government agencies, entities, and offices, and disseminates its findings.

4. TIGTA provides independent oversight of the activities of the Internal Revenue Service. TIGTA is an agency within the meaning of 5 U.S.C. § 552(f)(1).

FACTS

5. Section 6103(a) of the Internal Revenue Code (IRC) sets forth a general rule that “returns” and “return information,” as defined in the IRC and its accompanying regulations, “shall be confidential.”

6. However, Section 6103(g) of the IRC provides that upon written request by the President, signed by him personally, the Secretary [of the Treasury] shall furnish returns and return information to the President, or to such employee or employees of the White House Office as the President may designate by name in such request.

7. On October 9, 2012, Plaintiff sent a FOIA request to the Internal Revenue Service (IRS) seeking the following documents:

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).

Ex. 1.

8. By letter dated October 31, 2012, the IRS informed Plaintiff that it had received its FOIA request on October 10, 2012, and that it had assigned the request a case number: F13286-0081. *Ex. 2.* By this same letter, the IRS extended its response date by ten (10) business days, to November 23, 2012, and asked Plaintiff to voluntarily agree to extend the response deadline to January 31, 2013. *Id.*

9. By letter dated December 11, 2012, the IRS informed Plaintiff that it had “transferred” item 7 of the request to TIGTA because that office had jurisdiction over the requested records. *Ex. 3.* That letter further informed Plaintiff that TIGTA would respond to that portion of the request. *Id.*

10. The IRS issued a follow-up determination on March 4, 2013, again noting that TIGTA would respond to item seven of Plaintiff's FOIA request. *Ex. 4.* The IRS reiterated that response at the administrative appeal stage by letter dated May 6, 2013. *Ex. 5.* Due to what Plaintiff perceived as a significant delay in TIGTA's response, Plaintiff asked TIGTA for an update by e-mail dated May 21, 2013. *Ex. 6.* By e-mail dated May 22, 2013, TIGTA sent Plaintiff a copy of TIGTA's determination letter. *Id.* In this same e-mail, TIGTA conceded that it had not sent Plaintiff an acknowledgment letter when the IRS had transferred a portion of the request. *Id.*

11. TIGTA's determination letter, which was dated November 30, 2012, stated that the agency could neither confirm nor deny the existence of records responsive to item seven of the request. *Ex. 7.* TIGTA cited Exemptions 6 and 7(c) of the FOIA, 5 U.S.C. §§ 552(b)(6), (b)(7)(c), in support of its "Glomar" response. *Ex. 7.* By this same letter, TIGTA assigned the request a case number (2013-FOI-00017) and informed Plaintiff of its administrative appeal rights. *Id.*

12. Upon receipt of TIGTA's determination letter, Plaintiff asked TIGTA to extend the appeals deadline because Plaintiff had relocated in early 2012 and had not received TIGTA's letter. *Ex. 6.* On May 22, 2013, TIGTA agreed to extend the appeal deadline. *Id.*

13. By letter dated June 12, 2013, Plaintiff appealed TIGTA's November 30, 2012 determination. *Ex. 8.* Plaintiff's appeal explained that TIGTA's Glomar response on privacy grounds was overbroad because the request did not identify a particular taxpayer or the subject of an investigation. *Id.*

14. On June 19, 2013, Plaintiff filed a Complaint against the IRS, challenging its actions on Plaintiff's FOIA request dated October 9, 2012. *See Cause of Action v. Internal Revenue Service*, No. 13-00920 (D.D.C.).

15. By letter dated July 10, 2013, TIGTA affirmed its initial determination of November 30, 2012. *Ex. 9.* In support of its Glomar response, TIGTA relied on Exemption 3 of the FOIA, 5 U.S.C. § 552(b)(3), in conjunction with 26 U.S.C. § 6103, as well as Exemptions 6 and 7(c). *Ex. 9.*

16. Subsequent to TIGTA's appeal response, the media reported that TIGTA had sent a letter to Senator Charles Grassley dated July 3, 2013, that acknowledged eight instances involving potential unauthorized access or disclosure of tax records belonging to political donors or candidates since 2006. *See, e.g.,* Dave Boyer and Ben Wolfgang, *EXCLUSIVE: Feds admit improper scrutiny of candidate, donor tax records*, THE WASHINGTON TIMES (July 15, 2013), <http://www.washingtontimes.com/news/2013/jul/15/feds-admit-improper-scrutiny-candidate-donor-tax-r/>. A copy of TIGTA's letter to Senator Grassley is attached to this Complaint. *See Ex. 10.*

COUNT 1

Violation of the FOIA: Failure to Acknowledge Existence of Responsive Records

1. Plaintiff incorporates by reference paragraphs 1-16.
2. Plaintiff has exhausted applicable administrative remedies.
3. TIGTA has improperly refused to confirm or deny the existence of records requested by Plaintiff.

REQUESTED RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

- I. Enter an order:
 - a. Declaring that TIGTA has improperly refused to confirm or deny the existence of the requested records;

- b. Directing TIGTA to conduct a search that is reasonably calculated to uncover all documents that are responsive to Plaintiff's request; and
 - c. Directing the TIGTA to release by a date certain any and all reasonably segregable, non-exempt records that are response to Plaintiff's request.
- II. Maintain jurisdiction over this action until TIGTA complies with the FOIA and all orders of this Court.
 - III. Award Plaintiff's attorneys' fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E).
 - IV. Grant such additional and further relief to which Plaintiff may be entitled.

Respectfully submitted,

Dated: August 9, 2013

/s/ Daniel Z. Epstein
Daniel Z. Epstein
D.C. Bar No. 1009132
Cause of Action
1919 Pennsylvania Ave., NW
Suite 650
Washington, D.C. 20006
(202) 499-4232 (telephone)
(202) 330-5842 (fax)
daniel.epstein@causeofaction.org

/s/ Reed D. Rubinstein
Reed D. Rubinstein, Partner
D.C. Bar No. 440153
DINSMORE & SHOHL LLP
801 Pennsylvania Avenue, NW
Suite 610
Washington, D.C. 20004
(202) 372-9120 (telephone)
(202) 372-9141 (fax)
reed.rubinstein@dinsmore.com

Counsel for Plaintiff