

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

CAUSE OF ACTION, )  
 )  
Plaintiff, )  
 ) Case No.: 1:13-cv-00920-ABJ  
v. )  
 )  
INTERNAL REVENUE SERVICE, )  
 )  
Defendant. )  
\_\_\_\_\_ )

**PLAINTIFF'S STATEMENT OF UNDISPUTED MATERIAL FACTS**

Plaintiff, Cause of Action (CoA), provides the following statement of undisputed material facts pursuant to Rule 56 of the Federal Rules of Civil Procedure and Rule 7(h) of the Local Civil Rules of the United States District Court for the District of Columbia, in support of its opposition and cross-motion for summary judgment.

1. By letter dated June 12, 2012, Cause of Action submitted a FOIA request to the U.S. Department of Energy (DOE) seeking all records pertaining to requests that the DOE Secretary Steven Chu (or his representatives) had made to the Internal Revenue Service (IRS) as to whether an applicant for any DOE loan had a tax delinquent account. Declaration of Allan Blutstein (Blutstein Decl.) ¶ 5 & Ex. 1. The time period for this request was January 2009 to the present. *Id.*

2. By letter dated December 19, 2012, DOE advised CoA that it had referred 142 pages to the IRS for processing. Blutstein Decl. ¶ 6 & Ex. 2.

3. The IRS responded to CoA by letter dated January 22, 2013. Blutstein Decl. ¶ 7 & Ex. 3. Of the 142 pages referred to it, the IRS released 11 pages in full and 131 pages in part. *Id.* The IRS cited Exemption 3, together with 26 U.S.C. § 6103(a), as the basis for protecting the records withheld. Blutstein Decl. ¶ 7 & Ex. 3.

4. The documents released by the IRS to CoA consist of letters from the IRS to the DOE in response to the DOE's requests for tax information concerning DOE loan applicants. Blutstein Decl. ¶ 8 & Ex. 4. The IRS withheld the names of the DOE loan applicants and the status of their tax accounts under Exemption 3, in conjunction with 26 U.S.C. § 6103(a). Blutstein Decl. ¶ 8 & Ex. 4. The IRS released the remaining information. *Id.*

5. On October 9, 2012, CoA submitted a FOIA request to the IRS that asked for eight categories of records. Compl. ¶ 7, Ex.1.

6. By letter dated December 11, 2012, the IRS provided an interim response that addressed items 3-8 of CoA's FOIA request. Compl. ¶ 9, Ex. 3. For items 3 and 4, the IRS stated that the only requests that White House personnel had made under Section 6103(g) of the Internal Revenue Code (IRC) were "tax checks" made for the purpose of employment screening. Compl. ¶ 9, Ex. 3. The IRS withheld an unspecified number of such records under Exemption 3 of the FOIA, 5 U.S.C. § 552(b)(3), in conjunction with IRC section 6103(a). Compl. ¶ 9, Ex. 3. With respect to items 5 and 6, the IRS also withheld an unspecified amount of records under Exemption 3 in conjunction with IRC section 6103(a). Compl. ¶ 9, Ex. 3. The IRS referred item 7 to the Treasury Inspector General for Tax Administration. *Id.* Lastly, for item 8, the IRS stated that it found no documents "specifically responsive" to CoA's request. *Id.*

7. On March 4, 2013, the IRS issued its final response to CoA's FOIA request. Compl. ¶ 11, Ex. 5. The IRS reportedly located a total of 796 pages in response to items 1 and 2 of the request. *Id.* Of those records, the IRS withheld six pages in full and 289 pages in part, releasing the remaining 501 pages in full. *Id.* According to the IRS, the withheld material was protected from disclosure pursuant to Exemption 5, 5 U.S.C. § 552(b)(5), and Exemption 6, 5 U.S.C. § 552(b)(6). Compl. ¶ 11, Ex. 5. The IRS also withheld, in part, an unspecified portions of records that allegedly were "outside the scope" of the request. *Id.*

8. By letter dated April 8, 2013, CoA timely appealed the IRS's determination on its FOIA request, disputing the adequacy of the search and the propriety of the IRS's withholdings. Compl. ¶ 15, Ex. 6.

9. The IRS denied CoA's appeal by letter dated May 6, 2013. Compl. ¶ 22, Ex. 8.

Dated: June 9, 2014

Respectfully submitted,

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