

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

TEA PARTY PATRIOTS, INC.,
1025 Rose Creek Dr., Suite 620-322
Woodstock, GA 30189

Plaintiff,

v.

INTERNAL REVENUE SERVICE,
1111 Constitution Avenue, NW
Washington, D.C. 20224,

and

DEPARTMENT OF THE TREASURY,
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Defendants.

Civil Action No.

COMPLAINT FOR INJUNCTIVE RELIEF

Plaintiff, Tea Party Patriots, Inc., by and through undersigned counsel, hereby files this Complaint against the Internal Revenue Service (“the IRS”) and the United States Department of the Treasury (“the Treasury”) (collectively, “Defendants”) to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA” or “the FOIA”), and in support thereof states as follows:

JURISDICTION AND VENUE

1. This Court is vested with subject matter jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331. It may grant declaratory relief pursuant to 28 U.S.C. § 2201, *et seq.* and award attorneys’ fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E) and 28 U.S.C. § 2412.

2. This Court possesses personal jurisdiction over Defendants because they maintain their principal place of business in the District of Columbia. *See* D.C. Code § 13-422.

3. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e)(1)(A) & (B).

PARTIES

4. Plaintiff is a not-for-profit grassroots citizens social welfare organization organized and validly existing under the laws of the State of Georgia, having its principal place of business at 1025 Rose Creek Dr., Suite 620-322, Woodstock, GA 30189.

5. Defendant, the IRS, is an “agency” of the United States Government under 5 U.S.C. § 552(f)(1) and is headquartered at 1111 Constitution Avenue, NW, Washington, DC 20224. The IRS has possession, custody, and control of records that are subject to this Complaint, but has improperly and illegally denied Plaintiff access to them.

6. Defendant, the Treasury, is an “agency” of the United States Government under 5 U.S.C. § 552(f)(1) and is headquartered at 1500 Pennsylvania Ave, N.W., Washington, D.C. 20220. The Treasury has possession, custody, and control of records that are subject to this Complaint, but has improperly and illegally denied Plaintiff access to them.

STATEMENT OF FACTS

7. On November 29, 2013, the Treasury and the IRS issued IRS REG-134417-13 *Notice of Proposed Rulemaking: Guidance for Tax Exempt Social Welfare Organizations on Candidate-Related Political Activities*, Fed. Reg. 71,535 (proposed Nov. 29, 2013) (“the NPRM” and “Proposed Regulations”).

8. The Proposed Regulations would impose significant burdens and restrictions on the First Amendment activities, speech, and associational rights of every social welfare organization in America, including Plaintiff.

9. The NPRM drew more than 150,000 public comments by the end of the public comment period on February 27, 2014, a number which the IRS Commissioner testified to Congress constituted a new record for public comments regarding proposed IRS regulations. *See* IRS Commissioner Koskinen Testimony to the House Oversight and Government Reform Committee on March 26, 2014.

10. The NPRM would further impose significant reporting and recordkeeping burdens on a substantial number of Section 501(c)(4) social welfare organizations if the NPRM is adopted as final regulations. *See* 78 F.R. 71535; Internal Revenue Service Bulletin 2013-52, December 23, 2013.

11. Neither the IRS nor the Treasury included in its regulatory rulemaking agendas any reference to changes in the regulations governing Section 501(c)(4) organizations prior to November 26, 2013, the same date the Proposed Regulations were signed and three days before the NPRM was published in the Federal Register.

12. According to a document made public by the Ways and Means Committee of the House of Representatives on February 4, 2014, high ranking individuals within the Treasury and the IRS began as early as June 2012 to develop new regulations “off plan” and in secret. A true and correct copy of that document, which is an e-mail from Treasury Official Ruth Madrigal to IRS Head of Exempt Organizations, Lois Lerner, is attached hereto as **EXHIBIT A**.

13. Upon information and belief, the above-mentioned e-mail from Ruth Madrigal to Lois Lerner is but one of many documents that exist, and should be turned over to Plaintiff, regarding the origins and development of the Proposed Regulations.

14. The official federal government website where all proposed federal regulations are posted includes a tab for “Related Documents.” For this NPRM, the IRS and the Treasury posted no related documents and advised the public that there were “None.”

15. The public is entitled to have access to the documents, information and background materials regarding the origins, development and publication of the Proposed Regulations.

16. Congress enacted the FOIA, which mandates disclosure of records held by federal government agencies, to promote transparency across the government. The basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.

17. On December 10, 2013, counsel for Plaintiff, Ms. Clela Mitchell (“Plaintiff’s Attorney”), sent a FOIA request to the IRS (“Plaintiff’s IRS FOIA Request”)—a true and correct copy of which is attached as **EXHIBIT B**—seeking copies of the following documents:

1. All records related to IRS News Release 2013-92, Nov. 26, 2013 and Notice of Proposed Rulemaking, Reg-134417-13 (“Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities”) 78 Fed. Reg. 71535-71542 (Nov. 29, 2013) (collectively, the “Guidance”), including but not limited to the following:

a. Correspondence to / from any agent, employee, or representative of the IRS with any outside federal or state agency, educational or policy organization, any other organization, private entity or individual related to the Guidance (including, but not limited to the White House, Executive Office of the President, White House Counsel’s office, Federal Elections Commission, other federal agencies, state agencies, Congressional Committees, and Members of Congress).

b. Internal IRS documents, memorandums, and communications between or among any agent, employee, representative of the IRS including, but not limited to, Danny Werfel, William Wilkins, and Amy F. Giuliano related to the Guidance.

2. All records, communications, directives, minutes or reports of staff/task force meetings, drafts, internal commentary, proposals, memoranda relating to political activities of social welfare organizations and the topics contained in the Guidance from January 1, 2008 to present.

3. All records related to consideration and standards for processing tax-exempt status of organizations classified, denoted, or otherwise set apart by the IRS as “potential political cases” as described in the May 14, 2013 Treasury Inspector General for Tax Administration Report, “Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review” (Reference Number 2013-10-053) (the “Report”) that were used, or in any way relied upon, for the development of the Guidance. See attached for page 5 of the Report.

18. Also on December 10, 2013, Plaintiff’s Attorney sent a FOIA Request to the Treasury (“Plaintiff’s Treasury FOIA Request”)—a true and correct copy of which is attached as **EXHIBIT C**—requesting copies of all the Treasury’s records related to the following topics:

1. IRS News Release 2013-92, Nov. 26, 2013 and Notice of Proposed Rulemaking, Reg. 134417-13 (“Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities”) 78 Fed. Reg. 71535-71542 (Nov. 29, 2013) (collectively, the “Guidance”) and all records, communications, directives, minutes or reports of staff/task force meetings, drafts, internal commentary, proposals, memoranda relating thereto.

2. Political activities of social welfare organizations or business leagues, any topics contained in the Guidance, any definition containing any aspect of “political” or “lobbying” for any purpose from January 1, 2008 to present and all records, communications, directives, minutes or reports of staff/task force meetings, drafts, internal commentary, proposals, memoranda relating thereto.

3. The Treasury Inspector General for Tax Administration Report, “Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review” (Reference Number 2013-10-053) (issued May 14, 2013) (the “Report”) and all records, communications, directives, minutes or reports of staff/task force meetings, drafts, internal commentary, proposals, memoranda relating thereto, including but not limited to the use and reliance on the criteria in the Report for purposes of the development of the Guidance.

This request includes (but is not limited to) the following:

a. Correspondence to / from any agent, employee, or representative of the Department with any outside federal or state agency, educational or policy organization, any other organization, private entity or individual related to the Guidance (including, but not limited to the White House, Executive Office of the President, White House Counsel's office, Federal Elections Commission, other federal agencies, state agencies, Congressional Committees, and Members of Congress).

b. Internal Department documents, memorandums, and communications between or among any agent, employee, representative of the Department.

c. All records, communications, directives, minutes or reports of staff/task force meetings, drafts, internal commentary, proposals, memoranda, of the following individuals and groups of individuals: Treasury Secretary Jack Lew, Treasury Assistant Secretary for Tax Policy Mark J. Mazur; employees, contractors and representatives of any of the Treasury Offices, including but not limited to the General Counsel's Office and the Secretary's executive office.

d. All records and communications of Acting Commissioner of the Internal Revenue Service Danny Werfel, William Wilkins, and Amy F. Giuliano any employee, contractor or representative of the Internal Revenue Service with any employees, contractors and representatives of any of the Treasury Offices.

19. On or about December 20, 2013, the Treasury sent Plaintiff's Attorney a letter—a true and correct copy of which is attached as **EXHIBIT D**—confirming the Treasury's receipt of Plaintiff's Treasury FOIA request. The letter further stated:

We have initiated a search for records that would be responsive to your request. We will make every effort to provide you with a timely response; however, please be advised that unusual circumstances exist regarding a search and review of the information requested due to consultation required between two or more program offices and the timeframe of the requested records. This will require an additional processing extension of ten (10) days.

That is the last communication received by Plaintiff from the Treasury concerning Plaintiff's Treasury FOIA Request. The Treasury's deadline for producing documents responsive to Plaintiff's Treasury FOIA Request, even including the 10-day extension referenced in the letter, has long since passed. Nevertheless, the Treasury has not produced any documents responsive to

Plaintiff's Treasury FOIA Request, and has not specified any reason for withholding such documents.

20. On or about January 6, 2014, Ms. Denise Higley, a Tax Law Specialist at the IRS, sent Plaintiff's Attorney a letter—a true and correct copy of which is attached as **EXHIBIT E**—concerning Plaintiff's IRS FOIA request. The letter began by indicating that the IRS would be unable to respond by January 13, 2014, the 20 business-day-deadline provided by FOIA. As a consequence, the letter indicated that the IRS would apply a 10-day statutory extension to that deadline as follows:

I am unable to send the information you requested by January 13, 2014, which is the 20 business-day period allowed by law. I apologize for any inconvenience this delay may cause.

STATUTORY EXTENSION OF TIME FOR RESPONSE

The FOIA allows an additional ten-day statutory extension in certain circumstances. To complete your request I need additional time to search for, collect, and review responsive records from other locations. We have extended the statutory response date to January 28, 2014, after which you can file suit. An administrative appeal is limited to a denial of records, so it does not apply in this situation.

Although the IRS applied a 10-day statutory extension, in the same letter it nevertheless indicated that it “will still be unable to locate and consider release of the requested records by January 28, 2014.” Thus, the IRS simultaneously requested an additional extension of the response date to April 7, 2014, as follows:

REQUEST FOR ADDITIONAL EXTENSION OF TIME

Unfortunately, we will still be unable to locate and consider release of the requested records by January 28, 2014. We have extended the response date to April 7, 2014 when we believe we can provide a final response.

....

You may file suit if you do not agree to an extension beyond the statutory period. Your suit may be filed in the U.S. District Court:

- Where you reside or have your principal place of business
- Where the records are located, or
- In the District of Columbia

You may file suit after January 28, 2014.

Plaintiff did not agree to the IRS's request for an extension of the deadline to April 7, 2014.

21. On or about January 6, 2014, Ms. Denise Higley called counsel for Plaintiff's Attorney to ask for clarification concerning item two of Plaintiff's IRS FOIA request. Later that same day, Ms. Higley sent Plaintiff's Attorney an e-mail—a true and correct copy of which is attached as **EXHIBIT F**—confirming the earlier telephone conversation, and indicating that “a search will be conducted to provide any and all records our agency has that relates to the creation of both the IRS News Release 2013-92 and also the Notice of Proposed Rule Making Reg-134417-13.” Plaintiff's Attorney responded shortly thereafter stating “to be clear, we want the records/documents related to any formal/informal task force(s), staff groups that were established or formed any time since Jan 1, 2008 whose deliberations and discussions form any part of the basis of the proposed rules / NPRM to which we refer to as the ‘Guidance’.” *See EXHIBIT F*.

22. On or about January 6, 2014, Plaintiff's Attorney sent the Treasury a letter—a true and correct copy of which is attached as **EXHIBIT G**—confirming receipt of its December 20, 2013, letter. Plaintiff's Attorney stated:

Please commence production of responsive documents and records as soon as possible, even if your search is incomplete. I expect that production can begin before the required response date of January 9th (20 business days after the request is received). If production is not completed by that date, I ask that you advise us as to the status of the search at that time and continue to produce responsive documents and records by the required date under an extension (10 business days after the original deadline (January 24th)).

The Treasury never responded to this letter and, as indicated above, has yet to produce a single document responsive to Plaintiff's Treasury FOIA Request.

23. On or about February 4, 2014, Plaintiff's Attorney sent the IRS and the Treasury a letter—a true and correct copy of which is attached hereto as **EXHIBIT H**—requesting an extension of the February 27, 2014, “deadline for filing public comments regarding the IRS Notice of Proposed Rulemaking for Section 501(c)(4) organizations (‘the NPRM’) until a date *after* [Defendants] have complied with the Freedom of Information Act requests” submitted on behalf of Plaintiff.” The letter noted that the NPRM “provided *zero* documents at the public website where such background documents related to rulemaking are normally posted.” Thus, Plaintiff's Attorney requested that the “deadline for public comments regarding the NPRM be extended until at least thirty (30) days after Treasury and the IRS make public all documents and materials related to the NPRM, in order that the public can be informed as to the meaning, development and origins of the proposed regulations.” Neither the IRS nor the Treasury responded to Plaintiff's request for an extension of the deadline for filing public comments.

24. On or about April 2, 2014, Ms. Higley from the IRS sent Plaintiff's Attorney a letter—a true and correct copy of which is attached hereto as **EXHIBIT I**—stating “[o]n January 28, 2014, I asked for more time to obtain the records you requested. I am still working on your request and need additional time to obtain and review documents responsive to your request. I will contact you by July 2, 2014, if I am still unable to complete your request.” Plaintiff did not agree to the IRS's request for an extension of time.

25. On or about April 8, 2014, Plaintiff's Attorney called Ms. Higley at the IRS to discuss the IRS's April 2, 2014, letter, which was received via electronic mail on April 8, 2014.

26. On or about April 14, 2014, Plaintiff's Attorney sent a letter to Ms. Higley at the IRS—a true and correct copy of which is attached hereto as **EXHIBIT J**—to memorialize the telephone conversation and other communications between Plaintiff's Attorney and Ms. Higley.

As is reflected in that letter, Ms. Higley has confirmed via the April 8, 2014 telephone conversation with Plaintiff's Attorney that documents responsive to Plaintiff's IRS FOIA Request have still not been collected and that Ms. Higley has received no response concerning Plaintiff's IRS FOIA Request from the other offices within the IRS.

27. No further communications whatsoever have been received by Plaintiff's Attorney from Treasury since the initial letter on December 20, 2013 and no documents responsive to Plaintiff's FOIA Request have been received from Treasury.

COUNT I

(Violation of FOIA, 5 U.S.C. § 552)

28. Plaintiff realleges paragraphs 1-27 as if fully stated herein.

29. Subject to exceptions not applicable here, 5 U.S.C. § 552(a)(3)(A) dictates that "each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person."

30. Plaintiff's Treasury FOIA Request and Plaintiff's IRS FOIA Request (collectively, "Plaintiff's FOIA Requests") (1) reasonably described the records to which Plaintiff seeks access and (2) were made in accordance with all applicable rules.

31. Defendants have failed to produce the documents responsive to Plaintiff's FOIA Requests within the applicable statutory deadlines imposed by the FOIA and any applicable extensions.

32. Neither Defendant has claimed the applicability of any exemption set forth in 5 U.S.C. § 552(b) & (c), and none applies.

33. There is no valid legal basis under the FOIA to justify Defendants' withholding of the records responsive to Plaintiff's FOIA Requests.

34. For these reasons, Defendants are improperly and unlawfully withholding records responsive to Plaintiff's FOIA Requests.

35. Plaintiff has exhausted its administrative remedies. *See* 5 U.S.C. § 552(a)(6)(C)(i).

36. Plaintiff is being irreparably harmed by reason of Defendants' unlawful withholding of requested records, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to conform its conduct to the requirements of the law.

37. "On complaint, the district court of the United States . . . has jurisdiction to enjoin the agency from withhold agency records and to order the production of any agency records improperly withheld from the complainant." 5 U.S.C. § 552(a)(4)(viii)(B).

38. "The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed [A] complainant has substantially prevailed if the complainant has obtained relief through either— (I) a judicial order, or an enforceable written agreement or consent decree; or (II) a voluntarily unilateral change in position by the agency, if the complainant's claim is not insubstantial." 5 U.S.C. § 552(a)(4)(viii)(E)(i) & (ii).

39. There is, respectfully, no basis for this Court merely to retain jurisdiction and allow the government additional time to complete its review of the records, since Defendants cannot show that "exceptional circumstances" exist and that they have been "exercising due diligence in responding to" Plaintiff's FOIA Requests. *See* 5 U.S.C. § 552 (a)(6)(C)(i). Specifically, Ms. Higley from the IRS has confirmed that (1) documents responsive to Plaintiff's

IRS FOIA Request have not even been collected and (2) she has received no response from the other offices within the IRS concerning Plaintiff's IRS FOIA Request. Additionally, Plaintiff has received no communication from the Treasury since receiving its December 20, 2013, letter requesting a 10-day extension.

WHEREFORE, Plaintiff respectfully requests that the Court: (1) enjoin Defendants from continuing to withhold any and all non-exempt records responsive to Plaintiff's FOIA Requests; (2) order Defendants immediately to conduct a search for any and all records responsive to Plaintiff's FOIA requests and demonstrate that they employed search methods reasonably likely to lead to the discovery of records responsive to Plaintiff's FOIA Requests; (3) order Defendants to produce, by a date certain, any and all records responsive to Plaintiff's FOIA Requests and, if Defendants claim an exemption to such production, a *Vaughn* index of any responsive records withheld under claim of exemption; (4) grant Plaintiff an award of attorney's fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E) and 28 U.S.C. § 2412; and (5) grant Plaintiff such other relief as the Court deems proper.

Dated: April 15, 2014

Respectfully submitted,

Tea Party Patriots, Inc.

/s/ Cleta Mitchell

FOLEY & LARDNER LLP

Cleta Mitchell (D.C. Bar No. 433386)

William Davis (D.C. Bar No. 280057)

Mathew D. Gutierrez (Fla. Bar. No. 94014)*

Washington Harbour

3000 K Street, N.W., Sixth Floor

Washington, D.C. 20007-5109

202.672.5300 (telephone)

202.672.5399 (fax)

2 S. Biscayne Blvd., Suite 1900

Miami, FL 33131

305-482-8400

305-482-8600 (fax)

Counsel for Plaintiff

**Pro Hac Vice Motion and D.C. Bar Application
pending*

EXHIBIT A

From: Ruth.Madrigal@treasury.gov
Sent: Thursday, June 14, 2012 3:10 PM
To: Judson Victoria A; Cook Janine; Lerner Lois G; Marks Nancy J
Subject: 501(c)(4)s - From the Nonprofit Law Prof Blog

Don't know who in your organizations is keeping tabs on c4s, but since we mentioned potentially addressing them (off - plan) in 2013, I've got my radar up and this seemed interesting...

Bad News for Political 501(c)(4)s: 4th Circuit Upholds "Major Purpose" Test for Political Committees

In a case with potentially major ramifications for politically active section 501(c)(4) organizations, the U.S. Court of Appeals for the Fourth Circuit has upheld the Federal Election Commission's "major purpose" test for determining whether an organization is a political committee or PAC and so subject to extensive disclosure requirements. As described in the opinion, under the major purpose test "the Commission first considers a group's political activities, such as spending on a particular electoral or issue-advocacy campaign, and then it evaluates an organization's 'major purpose,' as revealed by that group's public statements, fundraising appeals, government filings, and organizational documents" (citations omitted). The FEC's summary of the litigation details the challenge made in this case:

A group or association that crosses the \$1,000 contribution or expenditure threshold will only be deemed a political committee if its "major purpose" is to engage in federal campaign activity. [The plaintiff] claims that the FEC set forth an enforcement policy regarding PAC status in a policy statement and that this enforcement policy is "based on an ad hoc, case-by-case, analysis of vague and impermissible factors applied to undefined facts derived through broad-ranging, intrusive, and burdensome investigations . . . that, in themselves, can often shut down an organization, without adequate bright lines to protect issue advocacy in this core First Amendment area." [The plaintiff] asks the court to find this "enforcement policy" unconstitutionally vague and overbroad and in excess of the FEC's statutory authority.

In a unanimous opinion, the court concluded that the FEC's current major purpose test is "a sensible approach to determining whether an organization qualifies for PAC status. And more importantly the Commission's multi-factor major-purpose test is consistent with Supreme Court precedent and does not unlawfully deter protected speech." In doing so, the court chose to apply the less stringent "exacting scrutiny" standard instead of the "strict scrutiny" standard because, in the wake of *Citizens United*, political committee status only imposes disclosure and organizational requirements but no other restrictions. While the plaintiff here (The Real Truth About Abortion, Inc., formerly known as The Real Truth About Obama, Inc.) is a section 527 organization for federal tax purposes, the same test would apply to other types of politically active organizations, including section 501(c)(4) entities.

Hat Tip: Election Law Blog

LHM

M. Ruth M. Madrigal
Office of Tax Policy
U.S. Department of the Treasury
1500 Pennsylvania Ave., N.W.
Washington, DC 20220

202-622-0224 (direct)
ruth.madrigal@treasury.gov

EXHIBIT B

December 10, 2013

ATTORNEYS AT LAW
WASHINGTON HARBOUR
3000 K STREET, N.W.
SUITE 600
WASHINGTON, D.C. 20007-5109
202.672.5300 TEL
202.672.5399 FAX
foley.com

VIA OVERNIGHT MAIL
TRACKING NO.: 7973-5820-5562

Paula Curren
Internal Revenue Service
Attn: Disclosure Scanning Operation
4800 Buford Hwy – Stop 93A
Chamblee, GA 39901-0093

Re: **Freedom of Information Act Request**

Dear Ms. Curren:

Pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the implementing regulations of the Internal Revenue Service (“IRS”), 26 C.F.R. Section 601.702, I am requesting copies of the following IRS records:

1. All records related to IRS News Release 2013-92, Nov. 26, 2013 and Notice of Proposed Rulemaking, Reg-134417-13 (“Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities”) 78 Fed. Reg. 71535-71542 (Nov. 29, 2013) (collectively, the “Guidance”), including but not limited to the following:

a. Correspondence to / from any agent, employee, or representative of the IRS with any outside federal or state agency, educational or policy organization, any other organization, private entity or individual related to the Guidance (including, but not limited to the White House, Executive Office of the President, White House Counsel’s office, Federal Elections Commission, other federal agencies, state agencies, Congressional Committees, and Members of Congress).

b. Internal IRS documents, memorandums, and communications between or among any agent, employee, representative of the IRS, including, but not limited to, Danny Werfel, William Wilkins, and Amy F. Giuliano related to the Guidance.

2. All records, communications, directives, minutes or reports of staff/task force meetings, drafts, internal commentary, proposals, memoranda relating to political activities of social welfare organizations and the topics contained in the Guidance from January 1, 2008 to present.

3. All records related to consideration and standards for processing tax-exempt status of organizations classified, denoted, or otherwise set apart by the IRS as “potential political cases” as described in the May 14, 2013 Treasury Inspector General for Tax Administration Report, “Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review” (Reference

BOSTON
BRUSSELS
CHICAGO
DETROIT

JACKSONVILLE
LOS ANGELES
MADISON
MIAMI

MILWAUKEE
NEW YORK
ORLANDO
SACRAMENTO

SAN DIEGO
SAN DIEGO/DEL MAR
SAN FRANCISCO
SHANGHAI

SILICON VALLEY
TALLAHASSEE
TAMPA
TOKYO
WASHINGTON, D.C.

4812-4968-0151.1



FOLEY & LARDNER LLP

Internal Revenue Service

December 10, 2013

Page 2

Number 2013-10-053) (the "Report") that were used, or in any way relied upon, for the development of the Guidance. See attached for page 5 of the Report.

For purposes of this request, "records" mean correspondence, documents, information, memoranda, letters, records, reports, drafts, communications, statements, audits, lists of names, applications, diskettes, letters, expense logs and receipts, calendar or diary logs, records of communications, telephone message records, facsimile logs, call sheets, tape recordings, video/movie recordings, notes, examinations, opinions, folders, files, books, manuals, pamphlets, forms, drawings, charts, photographs, and handwritten or typed notes, facsimile transmissions, electronic mail, tapes and all other documents or writings and things in the possession, control or custody of IRS or contractors working for IRS.

If any responsive record or portion thereof is claimed to be exempt from production under FOIA, sufficient identifying information (with respect to each allegedly exempt record or portion thereof) must be provided to allow the assessment of the propriety of the claimed exemption. *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir 1973), *cert denied*, 415 U.S. 977 (1974). For all records responsive to these requests that are not produced based on an asserted exemption from disclosure, please prepare a privilege and/or exemption log describing, at a minimum: (i) the type of record withheld; (ii) the date(s) of the creation of the record; (iii) the subject of the record; (iv) the identity of the author and all recipients of the records; and (v) a detailed description of the basis upon which IRS is withholding the record (*e.g.*, the claim of privilege, FOIA exemption, etc.). To the extent any responsive documents are withheld based upon a claim of privilege or other exemption from disclosure, please produce redacted copies of all non-privileged or non-exempt factual material contained within such documents.

I confirm in advance my willingness to pay for all reasonable costs associated with searching for and copying these records. However, should these costs exceed \$25,000, I ask that you contact me prior to proceeding.

My associate, Jason Kohout, and other attorneys from the law firm of Foley & Lardner LLP are assisting with me with this request and I have authorized them to communicate with you on my behalf.

Please direct any inquiries, notices, or determination to me at 202.295.4081. Thank you for your anticipated assistance.

Sincerely,

Cleta Mitchell, Esq.

Enclosure

TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION



Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review

May 14, 2013

Reference Number: 2013-10-053

This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.

Redaction Legend:

1 = Tax Return/Return Information

Phone Number / 202-622-6500

E-mail Address / TIGTACommunications@tigta.treas.gov

Website / <http://www.treasury.gov/tigta>



Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review

Results of Review

The Determinations Unit Used Inappropriate Criteria to Identify Potential Political Cases

The Determinations Unit developed and used inappropriate criteria to identify applications from organizations with the words Tea Party in their names. These applications (hereafter referred to as potential political cases)¹³ were forwarded to a team of specialists¹⁴ for review. Subsequently, the Determinations Unit expanded the criteria to inappropriately include organizations with other specific names (Patriots and 9/12) or policy positions. While the criteria used by the Determinations Unit specified particular organization names, the team of specialists was also processing applications from groups with names other than those identified in the criteria. The inappropriate and changing criteria may have led to inconsistent treatment of organizations applying for tax-exempt status. For example, we identified some organizations' applications with evidence of significant political campaign intervention that were not forwarded to the team of specialists for processing but should have been. We also identified applications that were forwarded to the team of specialists but did not have indications of significant political campaign intervention. All applications that were forwarded to the team of specialists experienced substantial delays in processing. Although the IRS has taken some action, it will need to do more so that the public has reasonable assurance that applications are processed without unreasonable delay in a fair and impartial manner in the future.

Criteria for selecting applications inappropriately identified organizations based on their names and policy positions

The Determinations Unit developed and began using criteria to identify potential political cases for review that inappropriately identified specific groups applying for tax-exempt status based on their names or policy positions instead of developing criteria based on tax-exempt laws and Treasury Regulations.

***** | *****
***** | *****
* | ***. According to media reports, some organizations were classified as I.R.C. § 501(c)(4) social welfare organizations but operated like political organizations. ***** | *****

¹³ Until July 2011, the Rulings and Agreements office referred to these cases as Tea Party cases. Afterwards, the EO function referred to these cases as advocacy cases.

¹⁴ Initially, the team consisted of one specialist, but it was expanded to several specialists in December 2011. The EO function referred to this team as the advocacy team.

EXHIBIT C

FACSIMILE TRANSMISSION

Total # of Pages 6 (including this page)

| TO: | PHONE #: | FAX #: |
|---|----------|--------------|
| Hugh Gilmore, Director Disclosure Svcs./FOIA/Dept. of the Treasury | | 202-622-3895 |

From : Cleta Mitchell, Esq.
Email Address : cmitchell@foley.com
Sender's Direct Dial : 202.295.4081
Date : December 10, 2013
Client/Matter No : 999100-0100
User ID No : 0310

MESSAGE:

If there are any problems with this transmission or if you have not received all of the pages, please call 202.672.5517.

| | | |
|-----------|------------|---|
| Operator: | Time Sent: | Return Original To: Catherine D. Kidwell |
|-----------|------------|---|

CONFIDENTIALITY NOTICE: THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS INTENDED ONLY FOR THE PERSONAL AND CONFIDENTIAL USE OF THE DESIGNATED RECIPIENTS NAMED ABOVE. THIS MESSAGE MAY BE AN ATTORNEY-CLIENT COMMUNICATION, AND AS SUCH IS PRIVILEGED AND CONFIDENTIAL. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT OR ANY AGENT RESPONSIBLE FOR DELIVERING IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT YOU HAVE RECEIVED THIS DOCUMENT IN ERROR, AND THAT ANY REVIEW, DISSEMINATION, DISTRIBUTION OR COPYING OF THIS MESSAGE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US BY MAIL. THANK YOU.

December 10, 2013

VIA FAX (202) 622-3895

Hugh Gilmore, Director, Disclosure Services
FOIA/PA Request
Disclosure Services
Department of the Treasury
Washington, D.C. 20220

Re: **Freedom of Information Act Request**

Dear Mr. Gilmore:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the implementing regulations of the Department of the Treasury (the "Department"), 31 CFR Part 1, Subpart A, I am requesting copies of all Department records related to the following topics:

1. IRS News Release 2013-92, Nov. 26, 2013 and Notice of Proposed Rulemaking, Reg-134417-13 ("Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities") 78 Fed. Reg. 71535-71542 (Nov. 29, 2013) (collectively, the "Guidance") and all records, communications, directives, minutes or reports of staff/task force meetings, drafts, internal commentary, proposals, memoranda relating thereto.
2. Political activities of social welfare organizations or business leagues, any topics contained in the Guidance, any definition containing any aspect of "political" or "lobbying" for any purpose from January 1, 2008 to present and all records, communications, directives, minutes or reports of staff/task force meetings, drafts, internal commentary, proposals, memoranda relating thereto.
3. The Treasury Inspector General for Tax Administration Report, "Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review" (Reference Number 2013-10-053) (issued May 14, 2013) (the "Report") and all records, communications, directives, minutes or reports of staff/task force meetings, drafts, internal commentary, proposals, memoranda relating thereto, including but not limited to the use and reliance on the criteria in the Report for purposes of the development of the Guidance.

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JACKSONVILLE
LOS ANGELES
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MILWAUKEE
NEW YORK
ORLANDO
SACRAMENTO

SAN DIEGO
SAN DIEGO/DEL MAR
SAN FRANCISCO
SHANGHAI

SILICON VALLEY
TALLAHASSEE
TAMPA
TOKYO
WASHINGTON, D.C.

4812-4968-0151.1

Department of the Treasury

December 10, 2013

Page 2

This request includes (but is not limited to) the following:

a. Correspondence to / from any agent, employee, or representative of the Department with any outside federal or state agency, educational or policy organization, any other organization, private entity or individual related to the Guidance (including, but not limited to the White House, Executive Office of the President, White House Counsel's office, Federal Elections Commission, other federal agencies, state agencies, Congressional Committees, and Members of Congress).

b. Internal Department documents, memorandums, and communications between or among any agent, employee, representative of the Department.

c. All records, communications, directives, minutes or reports of staff/task force meetings, drafts, internal commentary, proposals, memoranda, of the following individuals and groups of individuals: Treasury Secretary Jack Lew, Treasury Assistant Secretary for Tax Policy Mark J. Mazur; employees, contractors and representatives of any of the Treasury Offices, including and not limited to the General Counsel's Office and the Secretary's executive office.

d. All records and communications of Acting Commissioner of the Internal Revenue Service Danny Werfel, William Wilkins, and Amy F. Giuliano any employee, contractor or representative of the Internal Revenue Service with any employees, contractors and representatives of any of the Treasury Offices.

For purposes of this request, "records" mean correspondence, documents, information, memoranda, letters, records, reports, drafts, communications, statements, audits, lists of names, applications, diskettes, letters, expense logs and receipts, calendar or diary logs, records of communications, telephone message records, facsimile logs, call sheets, tape recordings, video/movie recordings, notes, examinations, opinions, folders, files, books, manuals, pamphlets, forms, drawings, charts, photographs, and handwritten or typed notes, facsimile transmissions, electronic mail, tapes and all other documents or writings and things in the possession, control or custody of IRS or contractors working for IRS.

If any responsive record or portion thereof is claimed to be exempt from production under FOIA, sufficient identifying information (with respect to each allegedly exempt record or portion thereof) must be provided to allow the assessment of the propriety of the claimed exemption. *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir 1973), *cert denied*, 415 U.S. 977 (1974). For all records responsive to these requests that are not produced based on an asserted exemption from disclosure, please prepare a privilege and/or exemption log describing, at a minimum: (i) the type of record withheld; (ii) the date(s) of the creation of the record; (iii) the subject of the record; (iv) the identity of the author and all recipients of the records; and (v) a detailed description of the basis upon which IRS is withholding the record (*e.g.*, the claim of privilege, FOIA exemption, etc.). To the extent any responsive documents are withheld based upon a claim of privilege or other exemption from disclosure, please produce redacted copies of all non-privileged or non-exempt factual material contained within such documents.



FOLEY & LARDNER LLP

Department of the Treasury

December 10, 2013

Page 3

I confirm in advance my willingness to pay for all reasonable costs associated with searching for and copying these records. However, should these costs exceed \$25,000, I ask that you contact me prior to proceeding.

My associate, Jason Kohout, and other attorneys from the law firm of Foley & Lardner LLP are assisting with me with this request and I have authorized them to communicate with you on my behalf.

Please direct any inquiries, notices, or determination to me at 202.295.4081. Thank you for your anticipated assistance.

Sincerely,

A handwritten signature in black ink that reads 'Cleta Mitchell'.

Cleta Mitchell, Esq.

Enclosure

TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION



Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review

May 14, 2013

Reference Number: 2013-10-053

This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.

Redaction Legend:

1 = Tax Return/Return Information

Phone Number / 202-622-6500

E-mail Address / TIGTACommunications@tigta.treas.gov

Website / <http://www.treasury.gov/tigta>



Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review

Results of Review

The Determinations Unit Used Inappropriate Criteria to Identify Potential Political Cases

The Determinations Unit developed and used inappropriate criteria to identify applications from organizations with the words Tea Party in their names. These applications (hereafter referred to as potential political cases)¹³ were forwarded to a team of specialists¹⁴ for review. Subsequently, the Determinations Unit expanded the criteria to inappropriately include organizations with other specific names (Patriots and 9/12) or policy positions. While the criteria used by the Determinations Unit specified particular organization names, the team of specialists was also processing applications from groups with names other than those identified in the criteria. The inappropriate and changing criteria may have led to inconsistent treatment of organizations applying for tax-exempt status. For example, we identified some organizations' applications with evidence of significant political campaign intervention that were not forwarded to the team of specialists for processing but should have been. We also identified applications that were forwarded to the team of specialists but did not have indications of significant political campaign intervention. All applications that were forwarded to the team of specialists experienced substantial delays in processing. Although the IRS has taken some action, it will need to do more so that the public has reasonable assurance that applications are processed without unreasonable delay in a fair and impartial manner in the future.

Criteria for selecting applications inappropriately identified organizations based on their names and policy positions

The Determinations Unit developed and began using criteria to identify potential political cases for review that inappropriately identified specific groups applying for tax-exempt status based on their names or policy positions instead of developing criteria based on tax-exempt laws and Treasury Regulations.

*****] *****
*****] *****
*] ***. According to media reports, some organizations were classified as I.R.C. § 501(c)(4) social welfare organizations but operated like political organizations. *****] *****

¹³ Until July 2011, the Rulings and Agreements office referred to these cases as Tea Party cases. Afterwards, the EO function referred to these cases as advocacy cases.

¹⁴ Initially, the team consisted of one specialist, but it was expanded to several specialists in December 2011. The EO function referred to this team as the advocacy team.

EXHIBIT D



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

December 20, 2013

RE: 2013-12-071

Cleta Mitchell, Esq.
Foley & Lardner LLP
Washington Harbour
3000 K. St., N.W. – Suite 600
Washington, DC 20007-5109

Dear Ms. Mitchell:

This concerns your Freedom of Information Act (FOIA) request of December 10, 2013, which was e-mailed to Hugh Gilmore with the U.S. Department of the Treasury. You have requested records concerning IRS News Release 2013-92, November 26, 2013 and Notice of Proposed Rulemaking, Reg. 134417-13; political activities of social welfare organizations or business leagues and the Treasury Inspector General for Tax Administration Report, "Inappropriate Criteria Were Used to Identify Tax-Exempt Applications Report for Review". A copy of your request is enclosed.

We have initiated a search for records that would be responsive to your request. We will make every effort to provide you with a timely response; however, please be advised that unusual circumstances exist regarding a search and review of the information requested due to consultation required between two or more program offices and the timeframe of the requested records. This will require an additional processing extension of ten (10) days.

Further inquiries concerning this request should make reference to the identification number at the top of this letter and should be faxed to 202/622-3895 or mailed to:

FOIA Request
Disclosure Services
Department of the Treasury
Washington, DC 20220

Sincerely,

Digitally signed by Ryan Law
DN: cn=Ryan Law, o=Disclosure
Services, ou=U.S. Department of
the Treasury,
email=FOIA@treasury.gov, c=US
Date: 2013.12.23 14:46:55 -05'00'

Ryan Law
Director, Disclosure Services

December 10, 2013

VIA FAX (202) 622-3895

Hugh Gilmore, Director, Disclosure Services
FOIA/PA Request
Disclosure Services
Department of the Treasury
Washington, D.C. 20220

Re: **Freedom of Information Act Request**

Dear Mr. Gilmore:

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2. Political activities of social welfare organizations or business leagues, any topics contained in the Guidance, any definition containing any aspect of "political" or "lobbying" for any purpose from January 1, 2008 to present and all records, communications, directives, minutes or reports of staff/task force meetings, drafts, internal commentary, proposals, memoranda relating thereto.
3. The Treasury Inspector General for Tax Administration Report, "Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review" (Reference Number 2013-10-053) (issued May 14, 2013) (the "Report") and all records, communications, directives, minutes or reports of staff/task force meetings, drafts, internal commentary, proposals, memoranda relating thereto, including but not limited to the use and reliance on the criteria in the Report for purposes of the development of the Guidance.

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WASHINGTON, D.C.

4812-4968-0151 1

Department of the Treasury
December 10, 2013
Page 2

~~This request includes (but is not limited to) the following:~~

- a. Correspondence to / from any agent, employee, or representative of the Department with any outside federal or state agency, educational or policy organization, any other organization, private entity or individual related to the Guidance (including, but not limited to the White House, Executive Office of the President, White House Counsel's office, Federal Elections Commission, other federal agencies, state agencies, Congressional Committees, and Members of Congress).
- b. Internal Department documents, memorandums, and communications between or among any agent, employee, representative of the Department.
- c. All records, communications, directives, minutes or reports of staff/task force meetings, drafts, internal commentary, proposals, memoranda, of the following individuals and groups of individuals: Treasury Secretary Jack Lew, Treasury Assistant Secretary for Tax Policy Mark J. Mazur; employees, contractors and representatives of any of the Treasury Offices, including and not limited to the General Counsel's Office and the Secretary's executive office.
- d. All records and communications of Acting Commissioner of the Internal Revenue Service Danny Werfel, William Wilkins, and Amy F. Giuliano any employee, contractor or representative of the Internal Revenue Service with any employees, contractors and representatives of any of the Treasury Offices.

For purposes of this request, "records" mean correspondence, documents, information, memoranda, letters, records, reports, drafts, communications, statements, audits, lists of names, applications, diskettes, letters, expense logs and receipts, calendar or diary logs, records of communications, telephone message records, facsimile logs, call sheets, tape recordings, video/movie recordings, notes, examinations, opinions, folders, files, books, manuals, pamphlets, forms, drawings, charts, photographs, and handwritten or typed notes, facsimile transmissions, electronic mail, tapes and all other documents or writings and things in the possession, control or custody of IRS or contractors working for IRS.

If any responsive record or portion thereof is claimed to be exempt from production under FOIA, sufficient identifying information (with respect to each allegedly exempt record or portion thereof) must be provided to allow the assessment of the propriety of the claimed exemption. *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir 1973), *cert denied*, 415 U.S. 977 (1974). For all records responsive to these requests that are not produced based on an asserted exemption from disclosure, please prepare a privilege and/or exemption log describing, at a minimum: (i) the type of record withheld; (ii) the date(s) of the creation of the record; (iii) the subject of the record; (iv) the identity of the author and all recipients of the records; and (v) a detailed description of the basis upon which IRS is withholding the record (*e.g.*, the claim of privilege, FOIA exemption, etc.). To the extent any responsive documents are withheld based upon a claim of privilege or other exemption from disclosure, please produce redacted copies of all non-privileged or non-exempt factual material contained within such documents.



FOLEY & LARDNER LLP

Department of the Treasury

December 10, 2013

Page 3

I confirm in advance my willingness to pay for all reasonable costs associated with searching for and copying these records. However, should these costs exceed \$25,000, I ask that you contact me prior to proceeding.

My associate, Jason Kohout, and other attorneys from the law firm of Foley & Lardner LLP are assisting with me with this request and I have authorized them to communicate with you on my behalf.

Please direct any inquiries, notices, or determination to me at 202.295.4081. Thank you for your anticipated assistance.

Sincerely,

A handwritten signature in black ink that reads 'Cleta Mitchell'.

Cleta Mitchell, Esq.

Enclosure

EXHIBIT E



PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

January 6, 2014

Cleta Mitchell
Foley & Lardner LLP
Washington Harbour
3000 K St NW, Ste 600
Washington, DC 20007-5109

Dear Cleta Mitchell:

I am responding to your Freedom of Information Act (FOIA) request dated December 10, 2013 that we received on December 12, 2013.

I am unable to send the information you requested by January 13, 2014, which is the 20 business-day period allowed by law. I apologize for any inconvenience this delay may cause.

STATUTORY EXTENSION OF TIME FOR RESPONSE

The FOIA allows an additional ten-day statutory extension in certain circumstances. To complete your request I need additional time to search for, collect, and review responsive records from other locations. We have extended the statutory response date to January 28, 2014, after which you can file suit. An administrative appeal is limited to a denial of records, so it does not apply in this situation.

REQUEST FOR ADDITIONAL EXTENSION OF TIME

Unfortunately, we will still be unable to locate and consider release of the requested records by January 28, 2014. We have extended the response date to April 7, 2014 when we believe we can provide a final response.

You do not need to reply to this letter if you agree to this extension. You may wish to consider limiting the scope of your request so that we can process it more quickly. If you want to limit your request, please contact the individual named below. If we subsequently deny your request, you still have the right to file an administrative appeal.

You may file suit if you do not agree to an extension beyond the statutory period. Your suit may be filed in the U.S. District Court:

- Where you reside or have your principal place of business

JAN 13 2014

- Where the records are located, or
- In the District of Columbia

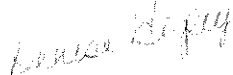
You may file suit after January 28, 2014. Your complaint will be treated according to the Federal Rules of Civil Procedure applicable to actions against an agency of the United States. These procedures require that the IRS be notified of the pending suit through service of process, which should be directed to:

Commissioner of Internal Revenue
Attention: CC:PA: Br 6/7
1111 Constitution Avenue, NW
Washington, D.C. 20224

The FOIA provides access to existing records. Extending the time period for responding to your request will not delay or postpone any administrative, examination, investigation or collection action.

If you have any questions please call me at (801) 620-7638 or write to: Internal Revenue Service, HQ Disclosure, 2980 Brandywine Road, Stop 211, Chamblee, GA 30341. Please refer to case number F14347-0041.

Sincerely,



Denise Higley
Tax Law Specialist
Badge No. 1000142331
Headquarters (HQ) Disclosure FOIA Group

EXHIBIT F

Mitchell, Cleta

From: Higley Denise <Denise.Higley@irs.gov>
Sent: Monday, January 06, 2014 2:13 PM
To: Mitchell, Cleta
Subject: FOIA Request F14347-0041

Cleta,

Per our phone conversation today pertaining to your Freedom of Information Act (FOIA) request dated December 10, 2013, this is to confirm our conversation pertaining to item two of your request. The January 1, 2008, date listed in item two is an arbitrary date. The records you are seeking are any and all communication, etc., from the inception of any task force and/or team that was put together relating to the preparation of the Notice of Proposed Rulemaking, Reg-134417-13 (Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities) 78 Fed. Reg 71535-71542.

In other words, a search will be conducted to provide any and all records our agency has that relates to the creation of both the IRS News Release 2013-92 and also the Notice of Proposed Rulemaking Reg-134417-13.

Thank you for your time and clarification regarding this FOIA request. The case number assigned to your request is F14347-0041.

Denise Higley

Tax Law Specialist
HQ Disclosure Office FOIA
M/S 7000
1973 N Rulon White Blvd
Ogden, UT 84404
801-620-7638 fax: 801-620-7676

Mitchell, Cleta

From: Mitchell, Cleta
Sent: Monday, January 06, 2014 2:56 PM
To: 'Higley Denise'
Subject: RE: FOIA Request F14347-0041

Thank you, Denise.

And to be clear, we want the records/documents related to any formal/informal task force(s), staff groups that were established or formed any time since Jan 1, 2008 whose deliberations and discussions form any part of the basis of the proposed rules / NPRM to which we refer as the "Guidance". Hope that makes sense.

Thank you! Cleta

Cleta Mitchell, Esq.
Foley & Lardner, LLP
3000 K Street NW #600
Washington, DC 20007
(202) 295-4081 (direct)
(202) 431-1950 (cell)
(202) 672-5399 (fax)
cmitchell@foley.com

From: Higley Denise [<mailto:Denise.Higley@irs.gov>]
Sent: Monday, January 06, 2014 2:13 PM
To: Mitchell, Cleta
Subject: FOIA Request F14347-0041

Cleta,

Per our phone conversation today pertaining to your Freedom of Information Act (FOIA) request dated December 10, 2013, this is to confirm our conversation pertaining to item two of your request. The January 1, 2008, date listed in item two is an arbitrary date. The records you are seeking are any and all communication, etc., from the inception of any task force and/or team that was put together relating to the preparation of the Notice of Proposed Rulemaking, Reg-134417-13 (Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities) 78 Fed. Reg 71535-71542.

In other words, a search will be conducted to provide any and all records our agency has that relates to the creation of both the IRS News Release 2013-92 and also the Notice of Proposed Rulemaking Reg-134417-13.

Thank you for your time and clarification regarding this FOIA request. The case number assigned to your request is F14347-0041.

Denise Higley

Tax Law Specialist
HQ Disclosure Office FOIA
M/S 7000
1973 N Rulon White Blvd
Ogden, UT 84404
801-620-7638 fax: 801-620-7676

EXHIBIT G

 *** TX REPORT ***

TRANSMISSION OK

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 RECIPIENT ADDRESS 0310#999100#0100#6223895#
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 ST. TIME 01/06 13:48
 TIME USE 01'35
 PAGES SENT 2
 RESULT OK

FOLEY
 FOLEY & LARDNER LLP

ATTORNEYS AT LAW
 WASHINGTON HARBOUR
 3000 K STREET, N.W.
 SUITE 600
 WASHINGTON, D.C. 20007-5109
 TELEPHONE: 202.672.5300
 FACSIMILE: 202.672.5399
 WWW.FOLEY.COM

FACSIMILE TRANSMISSION

ORIGINAL WILL BE SENT BY CERTIFIED MAIL MAIL

Total # of Pages 2 (including this page)

| TO: | PHONE #: | FAX #: |
|--|----------|--------------|
| Ryan Law Director, Disclosure Services FOIA Request Disclosure Services Department of the Treasury | | 202-622-3895 |

From : Cleta Mitchell, Esq.
 Email Address : cmitchell@foley.com
 Sender's Direct Dial : 202.295.4081
 Date : January 6, 2014
 Client/Matter No : 999100-0100
 User ID No : 0310

MESSAGE:



FOLEY & LARDNER LLP

ATTORNEYS AT LAW
WASHINGTON HARBOUR
3000 K STREET, N.W.
SUITE 600
WASHINGTON, D.C. 20007-5109
202.672.5300 TEL
202.672.5399 FAX
foley.com

January 6, 2013

VIA FAX & CERTIFIED MAIL

CERTIFIED MAIL NO.: 7007 1490 0003 8436 0903

Ryan Law
Director, Disclosure Services
FOIA Request
Disclosure Services
Department of the Treasury
Washington D.C. 20220
Fax: 202-622-3895

Re: **Freedom of Information Act Request 2013-12-071**

Dear Mr. Law:

I am in receipt of your December 20, 2013 letter regarding the above-referenced Freedom of Information Act request. Your letter states that unusual circumstances exist with regard to the FOIA request.

Please commence production of responsive documents and records as soon as possible, even if your search is incomplete. I expect that production can begin before the required response date of January 9th (20 business days after the request is received). If production is not completed by that date, I ask that you advise us as to the status of the search at that time and continue to produce responsive documents and records by the required date under an extension (10 business days after the original deadline (January 24th)).

Please direct any inquiries, notices, or determination to me at 202.295.4081. Thank you for your anticipated assistance.

Sincerely,

Cleta Mitchell, Esq.

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4821-7010-0503.1

EXHIBIT H

February 4, 2014

VIA HAND-DELIVERY

The Honorable Jack Lew
Secretary of the Treasury
1500 Pennsylvania Ave., NW
Washington, DC 20220

The Honorable John Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Ave., NW
Washington, DC 20224

Re: Request for Extension of Deadline for Filing Public Comments
regarding IRS Notice of Proposed Rulemaking for Section
501(c)(4) Organizations

Dear Sirs:

On behalf of Tea Party Patriots, a not-for-profit grassroots citizens organization, we hereby request that the Department of Treasury ("Treasury") and the Internal Revenue Service ("IRS") extend the deadline for filing public comments regarding the IRS Notice of Proposed Rulemaking for Section 501(c)(4) organizations ("the NPRM") until a date *after* your departments have complied with the Freedom of Information Act requests filed by the undersigned on December 10, 2013 ("Tea Party Patriots FOIA Requests").

Attached please find the Tea Party Patriots FOIA requests filed on December 10, 2013 with both of your departments and the "responses" received to date.

The deadline for public comments regarding the NPRM is February 27, 2014; however, Treasury has indicated that it will not provide responsive documents regarding the NPRM until April 7, 2014 and we have yet to receive any documents from the IRS or even any indication as to when responsive documents will be forthcoming.

The NPRM has provided *zero* documents at the public website where such background documents related to a rulemaking are normally posted.

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SAN DIEGO
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WASHINGTON, D.C.



FOLEY & LARDNER LLP

February 4, 2014

Page 2

In fact, the Regulations.gov website tab for "Related Documents" states that there are "none". See <http://www.regulations.gov/#!documentDetail;D=IRS-2013-0038-0001>. Accessed February 4, 2014.

Accordingly, we hereby request that the deadline for public comments regarding the NPRM be extended until at least thirty (30) days after Treasury and the IRS make public all documents and materials related to the NPRM, in order that the public can be fully informed as to the meaning, development and origins of the proposed regulations.

We should not have to file suit against your agencies simply to obtain what is lawfully required of your agencies to furnish and which is necessary information for us to fully understand the NPRM and to formulate proper comments regarding the proposed regulations.

Please contact me at (202) 295-4081 if you have questions regarding this request.

Sincerely,

A handwritten signature in black ink that reads "Cleta Mitchell". The signature is fluid and cursive, with the first name "Cleta" being more prominent.

Cleta Mitchell, Esq., Counsel
Tea Party Patriots

cc: Ms. Jenny Beth Martin, President
Tea Party Patriots

FOIA REQUEST TO TREASURY

FACSIMILE TRANSMISSION

Total # of Pages 6 (including this page)

| TO: | PHONE #: | FAX #: |
|---|----------|--------------|
| Hugh Gilmore, Director Disclosure Sves./FOIA/Dept. of the Treasury | | 202-622-3895 |

From : Cleta Mitchell, Esq.
Email Address : cmitchell@foley.com
Sender's Direct Dial : 202.295.4081
Date : December 10, 2013
Client/Matter No : 999100-0100
User ID No : 0310

MESSAGE:

If there are any problems with this transmission or if you have not received all of the pages, please call 202.672.5517.

Operator:

Time Sent:

Return Original To:
Catherine D. Kidwell

CONFIDENTIALITY NOTICE: THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS INTENDED ONLY FOR THE PERSONAL AND CONFIDENTIAL USE OF THE DESIGNATED RECIPIENTS NAMED ABOVE. THIS MESSAGE MAY BE AN ATTORNEY-CLIENT COMMUNICATION, AND AS SUCH IS PRIVILEGED AND CONFIDENTIAL. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT OR ANY AGENT RESPONSIBLE FOR DELIVERING IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT YOU HAVE RECEIVED THIS DOCUMENT IN ERROR, AND THAT ANY REVIEW, DISSEMINATION, DISTRIBUTION OR COPYING OF THIS MESSAGE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US BY MAIL. THANK YOU.

December 10, 2013

VIA FAX (202) 622-3895

Hugh Gilmore, Director, Disclosure Services
FOIA/PA Request
Disclosure Services
Department of the Treasury
Washington, D.C. 20220

Re: **Freedom of Information Act Request**

Dear Mr. Gilmore:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the implementing regulations of the Department of the Treasury (the "Department"), 31 CFR Part 1, Subpart A, I am requesting copies of all Department records related to the following topics:

1. IRS News Release 2013-92, Nov. 26, 2013 and Notice of Proposed Rulemaking, Reg-134417-13 ("Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities") 78 Fed. Reg. 71535-71542 (Nov. 29, 2013) (collectively, the "Guidance") and all records, communications, directives, minutes or reports of staff/task force meetings, drafts, internal commentary, proposals, memoranda relating thereto.
2. Political activities of social welfare organizations or business leagues, any topics contained in the Guidance, any definition containing any aspect of "political" or "lobbying" for any purpose from January 1, 2008 to present and all records, communications, directives, minutes or reports of staff/task force meetings, drafts, internal commentary, proposals, memoranda relating thereto.
3. The Treasury Inspector General for Tax Administration Report, "Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review" (Reference Number 2013-10-053) (issued May 14, 2013) (the "Report") and all records, communications, directives, minutes or reports of staff/task force meetings, drafts, internal commentary, proposals, memoranda relating thereto, including but not limited to the use and reliance on the criteria in the Report for purposes of the development of the Guidance.

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TOKYO
WASHINGTON, D.C.

4812-4968-0151 1



FOLEY & LARDNER LLP

Department of the Treasury
December 10, 2013
Page 2

This request includes (but is not limited to) the following:

- a. Correspondence to / from any agent, employee, or representative of the Department with any outside federal or state agency, educational or policy organization, any other organization, private entity or individual related to the Guidance (including, but not limited to the White House, Executive Office of the President, White House Counsel's office, Federal Elections Commission, other federal agencies, state agencies, Congressional Committees, and Members of Congress).
- b. Internal Department documents, memorandums, and communications between or among any agent, employee, representative of the Department.
- c. All records, communications, directives, minutes or reports of staff/task force meetings, drafts, internal commentary, proposals, memoranda, of the following individuals and groups of individuals: Treasury Secretary Jack Lew, Treasury Assistant Secretary for Tax Policy Mark J. Mazur; employees, contractors and representatives of any of the Treasury Offices, including and not limited to the General Counsel's Office and the Secretary's executive office.
- d. All records and communications of Acting Commissioner of the Internal Revenue Service Danny Werfel, William Wilkins, and Amy F. Giuliano any employee, contractor or representative of the Internal Revenue Service with any employees, contractors and representatives of any of the Treasury Offices.

For purposes of this request, "records" mean correspondence, documents, information, memoranda, letters, records, reports, drafts, communications, statements, audits, lists of names, applications, diskettes, letters, expense logs and receipts, calendar or diary logs, records of communications, telephone message records, facsimile logs, call sheets, tape recordings, video/movie recordings, notes, examinations, opinions, folders, files, books, manuals, pamphlets, forms, drawings, charts, photographs, and handwritten or typed notes, facsimile transmissions, electronic mail, tapes and all other documents or writings and things in the possession, control or custody of IRS or contractors working for IRS.

If any responsive record or portion thereof is claimed to be exempt from production under FOIA, sufficient identifying information (with respect to each allegedly exempt record or portion thereof) must be provided to allow the assessment of the propriety of the claimed exemption. *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir 1973), *cert denied*, 415 U.S. 977 (1974). For all records responsive to these requests that are not produced based on an asserted exemption from disclosure, please prepare a privilege and/or exemption log describing, at a minimum: (i) the type of record withheld; (ii) the date(s) of the creation of the record; (iii) the subject of the record; (iv) the identity of the author and all recipients of the records; and (v) a detailed description of the basis upon which IRS is withholding the record (e.g., the claim of privilege, FOIA exemption, etc.). To the extent any responsive documents are withheld based upon a claim of privilege or other exemption from disclosure, please produce redacted copies of all non-privileged or non-exempt factual material contained within such documents.



FOLEY & LARDNER LLP

Department of the Treasury
December 10, 2013
Page 3

I confirm in advance my willingness to pay for all reasonable costs associated with searching for and copying these records. However, should these costs exceed \$25,000, I ask that you contact me prior to proceeding.

My associate, Jason Kohout, and other attorneys from the law firm of Foley & Lardner LLP are assisting with me with this request and I have authorized them to communicate with you on my behalf.

Please direct any inquiries, notices, or determination to me at 202.295.4081. Thank you for your anticipated assistance.

Sincerely,

A handwritten signature in black ink that reads 'Cleta Mitchell'.

Cleta Mitchell, Esq.

Enclosure

TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION



***Inappropriate Criteria Were Used to
Identify Tax-Exempt Applications for Review***

May 14, 2013

Reference Number: 2013-10-053

This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.

Redaction Legend:

1 = Tax Return/Return Information

Phone Number / 202-622-6500

E-mail Address / TIGTACommunications@tigta.treas.gov

Website / <http://www.treasury.gov/tigta>



Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review

Results of Review

The Determinations Unit Used Inappropriate Criteria to Identify Potential Political Cases

The Determinations Unit developed and used inappropriate criteria to identify applications from organizations with the words Tea Party in their names. These applications (hereafter referred to as potential political cases)¹³ were forwarded to a team of specialists¹⁴ for review. Subsequently, the Determinations Unit expanded the criteria to inappropriately include organizations with other specific names (Patriots and 9/12) or policy positions. While the criteria used by the Determinations Unit specified particular organization names, the team of specialists was also processing applications from groups with names other than those identified in the criteria. The inappropriate and changing criteria may have led to inconsistent treatment of organizations applying for tax-exempt status. For example, we identified some organizations' applications with evidence of significant political campaign intervention that were not forwarded to the team of specialists for processing but should have been. We also identified applications that were forwarded to the team of specialists but did not have indications of significant political campaign intervention. All applications that were forwarded to the team of specialists experienced substantial delays in processing. Although the IRS has taken some action, it will need to do more so that the public has reasonable assurance that applications are processed without unreasonable delay in a fair and impartial manner in the future.

Criteria for selecting applications inappropriately identified organizations based on their names and policy positions

The Determinations Unit developed and began using criteria to identify potential political cases for review that inappropriately identified specific groups applying for tax-exempt status based on their names or policy positions instead of developing criteria based on tax-exempt laws and Treasury Regulations.

***** | *****
***** | *****
* | ***. According to media reports, some organizations were classified as I.R.C. § 501(c)(4)
social welfare organizations but operated like political organizations. ***** | *****

¹³ Until July 2011, the Rulings and Agreements office referred to these cases as Tea Party cases. Afterwards, the EO function referred to these cases as advocacy cases.

¹⁴ Initially, the team consisted of one specialist, but it was expanded to several specialists in December 2011. The EO function referred to this team as the advocacy team.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

December 20, 2013

RE: 2013-12-071

Cleta Mitchell, Esq.
Foley & Lardner LLP
Washington Harbour
3000 K. St., N.W. – Suite 600
Washington, DC 20007-5109

Dear Ms. Mitchell:

This concerns your Freedom of Information Act (FOIA) request of December 10, 2013, which was e-mailed to Hugh Gilmore with the U.S. Department of the Treasury. You have requested records concerning IRS News Release 2013-92, November 26, 2013 and Notice of Proposed Rulemaking, Reg. 134417-13; political activities of social welfare organizations or business leagues and the Treasury Inspector General for Tax Administration Report, "Inappropriate Criteria Were Used to Identify Tax-Exempt Applications Report for Review". A copy of your request is enclosed.

We have initiated a search for records that would be responsive to your request. We will make every effort to provide you with a timely response; however, please be advised that unusual circumstances exist regarding a search and review of the information requested due to consultation required between two or more program offices and the timeframe of the requested records. This will require an additional processing extension of ten (10) days.

Further inquiries concerning this request should make reference to the identification number at the top of this letter and should be faxed to 202/622-3895 or mailed to:

FOIA Request
Disclosure Services
Department of the Treasury
Washington, DC 20220

Sincerely,

Ryan Law
Director, Disclosure Services

Digitally signed by Ryan Law
DN: cn=Ryan Law, o=Disclosure
Services, ou=U.S. Department of
the Treasury,
email=OIA@treasury.gov, c=US
Date: 2013.12.23 14:46:55 -0500

 *** TX REPORT ***

TRANSMISSION OK

TX/RX NO 1721
 RECIPIENT ADDRESS 0310#999100#0100#0223895#
 DESTINATION ID
 ST. TIME 01/06 13:48
 TIME USE 01'35
 PAGES SENT 2
 RESULT OK

FOLEY

FOLEY & LARDNER LLP

ATTORNEYS AT LAW
 WASHINGTON HARBOUR
 3000 K STREET, N.W.
 SUITE 600
 WASHINGTON, D.C. 20007-5109
 TELEPHONE: 202.672.5300
 FACSIMILE: 202.672.5399
 WWW.FOLEY.COM

FACSIMILE TRANSMISSION

ORIGINAL WILL BE SENT BY CERTIFIED MAIL MAIL

Total # of Pages 2 (including this page)

| TO: | PHONE #: | FAX #: |
|--|----------|--------------|
| Ryan Law Director, Disclosure Services FOIA Request Disclosure Services Department of the Treasury | | 202-622-3895 |

From : Cleta Mitchell, Esq.
 Email Address : cmitchell@foley.com
 Sender's Direct Dial : 202.295.4081
 Date : January 6, 2014
 Client/Matter No : 999100-0100
 User ID No : 0310

MESSAGE:

January 6, 2013

ATTORNEYS AT LAW
WASHINGTON HARBOUR
3000 K STREET, N.W.
SUITE 600
WASHINGTON, D.C. 20007 5109
202.672.5300 TEL.
202.672.5399 FAX
foley.com

VIA FAX & CERTIFIED MAIL
CERTIFIED MAIL NO.: 7007 1490 0003 8436 0903

Ryan Law
Director, Disclosure Services
FOIA Request
Disclosure Services
Department of the Treasury
Washington D.C. 20220
Fax: 202-622-3895

Re: Freedom of Information Act Request 2013-12-071

Dear Mr. Law:

I am in receipt of your December 20, 2013 letter regarding the above-referenced Freedom of Information Act request. Your letter states that unusual circumstances exist with regard to the FOIA request.

Please commence production of responsive documents and records as soon as possible, even if your search is incomplete. I expect that production can begin before the required response date of January 9th (20 business days after the request is received). If production is not completed by that date, I ask that you advise us as to the status of the search at that time and continue to produce responsive documents and records by the required date under an extension (10 business days after the original deadline (January 24th)).

Please direct any inquiries, notices, or determination to me at 202.295.4081. Thank you for your anticipated assistance.

Sincerely,


Cleta Mitchell, Esq.

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4821-7010-0503.1



PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

January 6, 2014

Cleta Mitchell
Foley & Lardner LLP
Washington Harbour
3000 K St NW, Ste 600
Washington, DC 20007-5109

Dear Cleta Mitchell:

I am responding to your Freedom of Information Act (FOIA) request dated December 10, 2013 that we received on December 12, 2013.

I am unable to send the information you requested by January 13, 2014, which is the 20 business-day period allowed by law. I apologize for any inconvenience this delay may cause.

STATUTORY EXTENSION OF TIME FOR RESPONSE

The FOIA allows an additional ten-day statutory extension in certain circumstances. To complete your request I need additional time to search for, collect, and review responsive records from other locations. We have extended the statutory response date to January 28, 2014, after which you can file suit. An administrative appeal is limited to a denial of records, so it does not apply in this situation.

REQUEST FOR ADDITIONAL EXTENSION OF TIME

Unfortunately, we will still be unable to locate and consider release of the requested records by January 28, 2014. We have extended the response date to April 7, 2014 when we believe we can provide a final response.

You do not need to reply to this letter if you agree to this extension. You may wish to consider limiting the scope of your request so that we can process it more quickly. If you want to limit your request, please contact the individual named below. If we subsequently deny your request, you still have the right to file an administrative appeal.

You may file suit if you do not agree to an extension beyond the statutory period. Your suit may be filed in the U.S. District Court:

- Where you reside or have your principal place of business

JAN 13 2014

- Where the records are located, or
- In the District of Columbia


You may file suit after January 28, 2014. Your complaint will be treated according to the Federal Rules of Civil Procedure applicable to actions against an agency of the United States. These procedures require that the IRS be notified of the pending suit through service of process, which should be directed to:

Commissioner of Internal Revenue
Attention: CC:PA: Br 6/7
1111 Constitution Avenue, NW
Washington, D.C. 20224

The FOIA provides access to existing records. Extending the time period for responding to your request will not delay or postpone any administrative, examination, investigation or collection action.

If you have any questions please call me at (801) 620-7638 or write to: Internal Revenue Service, HQ Disclosure, 2980 Brandywine Road, Stop 211, Chamblee, GA 30341. Please refer to case number F14347-0041.

Sincerely,



Denise Higley
Tax Law Specialist
Badge No. 1000142331
Headquarters (HQ) Disclosure FOIA Group

FOIA REQUEST TO IRS

December 10, 2013

ATTORNEYS AT LAW
WASHINGTON HARBOUR
3000 K STREET, N.W.
SUITE 600
WASHINGTON, D.C. 20007-5109
202.672.5300 TEL
202.672.5399 FAX
foley.com

VIA OVERNIGHT MAIL
TRACKING NO.: 7973-5820-5562

Paula Curren
Internal Revenue Service
Attn: Disclosure Scanning Operation
4800 Buford Hwy – Stop 93A
Chamblee, GA 39901-0093

Re: Freedom of Information Act Request

Dear Ms. Curren:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the implementing regulations of the Internal Revenue Service ("IRS"), 26 C.F.R. Section 601.702, I am requesting copies of the following IRS records:

1. All records related to IRS News Release 2013-92, Nov. 26, 2013 and Notice of Proposed Rulemaking, Reg-134417-13 ("Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities") 78 Fed. Reg. 71535-71542 (Nov. 29, 2013) (collectively, the "Guidance"), including but not limited to the following:

a. Correspondence to / from any agent, employee, or representative of the IRS with any outside federal or state agency, educational or policy organization, any other organization, private entity or individual related to the Guidance (including, but not limited to the White House, Executive Office of the President, White House Counsel's office, Federal Elections Commission, other federal agencies, state agencies, Congressional Committees, and Members of Congress).

b. Internal IRS documents, memorandums, and communications between or among any agent, employee, representative of the IRS, including, but not limited to, Danny Werfel, William Wilkins, and Amy F. Giuliano related to the Guidance.

2. All records, communications, directives, minutes or reports of staff/task force meetings, drafts, internal commentary, proposals, memoranda relating to political activities of social welfare organizations and the topics contained in the Guidance from January 1, 2008 to present.

3. All records related to consideration and standards for processing tax-exempt status of organizations classified, denoted, or otherwise set apart by the IRS as "potential political cases" as described in the May 14, 2013 Treasury Inspector General for Tax Administration Report, "Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review" (Reference

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WASHINGTON, D.C.

4812-4968-0151.1



FOLEY & LARDNER LLP

Internal Revenue Service
December 10, 2013
Page 2

Number 2013-10-053) (the "Report") that were used, or in any way relied upon, for the development of the Guidance. See attached for page 5 of the Report.

For purposes of this request, "records" mean correspondence, documents, information, memoranda, letters, records, reports, drafts, communications, statements, audits, lists of names, applications, diskettes, letters, expense logs and receipts, calendar or diary logs, records of communications, telephone message records, facsimile logs, call sheets, tape recordings, video/movie recordings, notes, examinations, opinions, folders, files, books, manuals, pamphlets, forms, drawings, charts, photographs, and handwritten or typed notes, facsimile transmissions, electronic mail, tapes and all other documents or writings and things in the possession, control or custody of IRS or contractors working for IRS.

If any responsive record or portion thereof is claimed to be exempt from production under FOIA, sufficient identifying information (with respect to each allegedly exempt record or portion thereof) must be provided to allow the assessment of the propriety of the claimed exemption. *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir 1973), *cert denied*, 415 U.S. 977 (1974). For all records responsive to these requests that are not produced based on an asserted exemption from disclosure, please prepare a privilege and/or exemption log describing, at a minimum: (i) the type of record withheld; (ii) the date(s) of the creation of the record; (iii) the subject of the record; (iv) the identity of the author and all recipients of the records; and (v) a detailed description of the basis upon which IRS is withholding the record (e.g., the claim of privilege, FOIA exemption, etc.). To the extent any responsive documents are withheld based upon a claim of privilege or other exemption from disclosure, please produce redacted copies of all non-privileged or non-exempt factual material contained within such documents.

I confirm in advance my willingness to pay for all reasonable costs associated with searching for and copying these records. However, should these costs exceed \$25,000, I ask that you contact me prior to proceeding.

My associate, Jason Kohout, and other attorneys from the law firm of Foley & Lardner LLP are assisting with me with this request and I have authorized them to communicate with you on my behalf.

Please direct any inquiries, notices, or determination to me at 202.295.4081. Thank you for your anticipated assistance.

Sincerely,

Cleta Mitchell, Esq.

Enclosure

TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION



***Inappropriate Criteria Were Used to
Identify Tax-Exempt Applications for Review***

May 14, 2013

Reference Number: 2013-10-053

This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.

Redaction Legend:

1 = Tax Return/Return Information

Phone Number | 202-622-6500

E-mail Address | TIGTACommunications@tigta.treas.gov

Website | <http://www.treasury.gov/tigta>



***Inappropriate Criteria Were Used to
Identify Tax-Exempt Applications for Review***

Results of Review

***The Determinations Unit Used Inappropriate Criteria to Identify
Potential Political Cases***

The Determinations Unit developed and used inappropriate criteria to identify applications from organizations with the words Tea Party in their names. These applications (hereafter referred to as potential political cases)¹³ were forwarded to a team of specialists¹⁴ for review. Subsequently, the Determinations Unit expanded the criteria to inappropriately include organizations with other specific names (Patriots and 9/12) or policy positions. While the criteria used by the Determinations Unit specified particular organization names, the team of specialists was also processing applications from groups with names other than those identified in the criteria. The inappropriate and changing criteria may have led to inconsistent treatment of organizations applying for tax-exempt status. For example, we identified some organizations' applications with evidence of significant political campaign intervention that were not forwarded to the team of specialists for processing but should have been. We also identified applications that were forwarded to the team of specialists but did not have indications of significant political campaign intervention. All applications that were forwarded to the team of specialists experienced substantial delays in processing. Although the IRS has taken some action, it will need to do more so that the public has reasonable assurance that applications are processed without unreasonable delay in a fair and impartial manner in the future.

***Criteria for selecting applications inappropriately identified organizations based
on their names and policy positions***

The Determinations Unit developed and began using criteria to identify potential political cases for review that inappropriately identified specific groups applying for tax-exempt status based on their names or policy positions instead of developing criteria based on tax-exempt laws and Treasury Regulations.

***** | *****
***** | *****

*I***. According to media reports, some organizations were classified as I.R.C. § 501(c)(4) social welfare organizations but operated like political organizations. ***** | *****

¹³ Until July 2011, the Rulings and Agreements office referred to these cases as Tea Party cases. Afterwards, the EO function referred to these cases as advocacy cases.

¹⁴ Initially, the team consisted of one specialist, but it was expanded to several specialists in December 2011. The EO function referred to this team as the advocacy team.

Jan 6, 2014

Thank you, Denise.

And to be clear, we want the records/documents related to any formal/informal task force(s), staff groups that were established or formed any time since Jan 1, 2008 whose deliberations and discussions form any part of the basis of the proposed rules / NPRM to which we refer as the "Guidance". Hope that makes sense.

Thank you! Cleta

Cleta Mitchell, Esq.
Foley & Lardner, LLP
3000 K Street NW #600
Washington, DC 20007
(202) 295-4081 (direct)
(202) 431-1950 (cell)
(202) 672-5399 (fax)
cmitchell@foley.com

From: Higley Denise [<mailto:Denise.Higley@irs.gov>]
Sent: Monday, January 06, 2014 2:13 PM
To: Mitchell, Cleta
Subject: FOIA Request F14347-0041

Cleta,

Per our phone conversation today pertaining to your Freedom of Information Act (FOIA) request dated December 10, 2013, this is to confirm our conversation pertaining to item two of your request. The January 1, 2008, date listed in item two is an arbitrary date. The records you are seeking are any and all communication, etc., from the inception of any task force and/or team that was put together relating to the preparation of the Notice of Proposed Rulemaking, Reg-134417-13 (Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities) 78 Fed. Reg 71535-71542.

In other words, a search will be conducted to provide any and all records our agency has that relates to the creation of both the IRS News Release 2013-92 and also the Notice of Proposed Rulemaking Reg-134417-13.

Thank you for your time and clarification regarding this FOIA request. The case number assigned to your request is F14347-0041.

Denise Higley

Tax Law Specialist
HQ Disclosure Office FOIA
M/S 7000
1973 N Rulon White Blvd
Ogden, UT 84404
801-620-7638 fax: 801-620-7676

EXHIBIT I



PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

April 2, 2014

Cleta Mitchell
Foley & Lardner LLP
Washington Harbour
3000 K St NW, Ste 600
Washington, DC 20007-5109

Dear Cleta Mitchell:

I am responding to your Freedom of Information Act (FOIA) request dated December 10, 2013 that we received on December 12, 2013.

On January 28, 2014, I asked for more time to obtain the records you requested. I am still working on your request and need additional time to obtain and review documents responsive to your request. I will contact you by July 2, 2014, if I am still unable to complete your request.

Once again, I apologize for any inconvenience this delay may cause.

If you have any questions please call Tax Law Specialist Denise Higley ID # 1000142331, at (801) 620-7638 or write to: Internal Revenue Service, HQ Disclosure, 2980 Brandywine Road, Stop 211, Chamblee, GA 30341. Please refer to case number F14347-0041.

Sincerely,

Denise Higley
Tax Law Specialist
Headquarters (HQ) Disclosure Office

APR 8 2014

EXHIBIT J



FOLEY & LARDNER LLP

ATTORNEYS AT LAW
WASHINGTON HARBOUR
3000 K STREET, N.W.
SUITE 600
WASHINGTON, D.C. 20007-5109
202.672.5300 TEL
202.672.5399 FAX
WWW.FOLEY.COM

WRITER'S DIRECT LINE
202.295.4081
cmitchell@foley.com EMAIL

CLIENT/MATTER NUMBER
999100-0100

April 14, 2014

Ms. Denise Higley
Tax Law Specialist ID #100142331
Headquarters (HQ) Disclosure Office
Department of the Treasury
Internal Revenue Service
2980 Brandywine Road, Stop 211
Chamblee, GA 30341

Re: Tea Party Patriots, Inc. ("TPP") Freedom of Information Act
("FOIA") Request to Internal Revenue Service ("IRS") and
Dept of Treasury ("Treasury") – Case No. F14347-0041

Dear Ms. Higley:

I am in receipt of your letter dated April 2, 2014, received via email on April 8, 2014 and the hard copy received in my office on April 10, 2014. This is to memorialize our telephone conversation on April 8, 2014, when I telephoned you after I first received your most recent letter via email.

Your letter states that the documents responsive to the FOIA requests submitted to the IRS on December 10, 2013 by me on behalf of my client, Tea Party Patriots, Inc., ("TPP") have still not been collected and you have received no response from the other offices within the IRS since your initial notice to those offices of the TPP FOIA request.

To recap our correspondence and communications, we submitted the TPP FOIA requests on December 10, 2013 and, pursuant to the statute, responses were due on or before January 13, 2014. Having received no response from anyone within the IRS to your notice to them of the TPP requests, you asked by letter on January 6, 2014 for an extension to January 28, 2014. However, in that same letter of January 6, 2014, you advised me that responsive documents would not be produced until April 7, 2014.

You have confirmed to me last week that you have still received no response(s) from any person(s) in the IRS, no documents or communications of any kind whatsoever and, accordingly, you have advised me that a response to TPP's FOIA request will not be forthcoming until July 2, 2014.

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WASHINGTON, D.C.

April 14, 2014
Page 2

But you have also told me that July 2 is an arbitrary date that you have selected in hopes that on or before that date, you will actually receive some response or communication from within the IRS regarding a response to TPP's FOIA requests.

The underlying subject of these FOIA requests pertain to the Notice of Proposed Rulemaking, Reg. 134417-13, a very significant rulemaking in which both Treasury and the IRS are involved. TPP is seeking all underlying documents related to the origins and development of the proposed regulations for social welfare organizations and had hoped to receive the responsive documents prior to the close of the public comment period on February 27, 2014.

In fact, Tea Party Patriots wrote to both the Secretary of the Treasury and the IRS Commissioner, asking that the comment period be extended until such time as the responsive documents were produced to TPP, to better inform TPP's understanding and ability to comment on the proposed regulations. A copy of that letter is attached.

It is apparent from the silence within the IRS and Treasury that neither agency has any intention of producing the documents responsive to the TPP request. We have yet to receive any response from Treasury regarding TPP's FOIA request, other than to be advised on December 20, 2013 that a response would require an additional ten (10) days beyond the statutory deadline. Since that date, we have heard nothing further from Treasury regarding the TPP FOIA request.

We are reviewing the legal options available to the Tea Party Patriots at this time in order to obtain the documents to which it is legally entitled.

Thank you for your attention to the TPP FOIA request and the information you have provided to me as its counsel as to the absence of any response to you from others in the IRS responsible for complying with the TPP request.

Please contact me if I have misunderstood the information you conveyed to me in our telephone conference this week. I can be reached at (202) 295-4081. Thank you.

Sincerely,



Cleta Mitchell, Esq., Counsel
Tea Party Patriots, Inc.

cc: Tea Party Patriots, Inc.

April 14, 2014
Page 3

Attachment

February 4, 2014

VIA HAND-DELIVERY

The Honorable Jack Lew
Secretary of the Treasury
1500 Pennsylvania Ave., NW
Washington, DC 20220

The Honorable John Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Ave., NW
Washington, DC 20224

Re: Request for Extension of Deadline for Filing Public Comments
regarding IRS Notice of Proposed Rulemaking for Section
501(c)(4) Organizations

Dear Sirs:

On behalf of Tea Party Patriots, a not-for-profit grassroots citizens organization, we hereby request that the Department of Treasury ("Treasury") and the Internal Revenue Service ("IRS") extend the deadline for filing public comments regarding the IRS Notice of Proposed Rulemaking for Section 501(c)(4) organizations ("the NPRM") until a date *after* your departments have complied with the Freedom of Information Act requests filed by the undersigned on December 10, 2013 ("Tea Party Patriots FOIA Requests").

Attached please find the Tea Party Patriots FOIA requests filed on December 10, 2013 with both of your departments and the "responses" received to date.

The deadline for public comments regarding the NPRM is February 27, 2014; however, Treasury has indicated that it will not provide responsive documents regarding the NPRM until April 7, 2014 and we have yet to receive any documents from the IRS or even any indication as to when responsive documents will be forthcoming.

The NPRM has provided *zero* documents at the public website where such background documents related to a rulemaking are normally posted.

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WASHINGTON, D.C.

February 4, 2014
Page 2


In fact, the Regulations.gov website tab for "Related Documents" states that there are "none". See <http://www.regulations.gov/#!documentDetail;D=IRS-2013-0038-0001>. Accessed February 4, 2014.

Accordingly, we hereby request that the deadline for public comments regarding the NPRM be extended until at least thirty (30) days after Treasury and the IRS make public all documents and materials related to the NPRM, in order that the public can be fully informed as to the meaning, development and origins of the proposed regulations.

We should not have to file suit against your agencies simply to obtain what is lawfully required of your agencies to furnish and which is necessary information for us to fully understand the NPRM and to formulate proper comments regarding the proposed regulations.

Please contact me at (202) 295-4081 if you have questions regarding this request.

Sincerely,



Clela Mitchell, Esq., Counsel
Tea Party Patriots

cc: Ms. Jenny Beth Martin, President
Tea Party Patriots

FOIA REQUEST TO TREASURY



ATTORNEYS AT LAW
WASHINGTON HARBOUR
3000 K STREET, N.W.
SUITE 600
WASHINGTON, D.C. 20007-5109
TELEPHONE: 202.672.5300
FACSIMILE: 202.672.5390
WWW.FOLEY.COM

FACSIMILE TRANSMISSION

Total # of Pages 6 (including this page)

| TO: | PHONE #: | FAX #: |
|---|----------|--------------|
| Hugh Gilmore, Director Disclosure Svcs./FOIA/Dept. of the Treasury | | 202-622-3895 |

From : Cleta Mitchell, Esq.
Email Address : cmitchell@foley.com
Sender's Direct Dial : 202.295.4081
Date : December 10, 2013
Client/Matter No : 999100-0100
User ID No : 0310

MESSAGE:

If there are any problems with this transmission or if you have not received all of the pages, please call 202.672.5517.

| | | |
|-----------|------------|---|
| Operator: | Time Sent: | Return Original To: Catherine D. Kidwell |
|-----------|------------|---|

CONFIDENTIALITY NOTICE: THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS INTENDED ONLY FOR THE PERSONAL AND CONFIDENTIAL USE OF THE DESIGNATED RECIPIENTS NAMED ABOVE. THIS MESSAGE MAY BE AN ATTORNEY-CLIENT COMMUNICATION, AND AS SUCH IS PRIVILEGED AND CONFIDENTIAL. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT OR ANY AGENT RESPONSIBLE FOR DELIVERING IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT YOU HAVE RECEIVED THIS DOCUMENT IN ERROR, AND THAT ANY REVIEW, DISSEMINATION, DISTRIBUTION OR COPYING OF THIS MESSAGE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US BY MAIL. THANK YOU.

December 10, 2013

ATTORNEYS AT LAW
WASHINGTON HARBOUR
3000 K STREET, N.W.
SUITE 600
WASHINGTON, D.C. 20007-5109
202.672.5300 TEL
202.672.5399 FAX
foley.com

VIA FAX (202) 622-3895

Hugh Gilmore, Director, Disclosure Services
FOIA/PA Request
Disclosure Services
Department of the Treasury
Washington, D.C. 20220

Re: Freedom of Information Act Request

Dear Mr. Gilmore:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the implementing regulations of the Department of the Treasury (the "Department"), 31 CFR Part 1, Subpart A, I am requesting copies of all Department records related to the following topics:

1. IRS News Release 2013-92, Nov. 26, 2013 and Notice of Proposed Rulemaking, Reg-134417-13 ("Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities") 78 Fed. Reg. 71535-71542 (Nov. 29, 2013) (collectively, the "Guidance") and all records, communications, directives, minutes or reports of staff/task force meetings, drafts, internal commentary, proposals, memoranda relating thereto.

2. Political activities of social welfare organizations or business leagues, any topics contained in the Guidance, any definition containing any aspect of "political" or "lobbying" for any purpose from January 1, 2008 to present and all records, communications, directives, minutes or reports of staff/task force meetings, drafts, internal commentary, proposals, memoranda relating thereto.

3. The Treasury Inspector General for Tax Administration Report, "Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review" (Reference Number 2013-10-053) (issued May 14, 2013) (the "Report") and all records, communications, directives, minutes or reports of staff/task force meetings, drafts, internal commentary, proposals, memoranda relating thereto, including but not limited to the use and reliance on the criteria in the Report for purposes of the development of the Guidance.

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4812-4968-0151 1

Department of the Treasury
December 10, 2013
Page 2

This request includes (but is not limited to) the following:

- a. Correspondence to / from any agent, employee, or representative of the Department with any outside federal or state agency, educational or policy organization, any other organization, private entity or individual related to the Guidance (including, but not limited to the White House, Executive Office of the President, White House Counsel's office, Federal Elections Commission, other federal agencies, state agencies, Congressional Committees, and Members of Congress).
- b. Internal Department documents, memorandums, and communications between or among any agent, employee, representative of the Department.
- c. All records, communications, directives, minutes or reports of staff/task force meetings, drafts, internal commentary, proposals, memoranda, of the following individuals and groups of individuals: Treasury Secretary Jack Lew, Treasury Assistant Secretary for Tax Policy Mark J. Mazur; employees, contractors and representatives of any of the Treasury Offices, including and not limited to the General Counsel's Office and the Secretary's executive office.
- d. All records and communications of Acting Commissioner of the Internal Revenue Service Danny Werfel, William Wilkins, and Amy F. Giuliano any employee, contractor or representative of the Internal Revenue Service with any employees, contractors and representatives of any of the Treasury Offices.

For purposes of this request, "records" mean correspondence, documents, information, memoranda, letters, records, reports, drafts, communications, statements, audits, lists of names, applications, diskettes, letters, expense logs and receipts, calendar or diary logs, records of communications, telephone message records, facsimile logs, call sheets, tape recordings, video/movie recordings, notes, examinations, opinions, folders, files, books, manuals, pamphlets, forms, drawings, charts, photographs, and handwritten or typed notes, facsimile transmissions, electronic mail, tapes and all other documents or writings and things in the possession, control or custody of IRS or contractors working for IRS.

If any responsive record or portion thereof is claimed to be exempt from production under FOIA, sufficient identifying information (with respect to each allegedly exempt record or portion thereof) must be provided to allow the assessment of the propriety of the claimed exemption. *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir 1973), *cert denied*, 415 U.S. 977 (1974). For all records responsive to these requests that are not produced based on an asserted exemption from disclosure, please prepare a privilege and/or exemption log describing, at a minimum: (i) the type of record withheld; (ii) the date(s) of the creation of the record; (iii) the subject of the record; (iv) the identity of the author and all recipients of the records; and (v) a detailed description of the basis upon which IRS is withholding the record (e.g., the claim of privilege, FOIA exemption, etc.). To the extent any responsive documents are withheld based upon a claim of privilege or other exemption from disclosure, please produce redacted copies of all non-privileged or non-exempt factual material contained within such documents.



FOLEY & LARDNER LLP

Department of the Treasury

December 10, 2013

Page 3

I confirm in advance my willingness to pay for all reasonable costs associated with searching for and copying these records. However, should these costs exceed \$25,000, I ask that you contact me prior to proceeding.

My associate, Jason Kohout, and other attorneys from the law firm of Foley & Lardner LLP are assisting with me with this request and I have authorized them to communicate with you on my behalf.

Please direct any inquiries, notices, or determination to me at 202.295.4081. Thank you for your anticipated assistance.

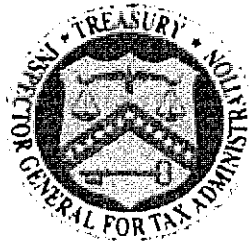
Sincerely,

A handwritten signature in black ink that reads 'Cleta Mitchell'.

Cleta Mitchell, Esq.

Enclosure

TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION



***Inappropriate Criteria Were Used to
Identify Tax-Exempt Applications for Review***

May 14, 2013

Reference Number: 2013-10-053

This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.

Redaction Legend:

1 = Tax Return/Return Information

Phone Number / 202-622-6500

E-mail Address / TIGTACommunications@tigta.treas.gov

Website / <http://www.treasury.gov/tigta>



Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review

Results of Review

The Determinations Unit Used Inappropriate Criteria to Identify Potential Political Cases

The Determinations Unit developed and used inappropriate criteria to identify applications from organizations with the words Tea Party in their names. These applications (hereafter referred to as potential political cases)¹³ were forwarded to a team of specialists¹⁴ for review. Subsequently, the Determinations Unit expanded the criteria to inappropriately include organizations with other specific names (Patriots and 9/12) or policy positions. While the criteria used by the Determinations Unit specified particular organization names, the team of specialists was also processing applications from groups with names other than those identified in the criteria. The inappropriate and changing criteria may have led to inconsistent treatment of organizations applying for tax-exempt status. For example, we identified some organizations' applications with evidence of significant political campaign intervention that were not forwarded to the team of specialists for processing but should have been. We also identified applications that were forwarded to the team of specialists but did not have indications of significant political campaign intervention. All applications that were forwarded to the team of specialists experienced substantial delays in processing. Although the IRS has taken some action, it will need to do more so that the public has reasonable assurance that applications are processed without unreasonable delay in a fair and impartial manner in the future.

Criteria for selecting applications inappropriately identified organizations based on their names and policy positions

The Determinations Unit developed and began using criteria to identify potential political cases for review that inappropriately identified specific groups applying for tax-exempt status based on their names or policy positions instead of developing criteria based on tax-exempt laws and Treasury Regulations.

*****|*****
*****|*****
*|***. According to media reports, some organizations were classified as I.R.C. § 501(c)(4) social welfare organizations but operated like political organizations. *****|*****

¹³ Until July 2011, the Rulings and Agreements office referred to these cases as Tea Party cases. Afterwards, the EO function referred to these cases as advocacy cases.

¹⁴ Initially, the team consisted of one specialist, but it was expanded to several specialists in December 2011. The EO function referred to this team as the advocacy team.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

December 20, 2013

RE: 2013-12-071

Cleta Mitchell, Esq.
Foley & Lardner LLP
Washington Harbour
3000 K. St., N.W. – Suite 600
Washington, DC 20007-5109

Dear Ms. Mitchell:

This concerns your Freedom of Information Act (FOIA) request of December 10, 2013, which was e-mailed to Hugh Gilmore with the U.S. Department of the Treasury. You have requested records concerning IRS News Release 2013-92, November 26, 2013 and Notice of Proposed Rulemaking, Reg. 134417-13; political activities of social welfare organizations or business leagues and the Treasury Inspector General for Tax Administration Report, "Inappropriate Criteria Were Used to Identify Tax-Exempt Applications Report for Review". A copy of your request is enclosed.

We have initiated a search for records that would be responsive to your request. We will make every effort to provide you with a timely response; however, please be advised that unusual circumstances exist regarding a search and review of the information requested due to consultation required between two or more program offices and the timeframe of the requested records. This will require an additional processing extension of ten (10) days.

Further inquiries concerning this request should make reference to the identification number at the top of this letter and should be faxed to 202/622-3895 or mailed to:

FOIA Request
Disclosure Services
Department of the Treasury
Washington, DC 20220

Sincerely,

Ryan Law
Director, Disclosure Services

Digitally signed by Ryan Law
DN: cn=Ryan Law, o=Disclosure
Services, ou=U.S. Department of
the Treasury,
email=OIA@treasury.gov, c=US
Date: 2013.12.23 14:46:53 -0500

 *** TX REPORT ***

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FOLEY
 FOLEY & LARDNER LLP

ATTORNEYS AT LAW
 WASHINGTON HARBOUR
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 FACSIMILE: 202.672.5399
 WWW.FOLEY.COM

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ORIGINAL WILL BE SENT BY CERTIFIED MAIL MAIL

Total # of Pages 2 (including this page)

| TO: | PHONE #: | FAX #: |
|--|----------|--------------|
| Ryan Law Director, Disclosure Services FOIA Request Disclosure Services Department of the Treasury | | 202-622-3895 |

From : Cleta Mitchell, Esq.
 Email Address : cmitchell@foley.com
 Sender's Direct Dial : 202.295.4081
 Date : January 6, 2014
 Client/Matter No : 999100-0100
 User ID No : 0310

MESSAGE:



FOLEY & LARDNER LLP

January 6, 2013

ATTORNEYS AT LAW
WASHINGTON HARBOUR
3000 K STREET, N.W.
SUITE 600
WASHINGTON, D.C. 20007 5109
202.672.5300 TEL
202.672.5399 FAX
foley.com

VIA FAX & CERTIFIED MAIL

CERTIFIED MAIL No.: 7007 1490 0003 8436 0903

Ryan Law
Director, Disclosure Services
FOIA Request
Disclosure Services
Department of the Treasury
Washington D.C. 20220
Fax: 202-622-3895

Re: Freedom of Information Act Request 2013-12-071

Dear Mr. Law:

I am in receipt of your December 20, 2013 letter regarding the above-referenced Freedom of Information Act request. Your letter states that unusual circumstances exist with regard to the FOIA request.

Please commence production of responsive documents and records as soon as possible, even if your search is incomplete. I expect that production can begin before the required response date of January 9th (20 business days after the request is received). If production is not completed by that date, I ask that you advise us as to the status of the search at that time and continue to produce responsive documents and records by the required date under an extension (10 business days after the original deadline (January 24th)).

Please direct any inquiries, notices, or determination to me at 202.295.4081. Thank you for your anticipated assistance.

Sincerely,

Clea Mitchell, Esq.

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PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

January 6, 2014

Cleta Mitchell
Foley & Lardner LLP
Washington Harbour
3000 K St NW, Ste 600
Washington, DC 20007-5109

Dear Cleta Mitchell:

I am responding to your Freedom of Information Act (FOIA) request dated December 10, 2013 that we received on December 12, 2013.

I am unable to send the information you requested by January 13, 2014, which is the 20 business-day period allowed by law. I apologize for any inconvenience this delay may cause.

STATUTORY EXTENSION OF TIME FOR RESPONSE

The FOIA allows an additional ten-day statutory extension in certain circumstances. To complete your request I need additional time to search for, collect, and review responsive records from other locations. We have extended the statutory response date to January 28, 2014, after which you can file suit. An administrative appeal is limited to a denial of records, so it does not apply in this situation.

REQUEST FOR ADDITIONAL EXTENSION OF TIME

Unfortunately, we will still be unable to locate and consider release of the requested records by January 28, 2014. We have extended the response date to April 7, 2014 when we believe we can provide a final response.

You do not need to reply to this letter if you agree to this extension. You may wish to consider limiting the scope of your request so that we can process it more quickly. If you want to limit your request, please contact the individual named below. If we subsequently deny your request, you still have the right to file an administrative appeal.

You may file suit if you do not agree to an extension beyond the statutory period. Your suit may be filed in the U.S. District Court:

- Where you reside or have your principal place of business

JAN 13 2014

- Where the records are located, or
- In the District of Columbia

You may file suit after January 28, 2014. Your complaint will be treated according to the Federal Rules of Civil Procedure applicable to actions against an agency of the United States. These procedures require that the IRS be notified of the pending suit through service of process, which should be directed to:

Commissioner of Internal Revenue
Attention: CC:PA: Br 6/7
1111 Constitution Avenue, NW
Washington, D.C. 20224

The FOIA provides access to existing records. Extending the time period for responding to your request will not delay or postpone any administrative, examination, investigation or collection action.

If you have any questions please call me at (801) 620-7638 or write to: Internal Revenue Service, HQ Disclosure, 2980 Brandywine Road, Stop 211, Chamblee, GA 30341. Please refer to case number F14347-0041.

Sincerely,



Denise Higley
Tax Law Specialist
Badge No. 1000142331
Headquarters (HQ) Disclosure FOIA Group

FOIA REQUEST TO IRS



FOLEY & LARDNER LLP

December 10, 2013

ATTORNEYS AT LAW
WASHINGTON HARBOUR
3000 K STREET N.W.
SUITE 600
WASHINGTON, D.C. 20007-5109
202.672.5300 TEL
202.672.5399 FAX
foley.com

VIA OVERNIGHT MAIL
TRACKING NO.: 7973-5820-5562

Paula Curren
Internal Revenue Service
Attn: Disclosure Scanning Operation
4800 Buford Hwy - Stop 93A
Chamblee, GA 39901-0093

Re: Freedom of Information Act Request

Dear Ms. Curren:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the implementing regulations of the Internal Revenue Service ("IRS"), 26 C.F.R. Section 601.702, I am requesting copies of the following IRS records:

1. All records related to IRS News Release 2013-92, Nov. 26, 2013 and Notice of Proposed Rulemaking, Reg-134417-13 ("Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities") 78 Fed. Reg. 71535-71542 (Nov. 29, 2013) (collectively, the "Guidance"), including but not limited to the following:

a. Correspondence to / from any agent, employee, or representative of the IRS with any outside federal or state agency, educational or policy organization, any other organization, private entity or individual related to the Guidance (including, but not limited to the White House, Executive Office of the President, White House Counsel's office, Federal Elections Commission, other federal agencies, state agencies, Congressional Committees, and Members of Congress).

b. Internal IRS documents, memorandums, and communications between or among any agent, employee, representative of the IRS, including, but not limited to, Danny Werfel, William Wilkins, and Amy F. Giuliano related to the Guidance.

2. All records, communications, directives, minutes or reports of staff/task force meetings, drafts, internal commentary, proposals, memoranda relating to political activities of social welfare organizations and the topics contained in the Guidance from January 1, 2008 to present.

3. All records related to consideration and standards for processing tax-exempt status of organizations classified, denoted, or otherwise set apart by the IRS as "potential political cases" as described in the May 14, 2013 Treasury Inspector General for Tax Administration Report, "Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review" (Reference

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WASHINGTON, D.C.

4812-4968-0151 1



FOLEY & LARDNER LLP

Internal Revenue Service
December 10, 2013
Page 2

Number 2013-10-053) (the "Report") that were used, or in any way relied upon, for the development of the Guidance. See attached for page 5 of the Report.

For purposes of this request, "records" mean correspondence, documents, information, memoranda, letters, records, reports, drafts, communications, statements, audits, lists of names, applications, diskettes, letters, expense logs and receipts, calendar or diary logs, records of communications, telephone message records, facsimile logs, call sheets, tape recordings, video/movie recordings, notes, examinations, opinions, folders, files, books, manuals, pamphlets, forms, drawings, charts, photographs, and handwritten or typed notes, facsimile transmissions, electronic mail, tapes and all other documents or writings and things in the possession, control or custody of IRS or contractors working for IRS.

If any responsive record or portion thereof is claimed to be exempt from production under FOIA, sufficient identifying information (with respect to each allegedly exempt record or portion thereof) must be provided to allow the assessment of the propriety of the claimed exemption. *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir 1973), *cert denied*, 415 U.S. 977 (1974). For all records responsive to these requests that are not produced based on an asserted exemption from disclosure, please prepare a privilege and/or exemption log describing, at a minimum: (i) the type of record withheld; (ii) the date(s) of the creation of the record; (iii) the subject of the record; (iv) the identity of the author and all recipients of the records; and (v) a detailed description of the basis upon which IRS is withholding the record (e.g., the claim of privilege, FOIA exemption, etc.). To the extent any responsive documents are withheld based upon a claim of privilege or other exemption from disclosure, please produce redacted copies of all non-privileged or non-exempt factual material contained within such documents.

I confirm in advance my willingness to pay for all reasonable costs associated with searching for and copying these records. However, should these costs exceed \$25,000, I ask that you contact me prior to proceeding.

My associate, Jason Kohout, and other attorneys from the law firm of Foley & Lardner LLP are assisting with me with this request and I have authorized them to communicate with you on my behalf.

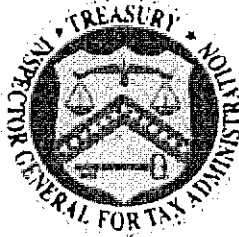
Please direct any inquiries, notices, or determination to me at 202.295.4081. Thank you for your anticipated assistance.

Sincerely,

Cleta Mitchell, Esq.

Enclosure

TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION



***Inappropriate Criteria Were Used to
Identify Tax-Exempt Applications for Review***

May 14, 2013

Reference Number: 2013-10-053

This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.

Redaction Legend:

1 = Tax Return/Return Information

Phone Number / 202-622-6500

E-mail Address / TIGTACommunications@tigta.treas.gov

Website / <http://www.treasury.gov/tigta>



***Inappropriate Criteria Were Used to
Identify Tax-Exempt Applications for Review***

Results of Review

***The Determinations Unit Used Inappropriate Criteria to Identify
Potential Political Cases***

The Determinations Unit developed and used inappropriate criteria to identify applications from organizations with the words Tea Party in their names. These applications (hereafter referred to as potential political cases)¹¹ were forwarded to a team of specialists¹² for review. Subsequently, the Determinations Unit expanded the criteria to inappropriately include organizations with other specific names (Patriots and 9/12) or policy positions. While the criteria used by the Determinations Unit specified particular organization names, the team of specialists was also processing applications from groups with names other than those identified in the criteria. The inappropriate and changing criteria may have led to inconsistent treatment of organizations applying for tax-exempt status. For example, we identified some organizations' applications with evidence of significant political campaign intervention that were not forwarded to the team of specialists for processing but should have been. We also identified applications that were forwarded to the team of specialists but did not have indications of significant political campaign intervention. All applications that were forwarded to the team of specialists experienced substantial delays in processing. Although the IRS has taken some action, it will need to do more so that the public has reasonable assurance that applications are processed without unreasonable delay in a fair and impartial manner in the future.

***Criteria for selecting applications inappropriately identified organizations based
on their names and policy positions***

The Determinations Unit developed and began using criteria to identify potential political cases for review that inappropriately identified specific groups applying for tax-exempt status based on their names or policy positions instead of developing criteria based on tax-exempt laws and Treasury Regulations.

***** | *****
***** | *****
*|***. According to media reports, some organizations were classified as I.R.C. § 501(c)(4) social welfare organizations but operated like political organizations. ***** | *****

¹¹ Until July 2011, the Rulings and Agreements office referred to these cases as Tea Party cases. Afterwards, the EO function referred to these cases as advocacy cases.

¹² Initially, the team consisted of one specialist, but it was expanded to several specialists in December 2011. The EO function referred to this team as the advocacy team.

Jan 6, 2014

Thank you, Denise.

And to be clear, we want the records/documents related to any formal/informal task force(s), staff groups that were established or formed any time since Jan 1, 2008 whose deliberations and discussions form any part of the basis of the proposed rules / NPRM to which we refer as the "Guidance". Hope that makes sense

Thank you! Cleta

Cleta Mitchell, Esq
Foley & Lardner LLP
3000 K Street NW #600
Washington DC 20007
(202) 295-4081 (direct)
(202) 431-1950 (cell)
(202) 672-5399 (fax)
cmitchell@foley.com

From: Higley Denise [<mailto:Denise.Higley@irs.gov>]

Sent: Monday, January 06, 2014 2:13 PM

To: Mitchell, Cleta

Subject: FOIA Request F14347-0041

Cleta,

Per our phone conversation today pertaining to your Freedom of Information Act (FOIA) request dated December 10, 2013, this is to confirm our conversation pertaining to item two of your request. The January 1, 2008, date listed in item two is an arbitrary date. The records you are seeking are any and all communication, etc., from the inception of any task force and/or team that was put together relating to the preparation of the Notice of Proposed Rulemaking, Reg-134417-13 (Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities) 78 Fed. Reg 71535-71542.

In other words, a search will be conducted to provide any and all records our agency has that relates to the creation of both the IRS News Release 2013-92 and also the Notice of Proposed Rulemaking Reg-134417-13.

Thank you for your time and clarification regarding this FOIA request. The case number assigned to your request is F14347-0041.

Denise Higley

Tax Law Specialist
HQ Disclosure Office FOIA
M/S 7000
1973 N Rulon White Blvd
Ogden, UT 84404
801-620-7638 fax: 801-620-7676