



INSPECTOR GENERAL
FOR TAX
ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20005

February 16, 2022

SENT VIA EMAIL: foia@americanoversight.org

Rachel Baron
American Oversight
1030 15th Street, NW, Suite B 255
Washington, DC 20005

Re: Freedom of Information Act Appeal Dated January 19, 2022

Dear Ms. Baron:

This responds to your letter dated January 19, 2022, in which you appealed the Treasury Inspector General for Tax Administration's (TIGTA's) October 25, 2021, decision on your Freedom of Information Act (FOIA) request dated October 1, 2021. In that request, you asked that TIGTA produce "[a]ll whistleblower complaints submitted to the Treasury Inspector General for Tax Administration from July 22, 2019, through August 9, 2019." By letter dated October 25, 2021, TIGTA's Disclosure Officer issued a Glomar response to your request, asserting that TIGTA could neither admit nor deny the existence of responsive records. You have appealed that determination, arguing that a Glomar response was improper because merely acknowledging the existence of responsive records would not result in a disclosure of return information or the type of intrusion into personal privacy that FOIA Exemptions (b)(3), (b)(6), and (b)(7)(C) were intended to prevent.

We have carefully considered the assertions set forth in the FOIA response and in your appeal. In addition, we carefully evaluated the search conducted by the Disclosure Branch to ensure that it was reasonably calculated to uncover all relevant documents, and to determine whether and to what extent any responsive records should be disclosed. Based on those reviews, we have located 35 pages of documents responsive to your request. We are withholding all 35 pages in full and assert FOIA Exemptions (b)(3) in conjunction with 26 U.S.C. § 6103, (b)(6), and (b)(7)(C) as legal justification for the withholding. We have also concluded that no reasonably segregable non-exempt information exists.

FOIA subsection (b)(3) provides that the disclosure provisions of the FOIA do not apply to matters that are "specifically exempted from disclosure by statute . . . provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld." I.R.C. § 6103 has been held to be a statute meeting the criteria set forth in Exemption 3 of the FOIA. See

Church of Scientology v. I.R.S., 484 U.S. 9, 17-18 (1987) (return information remains such even when it does not identify a particular taxpayer; deletion of identifying data would not make otherwise protected return information disclosable under FOIA); *Chamberlain v. Kurtz*, 589 F.2d 827, 840 (5th Cir.), *cert. denied*, 444 U.S. 842 (1979) (provisions of section 6103 satisfy requirements of Exemption 3). The responsive records contain return information, as defined by I.R.C. § 6103(b)(2), of taxpayers other than you and no provision in the Internal Revenue Code authorizes its release to you in response to your FOIA request. Therefore, we assert subsection (b)(3) in conjunction with I.R.C. § 6103(a) as the legal justification for withholding this information.

FOIA subsection (b)(6) protects information about individuals in personnel and medical and similar files when the disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. The United States Supreme Court has made clear that the term "similar files" is to be interpreted broadly to include all information that applies to a particular individual. We have withheld information that pertains to individual(s) other than yourself. This individual(s) would have a strong privacy interest in such information. Furthermore, release of any such information would shed little, if any, light on a governmental agency's performance of its official functions, and therefore, there is little, if any, public interest in this information as that term is defined for purposes of the FOIA. Accordingly, this information is exempt from release pursuant to FOIA subsection (b)(6).

FOIA exemption (b)(7)(C) protects from disclosure "information compiled for law enforcement purposes the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy." Exemption (b)(7)(C) applies if the invasion of privacy that would result from the release of the information outweighs the public interest in disclosure. *See Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749, 762 (1989). The public interest prong of the personal privacy balancing test, as the Supreme Court noted, is the public's interest in shedding light on the agency's performance of its statutory duties, not the individual's interest in obtaining a particular document. *Id.* at 773. Releasing the withheld information would not shed any light on TIGTA's performance of its official functions, but instead would result in an invasion into the personal privacy of the individual(s) whose name(s) and personal information have been withheld. The information was compiled for law enforcement purposes and the privacy interest of third parties outweighs the public's interest in having the information released. Therefore, this information has been withheld pursuant to FOIA exemption (b)(7)(C).

This letter constitutes TIGTA's final decision with respect to your FOIA appeal. The FOIA requires us to advise you of the judicial remedies granted in the Act. You may file a complaint in the United States District Court for the district in which you reside, or have your principal place of business, or in which the agency records are located, or in the District of Columbia.

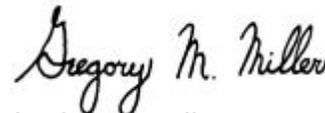
In addition, as part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road
College Park, MD 20740-6001

E-mail: ogis@nara.gov
Telephone: 202-741-5770
Facsimile: 202-741-5769
Toll-free: 1-877-684-6448

If you have any questions concerning this matter, you may contact Greg Miller at (202) 622-6004.

Sincerely,

 for

Lori Creswell
Deputy Chief Counsel

cc: Disclosure Officer