

# **FREEDOM OF INFORMATION ACT ANNUAL REPORT INTERNAL REVENUE SERVICE**

Fiscal Year 1998  
October 1, 1997 through September 30, 1998

## **I. Basic Information Regarding the Report**

### **A. Questions concerning this report may be directed to:**

Director, Office of Disclosure  
Internal Revenue Service  
1111 Constitution Avenue, N.W.  
Washington, DC 20224

### **B. This report is available on the web at: <http://www.irs.gov/foia/index.html>**

### **C. Copies of this report may be requested at the address provided in A. above.**

## **II. How to Make a FOIA Request**

### **A. Name and addresses of offices that receive FOIA requests.**

- Please refer to Treasury Department consolidated Annual Report to Congress.

### **B. Time Ranges of Responses.**

- Response times are from 1 to 1000 days, with an average response time of 42 days. Half of the requests take in excess of 216 days.

### **C. Description of why some requests are not granted.**

- The majority of denials are requests for confidential tax information being sought by individuals who are not authorized to receive it or requests related to tax investigations, the disclosure of which might impair federal tax administration.

## **III. Definitions of Terms and Acronyms Used in Report**

### **A. Agency Specific. None.**

### **B. Basic Terms. Please see consolidated Treasury Report.**

IV. Supporting Statutes Used with Exemption (b)(3)

A.1. Listing and brief description of type of information withheld under each statute:

26 U.S.C. 6103	Confidentiality of Returns and Return Information: Prohibits the disclosure of: (1) Tax returns and return information of third party taxpayers except as specifically authorized (6103(a)); (2) The standards used for selection of returns for examination (Section 6103(b)(2)); and, (3) a requester's own return information if the release would seriously impair federal tax administration (section 6103(e)(7)).
31 U.S.C. 5319	Bank Secrecy Act Records: Prohibits the disclosure of BSA records. Generally used to withhold Currency Transaction Reports.
Rule 6(e)	Part of the Federal Rules of Criminal Procedure - Grand Jury Secrecy: regulates matters occurring before the Grand Jury. Used to withhold records used in Grand Jury proceedings.
41 U.S.C. 253(b)	Protects the solicitations of unsuccessful bidders in a competitive proposal. Used to withhold the unsuccessful bidders' contract proposals as well as information in the winning solicitation that is not incorporated into the contract.
18 U.S.C. 701	Official Badges, identification cards. Prohibits the reproduction of official identification media. Used to withhold copies of IRS employee identification badges and pocket commissions.
5 U.S.C. 7114	Delineates the rights and duties of a labor organization which is the exclusive representative of the employees in the unit it represents.
Tax Treaty Clauses	Foreign Tax Treaties ratified by the Senate protect tax information provided by foreign governments for use in tax administration.

A.2. Statement of whether a court has upheld the use of the above cited statutes:

26 U.S.C. 6103      *Church of Scientology v. IRS*, 484 U.S. 9 (1987); *Aronson v. IRS*, 973 F.2d 962 (1<sup>st</sup> Cir. 1992); *Stebbins v. Sullivan*, No. 90-5361, slip op. at 1 (D.C. Cir. July 22, 1992); *Wishart v. Commissioner*, C-97-20614-SW (N.D. Cal., decided August 6, 1998); and others.

Note: In one decided case, *Tax Analysts v IRS*, Civ. No. 94-923 (D.D.C. Apr 30, 1998), the court narrowed the scope of the (b)(3), supported by section 6103(a), assertion to only portions but not the entirety of the documents at issue. There are no cases in which a court rejected in toto the assertion of exemption (b)(3) in conjunction with section 6103.

31 U.S.C. 5319      *Small v. IRS*, 820 F. Supp. 163 (D.N.J. 1992).

Rule 6(e)      *Fund for Constitutional Gov't v. National Archives & Records Service*, 656 F. 2<sup>nd</sup> 856, 867 (D.C. Cir. 1981); *Walston v. U.S. Department of Justice*, 799 F. Supp. 193, 195 (D.D.C. 1992).

41 U.S.C. 253(b)      Public Law 104-201; not litigated.

18 U.S.C. 701      Not litigated.

5 U.S.C. 7114      *Dublin v. Dept. of the Treasury*, 555 F. Supp. 408, 412 (N.D. Ga. 1981), aff'd, 697 F.2d 1093 (unpublished table decision); *NTEU v. OPM*, No. 76-695, slip op at 49 D.D.C. July 9, 1979).

Tax Treaty Clauses      Treaties were ratified by the U.S. Senate; not decided by the courts.

V. Initial FOIA/PA Access Requests

A. Number of initial requests:

1. Requests Pending as of 10/01/97	4,057
2. Requests Received during FY 1998	30,942
3. Requests Processed during FY 1998	30,224
4. Requests Pending as of 09/30/98	4,775

B. Disposition of initial requests:

1. Total Grants	14,415
2. Partial Grants	3,299
3. Total Denials	426

B. 3. A. Number of times each FOIA exemption was used (counting each exemption once per case):

Exemption	Use	Exemption	Use	Exemption	Use
(b)(1)	8	(b)(6)	402	(b)(7)(E)	
(b)(2)	162	(b)(7)(A)*	2437	(b)(7)(F)	
(b)(3)	2853	(b)(7)(B)		(b)(8)	2
(b)(4)	51	(b)(7)(C)		(b)(9)	0
(b)(5)	692	(b)(7)(D)			

\* The current inventory system does not differentiate between the various (b)(7) exemptions. Program changes have been requested to allow capture of such data in the future. Amount shown under (b)(7) A) is the total for all (b)(7) exemptions for FY 1998.

B. 4. Other reasons for non-disclosure of requested information:

Total of Others (as categorized below)	12,084
No Records	2,907
Referrals	1,791
Request Withdrawn	465
Fee-related reason	2
Not a proper FOIA request for some other reason	6,157
Other reasons for not processing a request*	762

\* Closed without determination because an appeal was filed, or the records had previously been provided to the requester, or the requester had not paid the fee from a previous request, etc.

VI. Appeal of Initial Denials of FOIA/PA Requests

A. Number of appeals:

1. Received during FY 1998	1,384
2. Processed during FY 1998	2,092

B. Disposition of appeals. Number of appeals where the initial determination was:

1. Completely upheld	320
2. Partially reversed	104
3. Completely reversed	61

B. 3. a. Number of times each FOIA exemption was used in a completely or partially upheld appeal case (counting each exemption once per case):

Exemption	Use	Exemption	Use	Exemption	Use
(b)(1)	0	(b)(6)	38	(b)(7)(E)	49
(b)(2)	2	(b)(7)(A)	12	(b)(7)(F)	0
(b)(3)	114	(b)(7)(B)	0	(b)(8)	0
(b)(4)	1	(b)(7)(C)	45	(b)(9)	0
(b)(5)	15	(b)(7)(D)	6		

B.4. Other reasons for non-disclosure during appeal process:

Total of Others (as categorized below)	1,607
Withdrawn	1,254
Treated as a non-appeal	333
Other (litigation due to failure to respond)	20

VII. Compliance with Time Limits/Status of Pending Requests

A. Median time for processing requests:

1. Simple Requests		
a.	Number of requests processed	0
b.	Median number of days to process	N/A
2. Complex Requests		
a.	Number of requests processed	30,224
b.	Median number of days to process	216
3. Expedited Requests		
a.	Number of requests processed	0
b.	Median number of days to process	N/A

B. Status of pending requests (as of September 30, 1998):

1. Number of requests pending	4,775
2. Median age of pending cases	63

VIII. Comparison with Previous Year (Optional)

Comparison not made.

IX. Costs/FOIA Staffing

A. Staffing levels, given in number of positions in agency:

1. Full-time FOIA personnel	17
2. Personnel with part-time or occasional FOIA duties (composite total, in work years)	87
3. Total personnel (in composite work years)	104

B. Total costs (including all staff and resources):

1. FOIA processing (including appeals)	\$ 9,321,672
2. Litigation related activities (estimated)	1,242,657
3. Total Costs	\$10,564,329

X. Fees

A. Total fees collected by the agency during FY 2001	\$115,851
B. Percentage of total costs	1.1%