

FREEDOM OF INFORMATION ACT ANNUAL REPORT INTERNAL REVENUE SERVICE

Fiscal Year 2007

October 1, 2006 through September 30, 2007

I. Basic Information Regarding the Report

A. Questions concerning this report may be directed to:

Chief, Office of Disclosure
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, DC 20224
SE:S:CLD:GLD:D

B. This report is available on the internet 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. FOIA requests for IRS records may be sent to any IRS Disclosure Office. Addresses are listed in the IRS FOIA regulations at 26 C.F.R. 701.602 or are available on the internet at: [IRS Disclosure Offices](#).

Time Ranges of Responses

B. Response times are from 0 to 2554 days, with an average response time of 48 calendar days.

Why Some Requests are Not Granted

C. The majority of the requests denied by the IRS are requests for confidential tax information being sought by individuals who are not authorized to receive it, or are 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 (section 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 records. Generally used to withhold Currency Transaction Reports.
- 26 U.S.C. 6105 Confidentiality of information arising under treaty obligations.
- 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.
- 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.
- 41 U.S.C. 253(b) Protects the solicitations of unsuccessful bidders in a competitive proposal. This provision is used to withhold the unsuccessful bidder's contract proposal as well as information in the winning solicitation that was not incorporated into the contract.

A.2. Statement of whether a court has upheld the use of each statute:

- 26 U.S.C. 6103 *Church of Scientology v. IRS*, 484 U.S. 9 (1987); *Aronson v. IRS*, 973 F.2d 962 (1st 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); *Gillin v. IRS*, No. 90-31 (D.N.H. Apr. 15, 1991), *aff'd*, 980 F.2d 819 (1st Cir. 1992); *Casa Investors, Ltd. v. Gibbs*, No. 88-2485, 1990 WL 180703 (D.D.C. Oct. 11, 1990) and others.
- 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. 2nd 856, 867 (D.C. Cir. 1981); *Walston v. U.S. Department of Justice*, 799 F. Supp. 193, 195 (D.D.C. 1992).
- 26 U.S.C. 6105 *Tax Analysts v. IRS*, No. 99-0372, 2002 WL 1791162 (D.D.C. Aug. 6, 2002)

<u>5 U.S.C. 7114</u>	<i>Dublin v. Dept. of the Treasury</i> , 555 F. Supp. 408, 412 (N.D. Ga. 1981), <u>aff'd</u> , 697 F.2d 1093 (unpublished table decision); <i>NTEU v. OPM</i> , No. 76-695, slip op at 49 D.D.C. July 9, 1979).
<u>18 U.S.C. 701</u>	Not litigated.
<u>41 U.S.C. 253(b)</u>	<i>Hornbostel v. Dept of Interior</i> , No.02-0523, 2003 WL 23303294 (D.D.C., 2003)

V. Initial FOIA/PA Access Requests

A. Number of initial requests:

1. Requests Pending as of 10/01/06	2,070
2. Requests Received during FY 2007	17,894
3. Requests Processed during FY 2007	18,289
4. Requests Pending as of 09/30/07	1,675

B. Disposition of initial requests:

1. Total Grants	6,844
2. Partial Grants	2,289
3. Total Denials	242

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

Exemption	Use	Exemption	Use	Exemption	Use
(b)(1)	0	(b)(6)	493	(b)(7)(E)	939
(b)(2)	83	(b)(7)(A)	451	(b)(7)(F)	7
(b)(3)	1,960	(b)(7)(B)	4	(b)(8)	0
(b)(4)	41	(b)(7)(C)	771	(b)(9)	0
(b)(5)	489	(b)(7)(D)	49		

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

Total of Others (as categorized below)	8,914
No Records	3,393
Referrals	195
Requests Withdrawn	253
Not a proper FOIA request for some other reason	4,098
Misc. other reasons for not processing a request*	975

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

VI. Appeal of Initial Denials of FOIA/PA Requests

A. Number of appeals:

1. Received during FY 2007	239
2. Processed during FY 2007	267

B. Disposition of appeals.

1. Completely upheld	247
2. Partially reversed	18
3. Completely reversed	2

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)	26	(b)(7)(E)	40
(b)(2)	12	(b)(7)(A)	37	(b)(7)(F)	0
(b)(3)	86	(b)(7)(B)	4	(b)(8)	0
(b)(4)	5	(b)(7)(C)	42	(b)(9)	0
(b)(5)	57	(b)(7)(D)	8		

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

Total of Others (as categorized below)	0
a. No Records	
b. Referrals	
c. Withdrawn	
d. Fee-related	
e. Records not reasonably described	
f. Treated as a non-appeal	
g. Not an agency record	
h. Duplicate request	
i. Other (litigation due to failure to respond)	

VII. Compliance with Time Limits/Status of Pending Requests

1. Median time for processing requests:

Simple Requests		
a.	Number of requests processed	0
b.	Median number of days to process	N/A
Complex Requests		
a.	Number of requests processed	18,289
b.	Median number of days to process	27
Expedited Requests		
a.	Number of requests processed	0
b.	Median number of days to process	N/A

2. Status of pending requests (as of September 30, 2007):

Number of requests pending	1,675
Median age of pending cases	18

VIII. Comparison with Previous Year (Optional). Comparison not made.

IX. Costs/FOIA Staffing

A.1. Staffing levels, given in number of positions in agency:

Full-time FOIA personnel	6
Personnel with part-time or occasional FOIA duties (composite total, in work years)	66
Total personnel (in composite work years)	72

A.2. Total costs (including all staff and resources):

FOIA processing (including appeals)	\$ 8,792,758
Litigation related activities (estimated)	378,772
Total Costs	\$ 9,171,530

X. Fees

A. Total fees collected by the agency during FY 2007	\$ 190,752
B. Percentage of total costs	2.08%

XI. FOIA Regulations. N/A

XI. Report on FOIA Executive Order Implementation

- A. Description of supplement/modification of agency improvement plan if applicable:
N/A
- B. Report on agency implementation of its plan, including its performance in meeting milestones, with respect to each improvement area:
1. The IRS is an active participant at FOIA Council meetings.
 2. The IRS has submitted monthly FOIA Performance Measures Reports.
 3. The IRS continually reviews its oldest FOIA cases.
 4. Since the adoption of the Department of the Treasury FOIA Improvement Plan, the IRS has emphasized processing of backlog cases with the result that the backlog inventory was 605 requests as of September 30, 2007, a decrease of 43% from initial IRS backlog baseline of 1054. This represents a 33% reduction over and above the Treasury 10% improvement goal for FY2007.
- C. Identification and discussion of any deficiency in meeting plan milestones, if applicable: N/A
- D. Additional narrative statement regarding other executive order related activities – optional
1. The open FOIA ending inventory on September 30, 2007, reflects a 19% reduction from the ending inventory reported on September 30, 2006.
 2. The IRS piloted an automated FOIA case processing system in two Disclosure Offices during FY2007 and is planning future implementation. The new system utilizes document imaging and centralized receipt of all FOIA/PA requests to create fully electronic case files and online document redaction tools.

E. Concise descriptions of FOIA exemptions:

The majority of FOIA requests received by the IRS are for access to individual or business tax records. Records are released when proper authority for access to tax records is received and denied when it is not. Therefore, the primary exemption cited by the IRS is (b)(3) in conjunction with 26 U.S.C. 6103, to withhold tax records. These records are generally part of law enforcement files also subject to exemption (b)(7).

Exemption	Use	Exemption	Use	Exemption	Use
(b)(1)	0	(b)(6)	493	(b)(7)(E)	939
(b)(2)	83	(b)(7)(A)	451	(b)(7)(F)	7
(b)(3)	1,960	(b)(7)(B)	4	(b)(8)	0
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(b)(5)	489	(b)(7)(D)	49		

F. Additional Stats:

1. Time range of requests pending, by date of request (or, where applicable, by date of referral from another agency):
The range of open cases was from 2 days to 2,584 days. The dates of these requests range from October 2, 2000 to September 28, 2007.
2. Time range of consultations pending with other agencies, by date of initial interagency communication: N/A

G. Improvement Plan attached: N/A