

FILED
JOHN P. HEHMAN
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**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
(Eastern Division)**

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U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
EAST. DIV. COLUMBUS

JON R. ROGERS)
12 Cara Place)
Steubenville, Ohio 43953,)

Plaintiff,)

v.)

INTERNAL REVENUE SERVICE)
1111 Constitution Avenue, N.W.)
Washington, D.C. 20224,)

Defendant.)

2 : 1 3 C V 0 7 9 7
Civil Action No. _____

JUDGE GRAHAM
MAGISTRATE JUDGE KEMP

INTRODUCTION

1. This is an action to compel defendant to comply with the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as amended, and the Privacy Act, 5 U.S.C. §552a, as amended. Plaintiff seeks injunctive and other appropriate relief to enjoin defendant from withholding from disclosure to him certain records within its possession and control and to order defendant to release those records that were duly requested by plaintiff and wrongfully withheld by defendant.

Jurisdiction and Venue

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B), 552a(g)(1), and 28 U.S.C. § 1331.

3. Venue lies in this judicial district under 5 U.S.C. § 552(a)(4)(B), 552a(g)(5), and 28 U.S.C. §1391.

Parties

4. Plaintiff, Jon R. Rogers, is an adult citizen of the United States and the State of Ohio, residing at 12 Cara Place, Steubenville, Jefferson County, Ohio 43953.

5. Defendant, the Internal Revenue Service (“IRS”), is an agency of the U.S. Department of Justice, which is a department of the Executive Branch of the United States Government, and is headquartered at 1111 Constitution Avenue, N.W., Washington, D.C. 20224. Defendant has possession, custody, and control of the records which it wrongfully withheld from plaintiff.

Statement of Facts

6. On November 29, 2012, plaintiff submitted a FOIA and Privacy Act request (“plaintiff’s records request”) to defendant by both First-Class Mail and Certified Mail. Plaintiff’s records request is attached hereto as **Exhibit 1**. Plaintiff’s records request sought production of 71 separately numbered categories of records.

7. By letter dated December 12, 2012, defendant acknowledged receipt of plaintiff’s records request, but stated that plaintiff’s records request did not mention specific years, and asked that plaintiff perfect his request by furnishing such information. *See* **Exhibit 2**.

8. Plaintiff supplemented and perfected his records request in his letter to defendant dated December 26, 2012, indicating the specific years for which he sought the requested records. *See* **Exhibit 3**.

9. By letter dated February 6, 2013, defendant acknowledged receipt of plaintiff’s perfected records request and stated that the statutory response date of February 8, 2013 had been extended to February 25, 2013. *See* **Exhibit 4**. By letter dated February 22, 2013, defendant

notified plaintiff that additional time was needed to search for and collect the requested records, and that defendant would contact plaintiff by March 8, 2013, if defendant were unable to complete plaintiff's request by that date. See Exhibit 5.

10. By letter dated February 28, 2013 ("the IRS administrative denial letter"), defendant denied plaintiff's records request *in toto*. See Exhibit 6. In its administrative denial letter, defendant stated that there were approximately 500,000 pages of records responsive to records request items 11 and 48, and that such records are exempt from disclosure under FOIA exemption (b)(7)(A). The IRS administrative denial letter also stated that records responsive to records request item 41 are exempt from disclosure under FOIA exemption (b)(6), although the number of pages of responsive records was not indicated. With respect to records request items 1-10, 12-40, 42-47, and 49-71, the IRS administrative denial letter stated that "the responsive records may be under the other named agencies' jurisdiction and they will be responding to [plaintiff's] request," and that "[a]ny further inquiries should be directed to those agencies." See Exhibit 6.

11. By letter to defendant dated March 25, 2013, plaintiff administratively appealed the denial of his records request, submitting that the IRS administrative denial letter was in error, stating the reasons for which the IRS administrative denial letter was in error, and again requesting that the IRS produce the requested records. See Exhibit 7.

12. By letter dated April 3, 2013, defendant notified plaintiff that it might not be able to complete consideration of plaintiff's administrative appeal within 20 business days after receipt, that it might take "several weeks to retrieve the pertinent documents from the Disclosure

Office,” and that it would then complete its review and notify plaintiff of the decision on his appeal. See **Exhibit 8**.

13. By letter dated April 9, 2013 (“the IRS appeal denial letter”), defendant denied plaintiff’s administrative appeal. See **Exhibit 9**. The IRS appeal denial letter did not respond to any of the arguments made by plaintiff in his administrative appeal letter, and essentially repeated the grounds for non-disclosure set forth in the IRS administrative denial letter.

14. As of the date of this Complaint, defendant has failed to produce a single record that is responsive to plaintiff’s records request, and, except for its arguments claiming that the records responsive to records request items 11, 41, and 48 are exempt from disclosure, defendant has failed to assert that any responsive record is exempt from production or disclosure.

15. Defendant has possession and control of records responsive to plaintiff’s records request, which are not exempt from disclosure under either FOIA or the Privacy Act, yet defendant has failed and refused to produce them.

16. Plaintiff has exhausted all administrative remedies with respect to his records request.

COUNT 1
(Violation of FOIA, 5 U.S.C. § 552)

17. Plaintiff incorporates herein and realleges paragraphs 1 through 16 above as if fully stated herein.

18. Defendant possesses non-exempt records that are responsive to plaintiff’s FOIA records request.

19. Pursuant to 5 U.S.C. § 552, plaintiff is entitled to the records requested, and defendant has no valid legal basis for its refusal to respond to plaintiff's request and provide such records to plaintiff.

20. Defendant has wrongfully withheld the requested records from plaintiff.

COUNT 2
(Violation of the Privacy Act, 5 U.S.C. § 552a)

21. Plaintiff incorporates herein and realleges paragraphs 1 through 16 above as if fully stated herein.

22. Defendant possesses non-exempt records that are responsive to plaintiff's Privacy Act records request.

23. Pursuant to 5 U.S.C. § 552a(d)(1), plaintiff is entitled to the records requested, and defendant has no valid legal basis for its refusal to respond to plaintiff's request and provide such records to plaintiff.

24. Defendant has wrongfully withheld the requested records from plaintiff.

PRAYER FOR RELIEF

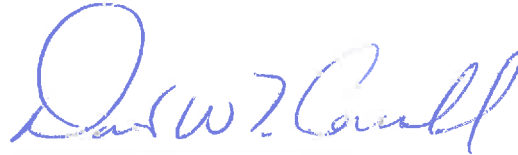
WHEREFORE, plaintiff prays that this Court:

- (1) enjoin defendant from continuing to withhold non-exempt records responsive to plaintiff's FOIA request and plaintiff's Privacy Act request;
- (2) order defendant to complete its search for all records responsive to plaintiff's FOIA request and plaintiff's Privacy Act request;
- (3) order defendant to produce all non-exempt records responsive to plaintiff's FOIA and Privacy Act requests, and to produce a *Vaughn* index of any responsive records withheld under a claim of exemption;

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- (4) award plaintiff his reasonable attorney's fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E) and 5 U.S.C. § 552a(g)(3)(B); and
- (5) grant plaintiff such other and further relief as the Court deems just and proper.

Dated: August 9, 2013



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