

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

GRANT F. SMITH, PRO SE,	)	
	)	Case No. 1:19-cv-02516
Plaintiff,	)	
	)	
v.	)	
	)	
INTERNAL REVENUE SERVICE,	)	
	)	
Defendant.	)	
_____	)	

**THIRD JOINT STATUS REPORT**

Pursuant to the Court’s January 29, 2020 minute order, the parties file this Third Joint Status Report.

***Background***

This case concerns a Freedom of Information Act (“FOIA”) request seeking from the Internal Revenue Service (IRS) unpublished policy guidance used by the Tax Exempt & Government Entities (TEGE) Division of the IRS and internal undisclosed IRS studies or findings on policy concerning U.S. charities using tax-exempt funds to fund Israeli settlements. (Dkt. 1, Compl, Ex. E., June 27, 2019 letter.)

***Status***

Since the last joint status report, the IRS has completed the additional searches described in the second joint status report in response to the plaintiff’s request and reviewed all records generated as a result of those searches. (Dkt. 8, Second Joint Status Report.) The IRS did not identify any documents responsive to the plaintiff’s request in the course of conducting additional searches and the resulting review.

The IRS is prepared to proceed with summary judgment to prove the adequacy of its searches.

Because Mr. Smith does not agree to proceed with summary judgment and instead asks the Court to compel the IRS to prepare and produce a *Vaughn* index, the parties set forth their respective statements.

***IRS Proposed Summary Judgment Briefing Schedule***

The IRS attorneys who coordinated the additional searches and review will be preparing the declaration(s) in support of the summary judgment motion. The coordinating attorney-declarants are also currently assisting the IRS with important guidance in connection with the recently enacted Coronavirus Aid, Relief, and Economic Security (CARES) Act and related disaster relief. In light of the substantial time commitment required for these essential and extremely time sensitive tasks, the IRS proposes the following briefing schedule.

1. **August 14, 2020**: The IRS's summary judgment motion due;
2. **September 14, 2020**: The plaintiff's opposition to the IRS's motion and cross-motion for summary judgment, if any;
3. **October 7, 2020**: The IRS's reply due, if the plaintiff does not file a cross-motion;
4. **October 14, 2020**: If the plaintiff files a cross-motion, the IRS shall file one brief in reply to the plaintiff's opposition to its motion and in opposition to the plaintiff's cross-motion; and
5. **October 28, 2020**: The plaintiff's reply to the IRS's opposition to his cross-motion is due.

Because the IRS's search did not locate records in response to the plaintiff's request, the IRS is not withholding any records or portions of records. Therefore, it is the position of the IRS that a *Vaughn* Index is not feasible, and therefore, inappropriate.

*The Plaintiff's Statement*

The plaintiff does not consent to this proposed filing schedule finding it to be premature. Plaintiff believes, given the importance of the issue in question and the agency's ongoing deliberations about it, the IRS may be withholding material under narrow or lawyerly interpretations of what constitutes "responsiveness." He therefore requests the production of a Vaughn index by June 1, and consideration of the issue of summary judgement schedules 30 days later.

Plaintiff contends that in similar situations, the exercise of being compelled to produce a Vaughan index and submit it to Plaintiffs during FOIA efforts overseen by a court, that untenable withholding positions contrived under tenuous legal theories, or circumscribed search patterns that seemed at first to be solid, crumbled and that responsive documents were eventually produced.

DATED: April 21, 2020.



---

Grant F. Smith  
IRmep,  
PO Box 32041,  
Washington, DC 20007  
(202) 342-7325  
[gsmith@IRmep.org](mailto:gsmith@IRmep.org)  
*Pro Se Plaintiff*

JESSIE K. LIU  
United States Attorney

RICHARD E. ZUCKERMAN  
Principal Deputy Assistant Attorney General

/s/ Olga L. Tobin  
OLGA L. TOBIN  
Trial Attorney  
Department of Justice Tax Division  
P.O. Box 227  
Ben Franklin Station  
Washington, D.C. 20044  
Telephone: (202) 307-6322  
Fax: (202) 514-6866  
E-mail: [olga.l.tobin@usdoj.gov](mailto:olga.l.tobin@usdoj.gov)  
*Counsel for the United States*

**CERTIFICATE OF SERVICE**

I, Olga Lysenko Tobin, hereby certify under penalty of perjury that I caused the Third Joint Status Report to be served on April 21, 2020 via ECF on the following:

Grant F. Smith  
[gsmith@IRmep.org](mailto:gsmith@IRmep.org)  
*Pro Se Plaintiff*

/s/ Olga L. Tobin  
OLGA L. TOBIN