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Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GRANT F. SMITH, PRO SE

vs.

Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Plaintiff,

Defendants

) Case: 1:19-cv-02516
Assigned To : Contreras, Rudolph
Assign. Date : 8/20/2019
Description: FOIA/Privacy Act (I-DECK)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. In this lawsuit, Plaintiff seeks injunctive relief to compel defendant Internal Revenue Service (the “Defendant”) to immediately release records related to the ongoing, long term laundering of tax-exempt donations by American donors through charitable organizations to which the IRS has issued determination letters, into illegal Israeli settlements, thereby directly and indirectly engaging in ethnic cleansing, illegal land seizures, and other expeditions against a friendly nation in violation of 18 U.S. Code § 960 and other applicable statutes and treaties.

2. Plaintiff is bringing this action because, to date, Defendant has not issued responses on Plaintiff’s requests within the statutorily-prescribed time limit nor disclosed any responsive records.

JURISDICTION AND VENUE

3. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331. Venue is proper in this district pursuant to 28 U.S.C. § 1391 (e).

PARTIES

4. Plaintiff, Grant F. Smith, is a public interest researcher domiciled in the District of Columbia and founder of the Institute for Research: Middle Eastern Policy, Inc. (IRmep). Smith's FOIA, mandatory declassification review (MDR) and Interagency Security Classification Appeals Panel (ISCAP) generated releases, research and analysis have been published in *The Washington Report on Middle East Affairs*, *Antiwar.com*, *the Wall Street Journal*, *the Washington Examiner*, *Corporate Crime Reporter*, *Mint Press News*, *LobeLog*, *the Bulletin of the Atomic Scientists*, *The Nation Magazine*, *The Weekly Standard*, *Military.com*, *the Jewish Daily Forward*, *Business Insider*, *the Jerusalem Post*, *Israel National News* and *Courthouse News Service*. They have been carried on broadcast outlets such as C-SPAN, NPR, other public and commercial U.S. radio stations, foreign broadcasts transmitted by VOA, as well as foreign news agencies like the BBC, Radio France and RT.

5. Defendant IRS is an agency of the United States Government within the meaning of 5 U.S.C. § 552(f)(1) and has possession and control over the requested records.

STATEMENT OF FACTS

6. The IRS is publicly known to have grappled with how to address the transfer of U.S. tax-exempt charitable funding into overseas activities that have no apparent legality, charitable purpose, or social welfare benefit. The very large amounts involved with regards to illegal Israeli settlements have generated mainstream news coverage, lawsuits, numerous

requests for clarity to the IRS, confrontations with IRS administrators on television and radio and other formal complaints:

7. In the 1982 lawsuit *Khalaf v. Regan* a group of individuals challenged the tax exempt status of organizations supporting Israeli settlement efforts in the West Bank.

8. In the year 2005 *USA Today* reported that \$50 billion had been raised, much of it in the United States in tax-exempt charitable contributions, and transferred overseas to build illegal settlements in the Israeli-occupied West Bank. Illegal settlement building involves the forced displacement of indigenous populations and the seizure of their lands and other property in violation of U.S. law, international law and U.S. policy.

9. On January 11, 2010 IRS Commissioner Douglas Shulman was asked on National Public Radio what the IRS policy on settlements was in reference to the \$50 billion of U.S. charitable contributions flowing into settlements.¹ Shulman dodged the question.

10. Eric Goldstein identified New York based charities as involved in funding illegal settlement activities and claimed that they should be discontinued in his 2015 report, “Can I Take a Tax-Deduction on My donation to Israeli Settlements in Palestine?”²

11. In 2016 the charitable organization J Street called on the U.S. Treasury for a review of tax exempt status of non-governmental organizations that “channeled millions” to support settlers. Details listed by J Street mentioned the funding was being used for “the demolition of Palestinian houses – and in some cases entire communities.”³

12. In the 2017 lawsuit *Abulhawa V. United States Department of The Treasury* a group

¹ http://www.irmep.org/mp3/01112010dr_show.mp3

² <https://foreignpolicy.com/2015/01/29/illegal-tax-deduction-charity-israel-settlements-palestine-irs/>

³ <https://www.timesofisrael.com/j-street-calls-for-tax-review-for-us-pro-settlement-organizations/>

of plaintiffs sued the Treasury for injuries suffered over their expulsion by Israeli settlers benefitting from tax exempt charitable support. The Court of Appeals acknowledged Plaintiffs had suffered harm, but no clarity as to the legality of charitable funding was issued.

13. In the 2/1/2018 settlement of the lawsuit *Z Street v. IRS*, the Department of Justice stated that:

"In email correspondence produced in discovery, a Treasury Department employee stationed in Israel asked the IRS in spring 2009, at the request of a State Department employee, whether organizations' tax-exempt status could be revoked for funding Israeli settlements in the West Bank. The Treasury Department employee asked whether such activity could be deemed illegal or in violation of established public policy based on executive branch policy as stated in a 2005 Congressional Research Service report that no U.S. assistance to Israel can be used in the occupied territories because the United States does not want to foster the appearance of endorsing Israel's annexation of the territories without negotiations. The Treasury Department employee further asked whether this would be enough to revoke the tax-exempt status of organizations that provide funds to Israeli occupied territories.'

As reflected in email correspondence produced in discovery, a number of IRS employees evaluated the questions raised by the Treasury Department employee in an effort to respond to the inquiry. An IRS employee ultimately referred the Treasury Department employee to the IRS hotline for reporting violations of the Internal Revenue laws."

14. On August 1, 2019 Plaintiff publicly asked on C-SPAN's Washington Journal IRS National Taxpayer Advocate Nina Olson to explain official IRS policy toward funds laundered through tax exempt charities into illegal settlements. Olson dodged and did not respond substantively to the question.⁴

15. In the present FOIA, Plaintiff consulted all private letter rulings, TAMs, the Internal Revenue Manual IRM, but has been unable to find any definitive information about IRS policy on U.S. IRS-recognized tax exempt organizations either formed to fund illegal settlements or formed with another social welfare benefit that are now or in the past involved in such activities, directly or indirectly.

16. The question of the official IRS position on illegal settlement money laundering remains pressing and unresolved. The United Nations claims settlement expansion is setting the stage for the annexation of the West Bank as average American taxpayers wonder whether they are making up for a multi-billion dollar “tax gap” imposed upon them because the IRS is not upholding applicable laws and regulations.

PLAINTIFF'S CURRENT FOIA REQUESTS AND AGENCY RESPONSES

17. On March 5, 2019, Plaintiff submitted a FOIA request to Defendants seeking disclosure of “IRS Policy and responses to inbound complaints about illegal settlement funding with U.S. tax-exempt charitable contributions.”

18. On March 27, 2019 Defendant issued a “final response” to Plaintiff’s March 5 FOIA request which it numbered F19071-0036 claiming it did not “reasonably describe” the

⁴ “IRS dodges questions on illegal settlements” C-SPAN’s Washington Journal, July 30, 2019
<https://www.c-span.org/video/?c4813214/irs-dodges-questions-illegal-settlements>

records sought, or provide sufficient detail for the IRS to avoid “unreasonable burden upon the IRS.”

19. On April 11, 2019, Plaintiff appealed the IRS decision to close the FOIA “without properly conducting a search and release of responsive records.”

20. On June 13, 2019, the IRS Appeals Office again claimed that “A determination by the disclosure office that a request is deficient in any respect is not a denial of access. Therefore, under the Departmental regulations, you are not entitled to administratively appeal this response. “

21. Although Plaintiff did not, and does not, believe his FOIA F19071-0036 was deficient, after telephone consultation with the IRS FOIA Public Liaison, he filed another FOIA request for “TEGE records on IRS policy toward illegal settlement funding from U.S. nonprofit tax exempt organizations.” Plaintiff stated it was related to and a refinement of F19071-0036. The IRS received Plaintiff’s FOIA on July 1, 2019⁵. To date Defendant IRS has not responded to Plaintiff’s request as required by FOIA and has not disclosed any responsive records.

22. Plaintiff requested fee waivers for all of the requests on the grounds that Plaintiff is a “representative of the news media” within the meaning of FOIA and that disclosure of the requested records is in the public interest because it is “likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. §§ 552(a)(4)(A)(ii)(II); 552(a)(4)(A)(iii). Plaintiff did offer up to \$50 for document reproduction.

⁵ US Priority Mail 9405511899561461038557

23. Plaintiff has constructively exhausted administrative remedies on account of Defendants' failure to comply with the 20-day time limit for making a determination on Plaintiff's FOIA requests as required by FOIA.

PREVIOUS TREASURY DEPARTMENT AND IRS FOIAs

24. Plaintiff does not expect the Department of Treasury in general or the IRS in particular will be responsive to this FOIA request absent the oversight of a district court. Plaintiff's past experience is that the Department of Treasury and IRS will unlawfully withhold releasable material or engage in claims which strain credulity in order to avoid releasing material that would publicly reveal the functions of government.

25. For example, on September 27, 2007 Plaintiff filed a FOIA to the Department of Treasury to obtain information about what actions were being taken to combat "U.S. charitable money laundering to the West Bank." The Department of Treasury forwarded the request to the Financial Crimes Enforcement Network. (Exhibit H). On December 10, 2007 the Financial Crimes Enforcement Network denied the FOIA asserting that the Bank Secrecy Act made all relevant information exempt from disclosure. (Exhibit I).

26 On December 4, 2007 Plaintiff filed a request with the Internal Revenue Service seeking information about why the IRS was allowing charitable funding to flow into illegal West Bank settlements. The IRS denied the request stating "Internal Revenue Service Code includes taxpayer privacy provisions enacted by the Congress to protect the privacy of returns and tax return information of all taxpayers. Therefore, I cannot comment on what action, if any, we may take regarding the information you provided." (Exhibit J)

27. On November 11, 2017 Plaintiff requested copies of the determination letter issued by the IRS and the original request filed on IRS Form 21024 with supporting documents by The Israel Project, a tax exempt charity that long functioned as a public relations front for the Israeli government in the U.S. and raised tens of millions of dollars in the U.S. Rather than properly respond with the documents, which law requires be released to any requester, the IRS responded that “We’re unable to locate the documents you requested.” (Exhibit K).

CAUSES OF ACTION

Violation of the Freedom of Information Act for Improper

Withholding of Agency Records

1. Plaintiff repeats, re-alleges, and incorporates the foregoing paragraphs as if set forth in full.
2. Defendant has improperly withheld the requested records from Plaintiff by failing to comply with the statutory time limit for rendering a determination on Plaintiff's FOIA requests in violation of 5 U.S.C. § 552(a)(6)(A)(i) and Defendants' corresponding regulations.
3. Defendant's failure to make reasonable efforts to search for records responsive to Plaintiff's requests violates FOIA, 5 U.S.C. § 552(a)(3)(C), and Defendant's corresponding regulations.
4. Defendants' failure to promptly disclose records responsive to Plaintiff's requests violates FOIA, 5 U.S.C. § 552(a)(3)(A), and Defendants' corresponding regulations.

5. Defendant DOD's failure to grant Plaintiff's request for a waiver of search fees violates FOIA, 5 U.S.C. § 552(a)(4)(A)(ii)(II), (iii) and Defendant's corresponding regulations.

7. Plaintiff has exhausted all applicable administrative remedies.

8. Plaintiff is entitled to injunctive relief with respect to the prompt disclosure of the requested documents.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Expedite its consideration of this action pursuant to 28 U.S.C. § 1657(a);
- B. Order Defendants immediately to conduct a thorough search for records responsive to Plaintiff's requests;
- C. Order Defendants immediately to process any responsive records for disclosure and produce such records to Plaintiff;
- D. Enjoin Defendants from charging Plaintiff search and review fees relating to the requests; nonexempt records responsive to Plaintiff's FOIA request.
- E. Award Plaintiff its costs incurred in this action; and
- F. Grant such other relief as the Court may deem just and proper.

Dated: August 20, 2019

Washington, DC



Grant F. Smith
IRmep
P.O. Box 32041
Washington, D.C. 20007
202-342-7325

info@IRmep.org

For process service:
Grant F. Smith c/o IRmep
1100 H St. NW Suite 840
Washington, D.C. 20005

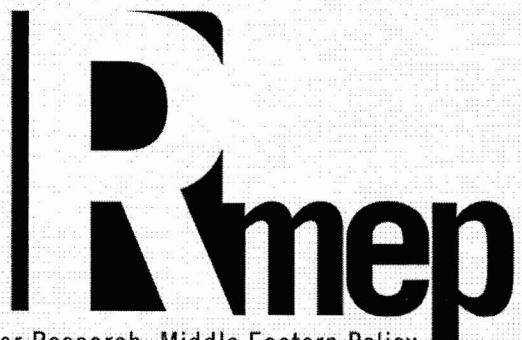
Table of Exhibits

Exhibit A	3/5/2019 Plaintiff Freedom of Information Act Request
Exhibit B	3/27/2018 Defendant IRS “Final Response”
Exhibit C	4/11/2019 Plaintiff Appeal
Exhibit D	06/13/2019 IRS denies Plaintiff’s right to appeal
Exhibit E	06/27/2019 Plaintiff “related and refinement” of 3/5/2019 FOIA after discussion with IRS FOIA Public Liaison
Exhibit F	06/26/2019 Priority Mail 2-Day shipping label
Exhibit G	7/1/2019 United States Postal System delivery confirmation
Exhibit H	10/26/2007 Department of Treasury forwards Plaintiff FOIA to Financial Crimes Enforcement Network
Exhibit I	12/10/2007 Financial Crimes Enforcement Network response
Exhibit J	1/24/2008 IRS response to request for information on tax deductible funds laundered into illegal settlements.
Exhibit K	12/14/2017 IRS response to request for information about the application for tax exempt status filed by “The Israel Project” and IRS determination letter.

Grant F. Smith

[REDACTED]
[REDACTED]
Washington, DC 20007

EXHIBIT A PAGE 1



March 5, 2019

Internal Revenue Service
Central Processing Unit
Stop 211 PO Box 621506
Atlanta, GA 30362-3006

RE: IRS Policy and responses to inbound complaints about illegal settlement funding with U.S. tax-exempt charitable contributions.

Dear Internal Revenue Service,

This is a request under the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA").

USA Today reported in 2005 that \$50 billion had been raised in the United States in tax-exempt charitable contributions and transferred overseas to build illegal settlements in the Israeli-occupied West Bank.

Illegal settlement building involves the forced displacement of indigenous populations and the seizure of their lands and other property in violation of international law and stated U.S. policy.

The IRS is known to have grappled with how to address the undeniable transfer of U.S. tax-exempt charitable funding into activities that have no apparent legality or social welfare benefit.

In the 2/1/2018 settlement of *Z Street v. IRS*¹ litigation (pages 2-3), the Department of Justice stated that:

"In email correspondence produced in discovery, a Treasury Department employee stationed in Israel asked the IRS in spring 2009, at the request of a State Department employee, whether organizations' tax-exempt status could be revoked for funding Israeli settlements in the West Bank. The Treasury Department employee asked whether such activity could be deemed illegal or in violation of established public policy based on executive branch policy as stated in a 2005 Congressional Research Service report that no U.S. assistance to Israel can be used in the occupied territories because the United States does not want to foster the appearance of endorsing Israel's annexation of the territories without negotiations. The Treasury Department employee further asked whether this would be enough to revoke the tax-exempt status of organizations that provide funds to "Israeli occupied territories."

As reflected in email correspondence produced in discovery, a number of IRS employees evaluated the questions raised by the Treasury Department employee in an effort to respond to the inquiry. An IRS employee ultimately referred the Treasury Department employee to the IRS hotline for reporting violations of the Internal Revenue laws."

¹ <https://www.justice.gov/opa/press-release/file/1030516/download>

I request that a copy of the following documents [or documents containing the following information] be provided to me. I do not wish to inspect the documents first.

1. All cross-referenced information held by the IRS including private letter rulings, internal policy documents and interpretation of IRS regulations on policy toward direct and indirect tax-deductible flows of charitable U.S. contributions into illegal Israeli settlements;
2. IRS policy on new and existing tax-exempt charitable organizations that fund illegal settlement activity;
3. Logs of inbound complaints, such as the US Treasury Department complaint referenced in the settlement, pertaining to illegal settlement funding and how the IRS addressed the complaints;
4. Any other IRS policy document pertaining to illegal settlement funding policy from the year 2001 to the present.

In order to help to determine my status to assess fees, you should know that I am a representative of the news media reporting for the *Washington Report on Middle East Affairs* magazine and syndicated analyst reporting for the news website Antiwar.com. (for more than one hundred published articles, see <https://original.antiwar.com/author/smith-grant/>) This request is made as part of news gathering and not for a commercial use.

The requester, Grant F. Smith, is a public interest researcher domiciled in the District of Columbia, who has research and analysis published in *The Washington Report on Middle East Affairs*, *Antiwar.com*, *the Wall Street Journal*, *the Washington Examiner*, *Corporate Crime Reporter*, *Mint Press News*, *LobeLog*, *Mondoweiss*, *Dissident Voice*, *the Bulletin of the Atomic Scientists*, *the Minneapolis Star Tribune*, *The Nation Magazine*, *The Weekly Standard*, *Military.com*, *the Jewish Daily Forward*, *Business Insider*, *the Jerusalem Post*, *Israel National News* and *Courthouse News Service*.

Smith's analysis has also been carried on broadcast outlets such as C-SPAN, NPR, other public and commercial U.S. radio stations, foreign broadcasts transmitted by VOA, as well as foreign news agencies like the BBC and Radio France.

This request is made as part of newsgathering and is not for a commercial use.

I therefore request a waiver of all search fees for this request. Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in my commercial interest.

I am willing to pay reproduction costs for this request up to a maximum of \$50. If you estimate that the reproduction fees will exceed this limit, please inform me first.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Grant F. Smith".

Grant F. Smith



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

March 27, 2019

Grant Smith
[REDACTED]

Washington, DC 20007

Dear Grant Smith:

This is final response to your Freedom of Information Act (FOIA) request dated March 5, 2019 that we received on March 11, 2019.

You asked for:

1. All cross-referenced information held by the IRS including private letter rulings, internal policy documents and interpretation of IRS regulations on policy toward direct and indirect tax-deductible flows of charitable U.S. contributions into illegal Israeli settlements;
2. IRS policy on new and existing tax-exempt charitable organizations that fund illegal settlement activity;
3. Logs of inbound complaints, such as the US Treasury Department complaint referenced in the settlement, pertaining to illegal settlement funding and how the IRS addressed the complaints;
4. Any other IRS policy document pertaining to illegal settlement funding policy from the year 2001 to the present.

Unfortunately, we are unable to process your request as it does not meet the requirements of the FOIA or Internal Revenue Code (IRC) § 6103.

The FOIA requires that requests (1) "reasonably describe" the records sought and (2) be made in accordance with published agency rules (5 U.S.C § 552(a)(3)(A)). IRS regulations at Treas. Reg. § 601.702(c)(5)(i), require that the request describe the documents in sufficient detail to enable us to locate the records "without placing an unreasonable burden upon the IRS."

Moreover, the scope of your request appears to extend to documents, to the extent that any exist, consist of, or contain the return information of a third party. Please be advised that such records, to the extent that they exist, would be confidential and may not be disclosed unless specifically authorized by law.

IRC § 6103 prohibits the release of returns and return information unless disclosure is authorized by Title 26. The Service's FOIA regulations specify that, in order to be processed, all requests that involve the disclosure of records that may be limited by statute or regulation, including requests for documents that are protected by IRC § 6103, must establish the right of the person making the request to the disclosure of the records in question. See 26 C.F.R. § 601.702(c)(4)(E).

Specifically, when a person is requesting records pertaining to other persons or businesses, "the requester shall furnish a properly executed power of attorney, Privacy Act consent, or tax information authorization, as appropriate." See 26 C.F.R. § 601.702(c)(5)(iii)(C). Without such authorization, the request is incomplete and cannot be processed. See 26 C.F.R. § 601.702(c)(4). Only fully compliant requests can be processed.

Also, private letter rulings, other written determinations letters and internal policies are available to the public at IRS.gov.

We encourage you to consider revising your request to comply with the requirements detailed above. Please send us the indicated information within 35 days, along with a copy of this letter and your original request with the information requested. Otherwise, we will be forced to close your request without further action. The 20 days we are allowed to comply with your request will begin when we receive the requested information.

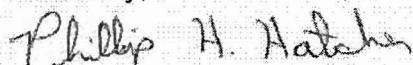
If you would like to discuss your request, you may contact me, the FOIA Public Liaison, Phillip Hatcher at:

400 West Bay Street
M/S 4030
Jacksonville, FL 32202
904-661-3443

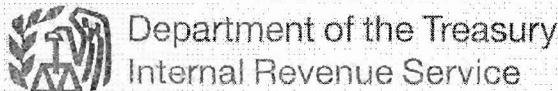
The FOIA Public Liaison responds to FOIA and Privacy Act requests for copies of documents maintained by the IRS. There is no provision in either Act to resolve tax, collection, or processing issues and our staff is not trained to answer questions regarding those issues. If you need assistance with tax related issues you may call the IRS toll free number at 1-800-829-1040.

If you have any other questions please call Disclosure Tax Law Specialist Bernard W McDade ID # 101749352, at (267) 941-6628 or write to: Internal Revenue Service Centralized Processing Unit – Stop 93A, PO Box 621506, Atlanta, GA 30362. Please refer to case number F19071-0036.

Sincerely,



Phillip H Hatcher
Disclosure Manager
Disclosure Office 5



Department of the Treasury Internal Revenue Service

Notice 393

(Rev. September 2016)

Information on an IRS Determination to Withhold Records Exempt From The Freedom of Information Act – 5 U.S.C. 552

Appeal Rights

You may file an appeal with the Internal Revenue Service (IRS) within 90 days after we (1) deny you access to a record in whole or in part; (2) have made an adverse determination as to your category as a requester; (3) deny your request for a fee waiver or reduction; or (4) have advised you that no records responsive to your request exist. You may file an appeal within 10 days when a request for expedited processing has been denied.

Your appeal must be in writing, must be signed by you, and must contain:

Your name and address,

- Description of the requested records,
- Date of the request (and a copy, if possible),
- Identity of the office and contact on the response letter, and
- Date of the letter denying the request (and a copy, if possible)

Mail your appeal to:

IRS Appeals

Attention: FOIA Appeals
M/Stop 55202
5045 E. Butler Ave.
Fresno, California 93727-5136

Judicial Review

If we deny your appeal, or do not address an issue raised in your appeal within 20 days (excluding Saturdays, Sundays, or legal public holidays) after the date we receive your appeal, you may file a complaint in United States District Court in the district in which (1) you reside; (2) your principal place of business is located; (3) the records are located; or (4) the District of Columbia. A complaint may be filed within 10 days (excluding Saturdays, Sundays, or legal public holidays) after the date we receive your appeal if your appeal is from an adverse determination of a request for expedited processing. If you choose to file suit before receipt of a final determination by the Appeals office, the administrative appeals process may cease.

The rule for effecting service of judicial process upon the Internal Revenue Service is set forth in Federal Rule of

EXHIBIT B - PAGE 3

Civil Procedure 4(i). In addition to service upon the United States, as set forth in Rule 4(i)(1), service must be made upon the Internal Revenue Service by registered or certified mail as set forth in Rule 4(i)(2)(A).

The address of the Internal Revenue Service is: Internal Revenue Service, Attention CC:PA, 1111 Constitution Avenue, N.W., Washington, D.C. 20224.

Exemptions

The Freedom of Information Act, 5 U.S.C. 552, does not apply to matters that are:

(b)(1) • specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified under such executive order;

(b)(2) • related solely to the internal personnel rules and practices of an agency;

(b)(3) • specifically exempted from disclosure by statute (other than section 552b of this title), provided that the 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.

Note: Internal Revenue Code sections 6103 and 6105 are statutes which qualify for exemption 3 treatment. Section 6103 protects the confidentiality of tax returns and information pertaining to a taxpayer collected by the IRS. Section 6105 protects information obtained from a foreign country under a tax treaty.

(b)(4) • trade secrets and commercial or financial information obtained from a person and privileged or confidential,

(b)(5) • inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency,

(b)(6) • personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy,

(b)(7) • records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(A) could reasonably be expected to interfere with enforcement proceedings,

(B) would deprive a person of a right to a fair trial or an impartial adjudication,

(C) could reasonably be expected to constitute an unwarranted invasion of personal privacy,

(D) could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,

(E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

(F) could reasonably be expected to endanger the life or physical safety of any individual.

(b)(8) • contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions, or

(b)(9) • geological and geophysical information and data, including maps, concerning wells.

Grant F. Smith**Washington, DC 20007**

Thursday, April 11, 2019



IRS Appeals
Attention: FOIA Appeals
M/Stop 55202
5045 E. Butler Ave
Fresno, CA 93727-5136

FOIA Appeal

Dear IRS Appeals,

This is an appeal of the attached Freedom of Information Act request (Attachment 1) which the IRS closed without properly conducting a search and release of responsive documents.

The IRS claims that the records sought under the FOIA request have not been "reasonably described." We have reviewed the statutes and regulations cited and firmly believe that upon review by a district court, the records will be held to have been reasonably described.

In refusing to administratively process the request, the IRS incorrectly claims we are requesting the returns of a third party. We believe that, upon review of a district court, the records requested will be found to be soliciting IRS policy, rather than records pertaining to a single third party return. We also note that even if a particular return is referenced, that by law all IRS form 990 returns are public records and not protected from disclosure, with the exception of individual biographical donor information on Schedule B, Schedule of Contributors (though not the individual contribution amounts).

The IRS in its denial speculates that there may be publicly available private letter rulings and written determination letters and internal policies available to the public related to billions of dollars in tax-exempt illegal settlement funding from tax-exempt U.S. charities. However, there are no such publicly available documents.

I believe, based on direct personal experience, that IRS Commissioner policy may be to obfuscate, ignore and dissemble when asked about the legality and social welfare benefit of U.S. tax exempt contributions that are used to ethnically cleanse the native population from territories occupied by Israel. On January 11, 2010 I asked IRS commissioner Douglas Shulman the same question inherent in this FOIA request on National Public Radio, but he refused to respond to the question in a responsive, accurate and bona fide fashion. Below is a transcript:

Susan Paige, USA Today: Welcome back, I'm Susan Paige of USA Today sitting in for Diane Rehm. We're talking with Doug Shulman. He's the Commissioner of the IRS--the 47th Commissioner of the IRS--the IRS collects \$2.4 trillion in tax revenue every year. It has 100,000 employees.

Grant F. Smith: I'd really like to take issue with this idea that IRS goes after powerful violators. In 2005 USA Today quoted vice premier Shimon Peres estimating \$50 billion had been raised since 1977--in the US--and used to build illegal settlements in Israeli occupied West Bank

territories. And many US charities like the One Israel Fund, American Friends of [the College of] Judea and Samaria, Christian Friends of Israel and even Jack Abramoff openly and illegally raise tax deductible funds in the US for illegal settlements. But while fellow Treasury officials like Stewart Levey and other political appointees supported by AIPAC [the American Israel Public Affairs Committee] aggressively go after many Muslim charities suspected of any criminal ties, none of these charities have ever lost a tax exemption and the IRS just doesn't go after any of these violators in spite of Obama administration policy against settlements.

Susan Paige: Alright Grant, thank you for your call. What about Grant's question in terms of 'does the IRS go after charities that get tax deductible contributions if their actions violate US policy?'

Doug Shulman, IRS: One of the interesting things about the agency, Susan, is that we actually reach into every nook and cranny of the country, so we focus on individuals, serving them and have an enforcement program, and have an enforcement program servicing business. We also have a tax exempt and government entities section of the IRS that focuses on charities and other nonprofits. They get the benefit of tax exemption, making sure that they're complying with the tax rules. We've, over the last ten years, beefed up that area, focused on everything from small nonprofits, international charities, hospitals, as well as education institutions, and we run a pretty robust program to make sure people are complying with the tax laws.

Susan Paige, USA Today: Grant said that Muslim charities have been subjected to special scrutiny, is that the case?

Doug Shulman, IRS: Oh, I don't believe so. We are very focused on running a nonpartisan, nonpolitical agency. There are only two people who are political appointments in the IRS, myself and our chief counsel. The rest of the 100,000 you mentioned are career civil servants, all of us are tasked with administering the laws that are on the books in an even handed manner, and I think our track record shows that's what we do.

LATER IN THE INTERVIEW

Susan Paige, USA Today: Now we've also had a caller, Basim from Cincinnati saying that I failed to get an answer to Grant's question about if a charity that accepts tax deductible contributions--is doing something that's illegal--do you go after them? The point that Grant was making was charities that may fund West Bank settlements. What is the case with that? Is that illegal, and would you go after a charity that was helping to fund that activity?

Doug Shulman: I don't know the specifics of the case that they brought up. But if I wasn't clear, if a charity is breaking the tax law, is engaged in activities that they are not supposed to be engaged in, we certainly will go after them. Every year we pull 501(c)(3) charity status from a number of charities. We've got thousands of audits going on regarding charities, and so we don't hesitate to administer the tax laws and make sure that people are following the rules."

Audio of this interview is available at: http://www.irmep.org/mp3/01112010dr_show.mp3

In the nearly ten years since Shulman publicly claimed the IRS goes after charities breaking the law, none of the charities known to fund illegal settlements has lost tax exempt status. Apparently, some policy of non-prosecution or special consideration of illegal settlements tax exempt charity finance is in place. If official IRS Commissioner policy is to obfuscate, ignore and dissemble on all issues regarding illegal settlements, we also believe there must be written policy guidance for that, and request immediate release of the policy guidance.

We also, through observation, believe overall IRS policy may be to purposefully debilitate its own ability to oversee U.S. tax-exempt contributions that are used to ethnically cleanse the native population from territories occupied by Israel. That is because in 2009 the IRS changed its policy and no longer requires U.S. charities to report overseas recipient organizations.¹ The IRS also does not object in any way to the inexplicable use of offshore tax-haven private banking by U.S. charities involved in illegal settlement financing that obfuscates the source and destination of their financial flows. If official IRS policy is to sabotage its own oversight capabilities through rules changes, tolerate unjustifiable use of tax-havens or give special consideration to tax-exempt illegal settlement financing, we believe there must be official policy guidance for that, and request immediate release of the policy guidance.

We do not believe that after even prodding by overseas U.S. Treasury Department officials for IRS policy on illegal settlement funding flows by charities overseen by the IRS cited in our FOIA that a federal court will find it credible that the IRS cannot properly search, locate, or release any of its internal policy documents about this important tax fairness and non-enforcement issue. The magnitude and ongoing nature of this activity could not persist absent IRS policies.

Please comply with the law and process this FOIA.

Sincerely,



Grant F. Smith

Attachments

FOIA request – March 5, 2019
IRS denial letter – March 27, 2019

¹ “IRS rules permit charities to say little about money sent overseas,” *The Forward*, April 9, 2013

Internal Revenue Service
Appeals Office M/S 55203
5045 E Butler Ave
Fresno, CA 93727-5136

Date: JUN 13 2019

Grant Smith
[REDACTED]

Washington, DC 20007

Department of the Treasury

Person to Contact:

Brett Ziegler
Employee ID Number: 1000094813
Tel: (559) 253-4828
Fax: (559) 253-4890

Refer Reply to:

AP:W:A8:T7:FSC

In Re:

Freedom of Information Act
Disclosure Case Number(s):
F19071-0036

Dear Grant Smith,

We are in receipt of your letter, dated April 11, 2019, which purports to administratively appeal under the Freedom of Information Act (FOIA), 5 U.S.C. Section 552, the March 27, 2019 response from the Jacksonville, FL disclosure office. The FOIA, at 5 U.S.C. Section 552(a)(3)(A), and the Department of the Treasury Regulations that implement the FOIA, specify that certain information must be included in your letter in order to be treated as a proper FOIA request. 31 C.F.R. Section 1.5(b)(1)-(7). The disclosure office informed you that your March 5, 2019 letter did not contain all the necessary information. A determination by the disclosure office that a request is deficient in any respect is not a denial of access. Therefore, under the Departmental regulations, you are not entitled to administratively appeal this response. 31 C.F.R. Section 1.5(f). These FOIA regulations apply to all bureaus of the Department of the Treasury, including the Internal Revenue Service. 31 C.F.R. Section 1.1(a)(1)(viii).

Until you take action to correct the infirmities in your FOIA request and submit a proper request to the disclosure office, no further action will be taken by the disclosure office with respect to your request.

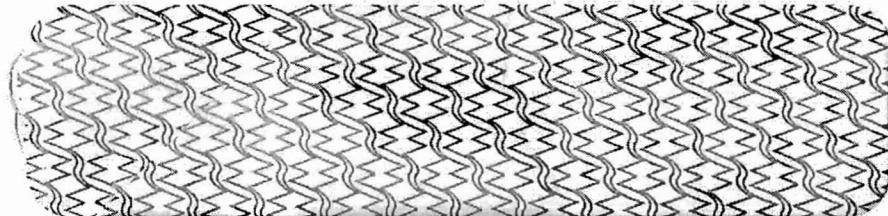
Because there is no jurisdiction for an administrative appeal under these circumstances, we are closing our file in regard to this matter.

Sincerely,


P. Perez
Appeals Team Manager

**Internal Revenue Service
Appeals Office, Fresno Campus
5045 E. Butler Avenue
Fresno, CA 93727-5136**

**Official Business
Penalty for Private Use, \$300**



2000781248 C034

bpm(Bullhorn)

IRmep
Calvert Station
P.O. Box 32041
Washington, DC 20007

EXHIBIT E - Page 1
<http://www.irmep.org>
info@irmep.org
Phone: 202-342-7325



June 27, 2019

Phillip Hatcher, FOIA Public Liaison
Internal Revenue Service
400 West Bay Street
MIS 4030
Jacksonville, FL 32202 I

RE: TEGE records on IRS policy toward illegal settlement funding from U.S. nonprofit tax-exempt organizations.

Dear FOIA Officer,

This is a request under the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA") for unpublished IRS policy on tax-exempt charitable funding for illegal settlements

Background

The IRS is known to have grappled with how to address the transfer of U.S. tax-exempt charitable funding into overseas activities that have no apparent legality or social welfare benefit. The very large amounts involved have generated mainstream news coverage, lawsuits, requests for clarity to the IRS and complaints:

1. In the 1982 lawsuit *Khalaf v. Regan* a group of individuals challenged the tax exempt status of organizations supporting Israeli settlement efforts in the West Bank.
2. In the year 2005 *USA Today* reported that \$50 billion had been raised in the United States in tax-exempt charitable contributions and transferred overseas to build illegal settlements in the Israeli-occupied West Bank. Illegal settlement building involves the forced displacement of indigenous populations and the seizure of their lands and other property in violation of international law and stated U.S. policy.
3. On January 11, 2010 IRS Commissioner Douglas Shulman was asked on National Public Radio what was the IRS policy on settlements in reference to the \$50 billion of U.S. charitable contributions flowing into settlements.¹
4. Eric Goldstein identified New York based charities funding illegal settlement activities and that they should be discontinued in his 2015 report, "Can I Take a Tax-Deduction on My donation to Israeli Settlements in Palestine?"²
5. In 2016 the charitable organization J Street called on the U.S. Treasury for a review of tax exempt status of non-governmental organizations that "channeled millions" to support settlers. Details listed by J Street mentioned the funding was being used for "the demolition of Palestinian houses – and in some cases entire communities."³

¹ http://www.irmep.org/mp3/01112010dr_show.mp3

² <https://foreignpolicy.com/2015/01/29/illegal-tax-deduction-charity-israel-settlements-palestine-irs/>

³ <https://www.timesofisrael.com/j-street-calls-for-tax-review-for-us-pro-settlement-organizations/>

6. In the 2017 lawsuit *Abulhawa V. United States Department of The Treasury* a group of plaintiffs sued the Treasury for injuries suffered over their expulsion by Israeli settlers benefitting from tax exempt charitable support. The court acknowledged they had suffered harm.
7. In the 2/1/2018 settlement of the lawsuit *Z Street v. IRS*⁴ (pages 2-3), the Department of Justice stated that:

"In email correspondence produced in discovery, a Treasury Department employee stationed in Israel asked the IRS in spring 2009, at the request of a State Department employee, whether organizations' tax-exempt status could be revoked for funding Israelis settlements in the West Bank. The Treasury Department employee asked whether such activity could be deemed illegal or in violation of established public policy based on executive branch policy as stated in a 2005 Congressional Research Service report that no U.S. assistance to Israel can be used in the occupied territories because the United States does not want to foster the appearance of endorsing Israel's annexation of the territories without negotiations. The Treasury Department employee further asked whether this would be enough to revoke the tax-exempt status of organizations that provide funds to 'Israeli occupied territories.'

As reflected in email correspondence produced in discovery, a number of IRS employees evaluated the questions raised by the Treasury Department employee in an effort to respond to the inquiry. An IRS employee ultimately referred the Treasury Department employee to the IRS hotline for reporting violations of the Internal Revenue laws."

I have consulted all private letter rulings, TAMs, the Internal Revenue Manual IRM, but have been unable to find any definitive information about IRS policy on U.S. IRS-recognized tax exempt organizations either formed to fund illegal settlements or formed with another social welfare benefit that are involved in such activities, directly or indirectly.

Request

I therefore request that a copy of the following policy documents [or documents containing the following information] be provided to me. I do not request information on specific entities or return information that is exempt from release under 26 U.S.C. § 6103.

1. All unpublished policy guidance used by the IRS TEGE about direct and indirect tax-deductible flows of charitable U.S. contributions into Israeli settlements;
2. Internal, undisclosed IRS studies or findings on policy toward settlement funding. This could include nonpublic directives received by TEGE from the Office of Chief Counsel.
3. The time period of interest is all IRS information produced or used during the five years prior (June 28, 2014) through the date of this request. (June 27, 2019)

⁴ <https://www.justice.gov/opa/press-release/file/1030516/download>

Fee Waiver

In order to help to determine my status to assess fees, you should know that I am a representative of the news media reporting for the *Washington Report on Middle East Affairs* magazine and syndicated analyst reporting for the news website Antiwar.com. This request is made as part of news gathering and not for a commercial use.

The requester, Grant F. Smith, is a public interest researcher domiciled in the District of Columbia and founder of the Institute for Research: Middle Eastern Policy, Inc. (IRmep). Smith's FOIA, mandatory declassification review (MDR) and Interagency Security Classification Appeals Panel (ISCAP) generated releases, research and analysis have been published in *The Washington Report on Middle East Affairs*, *Antiwar.com*, *the Wall Street Journal*, *the Washington Examiner*, *Corporate Crime Reporter*, *Mint Press News*, *LobeLog*, *Mondoweiss*, *Dissident Voice*, *the Bulletin of the Atomic Scientists*, *the Minneapolis Star Tribune*, *The Nation Magazine*, *The Weekly Standard*, *Military.com*, *the Jewish Daily Forward*, *Business Insider*, *the Jerusalem Post*, *Israel National News* and *Courthouse News Service*. They have been carried on broadcast outlets such as C-SPAN, NPR, other public and commercial U.S. radio stations, foreign broadcasts transmitted by VOA, as well as foreign news agencies like the BBC and Radio France.

As an affiliate with the educational or noncommercial research institution in the letterhead, and this request is made for a scholarly or scientific purpose and not for a commercial use. Over fifteen years of reporting and public interest research substantiating this may be found on the IRmep website (www.IRmep.org)

I therefore request a waiver of all search fees for this request. Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in my commercial interest.

I am willing to pay reproduction costs for this request up to a maximum of \$50. If you estimate that the fees will exceed this limit, please inform me first.

This request is related to and a refinement of F19071-0036.

Thank you for your consideration of this request.

Sincerely,



Grant F. Smith, Director of Research



Delivered

Monday, July 1, 2019 11:24 AM

JACKSONVILLE, FL 32202

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Shipped To: Phillip Hatcher

FOIA Public Liaison

Internal Revenue Service

400 West Bay Street

MIS 4030

Jacksonville, FL 32202

United States

Shipped From: 20007

Return To: Grant F. Smith

IRmep

PO Box 32041

Washington, DC 20007



[Services](#)

\$6.95 >

Amount Paid \$6.95 >



EXHIBIT H

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

October 26, 2007

RE: 2007-10-054

Mr. Grant Smith
Institute for Research: Middle Eastern Policy
Calvert Station
P.O. Box 32041
Washington, DC 20007

Dear Mr. Smith:

This concerns your Freedom of Information Act (FOIA) request dated September 27, 2007, which was received in this office on October 22, 2007.

One of the offices to which your request has been assigned is experiencing a substantial backlog of FOIA requests and cannot meet the normal time limits. They have established an orderly procedure for responding to requests, which is on a first-in, first-out basis. Be assured that your request will be answered as soon as possible.

Kindly include the identification number at the top of this letter on further inquiries concerning this request which may be faxed to 202-622-3895 or mailed to:

FOIA/PA Request
Disclosure Services
Department of the Treasury
Washington, DC 20220

Your request is also being forwarded to the Financial Crimes Enforcement Network (FinCEN). They will reply directly to you.

EXHIBIT H

Inquiries to FinCEN should be sent to the following address:

Financial Crimes Enforcement Network (FinCEN)
FOIA Request
P.O. Box 39
Vienna, VA 22183

Sincerely,



Hugh Gilmore
Director, Disclosure Services

DEPARTMENT OF THE TREASURY
FINANCIAL CRIMES ENFORCEMENT NETWORK

December 10, 2007

Grant F. Smith, Director of Research
Institute for Research, Middle Eastern Policy
Calvert Station
P.O. Box 32041
Washington, D.C. 20007

Re: FinCEN 2008-23

Dear Mr. Smith:

This letter is in response to your Freedom of Information Act (FOIA) request to the Department of the Treasury dated September 27, 2007, in which you requested documents about "Treasury Department investigations triggered by public revelations that U.S. charitable funds flows are used to illegally confiscate Palestinian lands and commit crimes overseas." Additionally, you requested information about Treasury Department programs designed to combat U.S. charitable money laundering to the West Bank, and certain meeting minutes of key Treasury Department officials, specifically Mr. Levey and Mr. Szubin. The Financial Crimes Enforcement Network (FinCEN) received a referral about your FOIA request from Treasury on November 7, 2007.

FinCEN has completed a search for non-Bank Secrecy Act (BSA) records in its Analysis and Liaison Division including the Offices of Global Support and Global Liaison, but could find no records responsive to your request.

Though FinCEN is authorized by the Secretary of the Treasury to collect information from financial institutions such as Suspicious Activity Reports (that may or may not be responsive to your request) under the Bank Secrecy Act, the BSA information is exempt from disclosure under the FOIA in accordance with 5 U.S.C. 552(b)(3), which covers records specifically exempted from disclosure by statute. The statutory provision that specifically exempts records collected under the Bank Secrecy Act from disclosure under the FOIA can be found in Section 5319 of Title 31 of the United States Code.

If you believe this response to be in error, you may appeal this determination by writing to the following address: FOIA Appeal, P.O. Box 39, Vienna, VA 22183. The appeal must be received within 35 days from the date of this letter. Both the letter and the



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

EXHIBIT J

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

JAN 24 2008

Mr. Grant F. Smith
Director of Research
Institute for Research: Middle Eastern Policy
P.O. Box 32041, Calvert Station
Washington, DC 20007

Dear Mr. Smith:

This responds to your letter dated December 4, 2007, to Acting Commissioner Linda E. Stiff. You wrote about allegations that funds raised by nonprofit organizations were being used in contravention of United States foreign policy in the Middle East.

The Internal Revenue Code includes taxpayer privacy provisions enacted by the Congress to protect the privacy of tax returns and tax return information of all taxpayers. Therefore, I cannot comment on what action, if any, we may take regarding the information you provided.

We maintain an ongoing examination program to ensure exempt organizations continue to meet the requirements for tax-exempt status. Whenever we receive information about an organization that raises questions about its continued exempt status or compliance with the tax laws, we forward the information to our Dallas office to determine if it warrants an examination or other action. If you have any additional information about an exempt organization you want to submit for our consideration, please send it to:

IRS—EO Classification
1100 Commerce Street
MC 4900 DAL
Dallas, TX 75242

I hope this information is helpful. If you have any questions about this letter, please contact Robert M. Cowen (ID #50-21789) at (202) 283-8939.

Sincerely,

Robert C. Harper Jr./JG

Robert C. Harper, Jr.
Manager, Exempt Organizations
Technical Group 3

EXHIBIT I

envelope should be clearly marked “FOIA Appeal” and must include a statement explaining why you believe this response is in error.

Sincerely yours,



Amanda Michanczyk
Acting Disclosure Officer

**Department of the Treasury
Internal Revenue Service
P. O. Box 2508
Cincinnati, OH 45201**

Date:
December 14, 2017
Person to Contact:
Mr. Schatz - 0196497
Contact Telephone Number:
1-877-829-5500

GRANT F SMITH
PO BOX 32041
WASHINGTON DC 20007

Dear Sir or Madam:

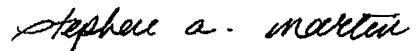
This is in response to your request dated November 11, 2017, for copies of The Israel Project.

We're unable to locate the documents you requested.

If you have questions, call 1-877-829-5500 between 8 a.m. and 5 p.m., local time, Monday through Friday (Alaska and Hawaii follow Pacific Time).

For tax forms, instructions, and publications, visit www.irs.gov or call 1-800-TAX-FORM (1-800-829-3676).

Sincerely yours,



Stephen A. Martin
Director, Exempt Organizations
Rulings and Agreements