

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.)
_____)

ANSWER

DEFENDANT, the Internal Revenue Service (“Service”), by and through its attorneys, responds to the complaint as follows:

1. The Service admits that this is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. The Service admits that the Plaintiff seeks injunctive relief to compel Defendant to release records. The Service denies any other allegations in paragraph one to the extent they characterize the content of the Plaintiff’s July 1, 2019 FOIA request. The Defendant respectfully refers the Court to the Plaintiff’s July 1, 2019 FOIA request, a true and accurate copy of which appears to be attached as Exhibit E and which speaks for itself. Paragraph one contain legal conclusions. To the extent that it contains additional factual allegations that require an answer, the Service does not have sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph one of the Complaint.

2. The Service admits that it has not disclosed records in response to the Plaintiff’s FOIA request. The Service denies the remaining allegations contained in paragraph two of the Complaint.

JURISDICTION AND VENUE

3. The Service admits the allegations contained in paragraph three of the Complaint.

PARTIES

4. The Service does not have sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph four of the Complaint.

5. The Service admits that it is an agency of the United States Government within the meaning of 5 U.S.C. § 552(f)(1). The Service does not have sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph five of the Complaint.

STATEMENT OF FACTS

6. The Service does not have sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph six of the Complaint.

7. The Service admits that a group of individuals challenged the tax-exempt status of organizations in a lawsuit in *Khalaf v. Regan*. The Service respectfully refers the Court to the complaint filed in that lawsuit, which speaks for itself. The Service denies any other allegations in paragraph seven to the extent they characterize that lawsuit.

8. The Service does not have sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph eight of the Complaint.

9. The Service admits that the link cited in footnote 1 of the Complaint leads to a website that appears to contain a recording of Commissioner Douglas Shulman being asked a question on National Public Radio in reference to charitable contributions. The Service respectfully refers the Court to the recording, which speaks for itself. The Service does not have sufficient knowledge or information to form a belief as to whether the website contains a true

and accurate copy of the entire recording. The Service denies any other allegations in paragraph nine to the extent they characterize the recording.

10. The Service admits that the link cited in footnote 2 of the Complaint leads to a website that contains a 2005 article by Eric Goldstein titled “Can I Take a Tax-Deduction on My Donation to Israeli Settlements in Palestine?” The Service respectfully refers the Court to the article, which speaks for itself. The Service does not have sufficient knowledge or information to form a belief as to whether the webpage contains a complete and accurate copy of the article. The Service denies any other allegations in paragraph ten to the extent they characterize the content of the article.

11. The Service admits that the link cited in footnote 3 of the Complaint leads to a website that contains an article concerning J Street. The Service respectfully refers the Court to the article, which speaks for itself. The Service does not have sufficient knowledge or information to form a belief as to whether the website contains a complete and accurate copy of the article. The Service denies any other allegations in paragraph 11 to the extent they characterize the content of the article.

12. The Service admits that *Abulhawa v. United States Department of the Treasury, et. al.* was brought by a group of plaintiffs against the Treasury Department concerning charitable organizations. The Service denies that the lawsuit was brought in 2017. The Service admits that the Court of Appeals issued an opinion in the case. The Service respectfully refers the Court to the Complaint and the opinion of the Court of Appeals, which speak for themselves. The Service denies any other allegations in paragraph 12 to the extent they characterize the lawsuit or the opinion issued by the Court of Appeals.

13. The Service admits that a settlement was reached in a lawsuit filed by Z Street against the Commissioner of the Internal Revenue Service. The Service further admits that the text quoted in paragraph 13 of the Complaint is an accurate and complete quote of the text contained in the Consent Order entered in the Z Street matter. To the extent the clause before the colon in the first sentence contains any other allegations, the Service denies them.

14. The Service admits that the link cited in footnote 4 of the Complaint leads to a website that appears to contain a C-SPAN video of National Taxpayer Advocate Nina Olson being asked a question in reference to charitable organizations. The Service respectfully refers the Court to the video, which speaks for itself. The Service does not have sufficient knowledge or information to form a belief as to whether the website contains a true and accurate copy of the entire video. The Service denies any other allegations in paragraph 14 to the extent they characterize the recording.

15. The Service does not have sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 15 of the Complaint.

16. The Service does not have sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 16 of the Complaint.

PLAINTIFF'S CURRENT FOIA REQUESTS AND AGENCY RESPONSES

17. The Service admits that it received a request for records from the Plaintiff dated March 5, 2019. The Service respectfully refers the Court to the March 5, 2019 request for records, a true and accurate copy of which appears to be attached as Exhibit A and which speaks for itself. The Service denies that the March 5, 2019 request for records contains the exact language quoted in paragraph 17 of the Complaint. The Service denies any other allegations in paragraph 17 to the extent they characterize the March 5, 2019 request for records.

18. The Service admits that it responded to the Plaintiff by letter dated March 27, 2019. The Service respectfully refers the Court to the March 27, 2019 letter, a true and accurate copy of which appears to be attached as Exhibit B and which speaks for itself. The Service denies any other allegations in paragraph 18 to the extent they characterize the March 27, 2019 letter.

19. The Service admits that the Plaintiff, on April 11, 2019, appealed the Service's decision to close the March 5, 2019 request for records. The Service respectfully refers the Court to the April 11, 2019 letter, a true and accurate copy of which appears to be the Plaintiff's appeal, attached as Exhibit C and which speaks for itself. The Service denies any other allegations in paragraph 19 to the extent they characterize the April 11, 2019 letter.

20. The Service admits that, on June 13, 2019, it responded to the Plaintiff's appeal. The Service further admits that the text quoted in paragraph 20 appears in the June 13, 2019 letter. The Service respectfully refers the Court to the June 13, 2019 letter, a true and accurate copy of which appears to be attached as Exhibit D and which speaks for itself. The Service denies any other allegations in paragraph 20 to the extent they characterize the June 13, 2019 letter.

21. The Service admits that it consulted with the Plaintiff concerning his March 5, 2019 request for records. The Service denies that the Plaintiff consulted with IRS FOIA Public Liaison. The Service further admits that after the telephone consultation, it received a FOIA request on July 1, 2019 from the Plaintiff dated June 27, 2019. The Service respectfully refers the Court to the June 27, 2019 FOIA request, a true and accurate copy of which appears to be attached as Exhibit D and which speaks for itself. The Service denies any other allegations in paragraph 21 to the extent they characterize the June 27, 2019 FOIA request. The Service does

not have sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 21 of the Complaint concerning the Plaintiff's beliefs as to the March 5, 2019 and June 27, 2019 requests for records. The Service denies that it did not respond to the Plaintiff's June 27, 2019 FOIA request as required by FOIA. The Service admits that it has not disclosed any responsive records in response to the June 27, 2019 FOIA request that is the subject of this Complaint.

22. The Service admits that the Plaintiff requested fee waivers in his March 5, 2019 and June 27, 2019 requests for records. The Service respectfully refers the Court to the March 5, 2019 and June 27, 2019 requests for records, true and accurate copies of which appear to be attached as Exhibits A and E, respectively. The letters speak for themselves. The Service denies any other allegations in paragraph 22 to the extent they characterize the March 5, 2019 and June 27, 2019 requests for records.

23. The Service denies the allegations contained in paragraph 23 of the Complaint.

PREVIOUS TREASURY DEPARTMENT AND IRS FOIA

24. The Service does not have sufficient knowledge or information to form a belief as to the truth of the allegations concerning the Plaintiff's beliefs. The Service denies the remaining allegations in paragraph 24 of the Complaint.

25. The Service does not have sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 25 of the Complaint.

26. The Service does not have sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 26 of the Complaint.

27. The Service does not have sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 27 of the Complaint.

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CAUSES OF ACTION

Violation of the Freedom of Information Act for Improper Withholding of Agency Records

1. The Service repeats its answers to the foregoing paragraphs.
2. The second paragraph 2 of the Complaint contains legal conclusions. To the extent that it contains factual allegations that require an answer, the Service denies the allegations contained in the second paragraph 2 of the Complaint.
3. The second paragraph 3 of the Complaint contains legal conclusions. To the extent that it contains factual allegations that require an answer, the Service denies the allegations contained in the second paragraph 3 of the Complaint.
4. The second paragraph 4 of the Complaint contains legal conclusions. To the extent that it contains factual allegations that require an answer, the Service denies the allegations contained in the second paragraph 4 of the Complaint.
5. The second paragraph 5 of the Complaint contains legal conclusions. To the extent that it contains factual allegations that require an answer, the Service denies the allegations contained in the second paragraph 5 of the Complaint.
7. The Service denies that the Plaintiff has exhausted all applicable administrative remedies.
8. The second paragraph 8 of the Complaint contains legal conclusions. To the extent that it contains factual allegations that require an answer, the Service denies the allegations contained in the second paragraph 8 of the Complaint.

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FIRST AFFIRMATIVE DEFENSE

Some records responsive to any perfected FOIA requests that are the subject of this complaint are exempt from disclosure in full or in part pursuant to the exemptions contained in the FOIA.

SECOND AFFIRMATIVE DEFENSE

Plaintiff is not entitled to any relief beyond that provided for in the FOIA.

THIRD AFFIRMATIVE DEFENSE

Plaintiff is not entitled to this action being expedited pursuant to 28 U.S.C. § 1657(a), as set forth in paragraph A of his prayer for relief.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's request for an award of attorneys' fees and costs, as set forth in paragraph E of his prayer for relief, is premature.

FIFTH AFFIRMATIVE DEFENSE

Pursuant to Fed. R. Civ. P. 12(b)(6), Plaintiff's Freedom of Information Act (FOIA) claims fail to state a claim upon which relief can be given, because Plaintiff prematurely filed this action, and therefore, he did not exhaust his administrative remedies. Specifically, the Service responded to the Plaintiff's June 27, 2019 FOIA request on August 7, 2019. In its response, the Service informed the Plaintiff that it was unable to respond to the request within the 20 business-day period prescribed by law. The Service invoked the ten-day statutory extension, extending the statutory response date to August 22, 2019. The Plaintiff filed his suit on August 20, 2019.

WHEREFORE, having fully responded to Plaintiff's complaint, the Service prays that this Court dismiss the Complaint with prejudice, grant the Service its costs of defense, and grant such other relief as may be deemed just and proper under the circumstances

DATED: September 25, 2019

Respectfully submitted,

RICHARD E. ZUCKERMAN
Principal Deputy Assistant Attorney General

/s/ Olga L. Tobin

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CERTIFICATE OF SERVICE

I, Olga Lysenko Tobin, hereby certify under penalty of perjury that I caused the Answer to be served on September 25, 2019 via email on the following:

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/s/ Olga L. Tobin
OLGA L. TOBIN