

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.)
_____)

SECOND JOINT STATUS REPORT

Pursuant to the Court’s October 21, 2019 minute order, the parties file this Second Joint Status Report.

This case concerns a Freedom of Information Act (“FOIA”) request seeking from the Internal Revenue Service (IRS) unpublished policy guidance used by the Tax Exempt & Government Entities (TEGE) Division of the IRS and internal undisclosed IRS studies or findings on policy concerning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.)

Since the last joint status report, the IRS has determined that additional searches are necessary to respond to the plaintiff’s request. To that end, the IRS has identified additional sources of information and 11 additional custodians who may be in possession of records potentially responsive to the plaintiff’s request. Additionally, the IRS has added search terms that custodians who have previously conducted searches will use to update their searches.

The IRS is not prepared to proceed with summary judgment to prove the adequacy of its search while it is in the middle of conducting additional searches. Because Mr. Smith does not agree to an extension, however, the parties set forth their respective statements.

The IRS's Statement

The IRS requires an additional 90 days to conduct the searches and review records located as a result of those searches to determine whether it is responsive to plaintiff's request and subject to any FOIA exemptions from disclosure.

If the IRS locates responsive records before the expiration of the 90 days, it will endeavor to release all or a portion of any non-exempt records identified on or before April 15, 2020.

The IRS proposes that the parties provide a third joint status report to the Court in 90 days, on or before April 20, 2020, at which time:

- (1) The parties will set a schedule for (a) the IRS to release any non-exempt records not previously released and (b) Mr. Smith to communicate to the undersigned any issues or concerns stemming from his review of the records the IRS releases; and/or
- (2) The parties will propose a briefing schedule for dispositive motions.

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Plaintiff's Statement

The Plaintiff expresses disappointed that despite the passage of an addition 90 days the Defendant cannot indicate whether it has located any documents or whether any will be released any time soon. Rather, Defendants only express new ideas about where the IRS might search next.

Nearly a year has elapsed since Plaintiff filed the first FOIA for this material. The last status update extended the preferred delay 90 days, an additional 30 days at Defendant's insistence. Plaintiff has already conceded a great deal of additional time. Although Plaintiff offered during conference to extend the deadline by 30 days if Defendants listed and described any releasable files gathered so far, Defendants have apparently not identified any, despite the numerous sources clearly spelled out in the complaint.

With Tax Day 2020 approaching both for individuals and nonprofit charities, and March 1 as the Plaintiff's deadline for publishing a news article, it is important that the public finally know what IRS policy is on charitable funding flows to colonization projects that the international community views as blatantly illegal. Does the IRS approve of settlement funding? Has it always approved? Or does the IRS want "ambiguity" like the State Department desires on questions about Israel's nuclear policy? Is there a policy guideline for IRS ambiguity on illegal settlements? (There is a nuclear policy for the Department of State called WNP-136). Is the IRS aware that under law Americans are banned from furnishing "the money for, or takes part in, any military or naval expedition or enterprise to be carried on from thence against the territory or dominion of any foreign prince or state, or of any colony, district, or people with whom the United States is at peace..." (18 U.S. Code § 960. Expedition against friendly nation)?

It is clear to Plaintiff that Defendants are stalling, and likely still not searching for responsive documents. He requests that the parties propose a briefing schedule in which a Vaughn Index will be prepared, and a release schedule supervised by this court.

DATED: January 21, 2020.



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CERTIFICATE OF SERVICE

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

Grant F. Smith
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Pro Se Plaintiff

/s/ Olga L. Tobin
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