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Description of document: **Records re: retention/maintenance/preservation of Presidential/Vice Presidential tax returns.**

Requested date: 29-October-2006

Released date: 20-February-2007 (and appeal 05-June-2007)

Posted date: 16-October-2007

Source of document: Internal Revenue Service
Disclosure Office 3, Room 940,
31 Hopkins Plaza
Baltimore, MD 21201

Internal Revenue Service
Appeals Office M/S 55201
5045 E Butler Ave
Fresno, CA 93727-5136

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

SMALL BUSINESS/SELF-EMPLOYED DIVISION

February 20, 2007

This is in response to your Freedom of Information Act (FOIA) request, dated October 29, 2006 and received in our Baltimore office on November 6, 2006. Your request sought the following:

1. The INVENTORY of Presidential and Vice Presidential Tax returns (1913 to present) under the retention and control of the Deputy Commissioner of the IRS as per IRM MT 1(15) 59.11-1. Specifically you wanted "... the names of the Presidents and Vice Presidents of the United States since 1913..."

- The IRM reference you cited above has been revised and can be found under IRM 1.15.8-1. The IRM is available on the internet at www.irs.gov. We are prohibited from releasing this tax return information under Freedom of Information Act exemption (b) (3) in conjunction with Internal Revenue Code section 6103. Tax return information includes, but is not limited to the taxpayers name, fact of filing or any information collected by the IRS about the tax affairs of any person. Subsection (b) (3) of the FOIA exempts from disclosure matters that are specifically exempted by statute. The information being withheld under FOIA exemption (b) (3) consists of tax return information of the individual Presidents and Vice Presidents. Internal Revenue Code section 6103 states the disclosure of this information can only be made to that individual or a designated third party with written authorization from the taxpayer.

2. Any memos, reports, documents, correspondence, emails, instructions, etc., concerning the retention and maintenance and preservation of the Presidential and Vice Presidential tax returns.

- We located 9 pages of information responsive to your request. We are withholding pages 2, 3, 5, 6, 7 and 9 in their entirety and pages 1, 4, and 8 in part, under Freedom of Information Act exemption (b) (5). Subsection (b) (5) of the FOIA exempts from disclosure inter-agency or intra-agency

memorandums or letters which would not be available to a party other than an agency in litigation with the agency. The three primary privileges covered by this exemption are the deliberative process privilege, the attorney work product privilege and the attorney-client privilege.

The deliberative process protects documents which reflect advisory opinions, recommendations, and deliberations comprising the process by which decisions and policies are formulated. The information being withheld meets the criteria for this exemption.

The attorney work product privilege protects memorandums prepared by an attorney in contemplation of litigation which sets forth the attorney's theory of the case and litigation strategy.

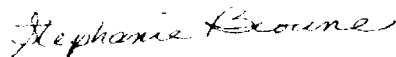
The attorney-client privilege protects confidential communications between an attorney and a client relating to a legal matter for which the client has sought professional advice.

Although, we processed your request in the Milwaukee Office, please direct any future FOIA requests to Internal Revenue Service, Disclosure Office 3, Room 940, 31 Hopkins Plaza, Baltimore, MD 21201

This constitutes a partial denial of your request. The enclosed Notice 393 explains your appeal rights.

Should you have any questions concerning this correspondence, you may contact Senior Disclosure Specialist, Eula Payne, ID# 39-02546, by calling 414-231-2773 or by writing to: Internal Revenue Service, Disclosure Office, 211 W. Wisconsin Avenue, Milwaukee, Wisconsin 53203. Please refer to case number 04-2007-00325.

Sincerely,



Stephanie Browne, ID# 36-08986
Chicago Disclosure Manager

Enclosures

Internal Revenue Service
Appeals Office M/S 55201
5045 E Butler Ave
Fresno, CA 93727-5136

Department of the Treasury

Person to Contact:

Alexis Lindauer
Employee ID Number: 78-00036
Tel: (559) 452-3040
Fax: (559) 452-3266

Refer Reply to:

AP:FW:FRE:AGL

In Re:

Freedom of Information Act

Disclosure Case Number(s):

04-2007-00325

Tax Period(s) Ended:

1913 - 2006

Date: JUN 05 2007

This letter is in response to your appeals request dated 3/18/2007 of Freedom of Information Act (FOIA) information. According to your letter you are appealing the response of 2/20/2007 from the Disclosure Office of your request for information dated 10/29/2006.

You requested the following information:

1) The inventory of Presidential and Vice Presidential Tax returns (1913 to present) under the retention and control of the Deputy commissioner of the IRS per IRMMT 1(15)59.11-1. You stated that you understood that the tax returns themselves may implicate 6103 disclosure limitations, and that the names of the Presidents and Vice Presidents of the United States since 1913 are clearly public information and records (not the returns) should be available in their entirety.

2) Any memos, reports, documents, correspondence, memos, emails instructions, etc. concerning the retention and maintenance and preservation of the Presidential and Vice Presidential Tax returns.

The Milwaukee Disclosure Office provided the following information:

1) They reference the IRM that you cited and let you know that it had been revised and referred you to the IRS website. They also explained that they were prohibited from releasing tax return information under Freedom of Information Act exemption (b)(3) in conjunction with IRC section 6103. And that the information being withheld under FOIA exemption (b)(3) consists of tax return information of the individual presidents and Vice presidents. IRC section 6103 states the disclosure of this information can only be made to that individual or a designated third party with written authorization from the taxpayer.

2) They located 9 pages responsive to your request and withheld 6 pages in their entirety and 3 pages in part under Freedom of Information Act exemption (b)(5).

I have reviewed the response from the Milwaukee Disclosure Office and concur with their determination, for the documents to be withheld under exemption (b)(3), (b)(5) and IRC section 6103.

The information you are seeking is the return information of a third party taxpayer(s). "Return information" is defined in I.R.C. Section 6103(b)(2)(A) as

a taxpayer's identity ... or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability [under the Internal Revenue Code]....

To the extent that such information exists, the Service is prohibited under I.R.C. Section 6103(a) from providing you with a copy of that information without authorization. Section 6103(a) provides that returns and return information are confidential. FOIA exemption 3 provides that the disclosure provisions of the FOIA do not apply to matters that are

specifically exempted from disclosure by statute ... provided that such statute (A) requires that the matters be withheld ... 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.

Exemption 3 is being asserted in conjunction with I.R.C. Section 6103(a) to withhold any third party return information. Section 6103 of the Internal Revenue Code has been determined to be an exemption 3 statute. Church of Scientology v. IRS, 484 U.S. 9 (1987).

Exemption (b)(5) of the FOIA protects inter- and intra-agency memoranda or letters which would not be available by law to a party in litigation with the agency. 5 U.S.C. Section 552(b)(5). As such, it has been interpreted to exempt from disclosure those documents that are normally privileged in the civil discovery context. *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975). Thus, "[t]his language contemplates that the public will not be entitled to government documents which a private party could not discover in litigation with the agency." *Schell v. U.S. Dept of Health & Human Services*, 843 F.2d 933, 939 (6th Cir. 1988). Exemption 5 has been interpreted as preserving to the agencies such recognized evidentiary privileges as the attorney client privilege, the attorney work product privilege and the deliberative process privilege. *Parke, Davis & Co. v. Califano*, 623 F.2d 1, 5 (6th Cir. 1980).

The primary purpose of the deliberative process privilege is to protect the integrity of the decision making process and preventing the "disrobing of an agency decision-maker's judgment." *Russell v. Dept. of the Air Force*, 682 F.2d 1045, 1049 (D.C. Cir. 1982). Because exemption 5 is concerned with protecting the deliberative process itself, 'the key question in exemption 5 cases is whether disclosure of material would expose an agency's decisionmaking process in such a way as to discourage discussion within the agency and thereby undermine the agency's ability to perform its functions.' *Schell v. HHS*, 843 F.2d at 940, citing *Dudman Communications Corp. v. Dept. of Air Force*, 815 F.2d 1565, 1568 (D.C. Cir. 1987). Specifically, three policy purposes have been held to constitute the basis for this privilege: (1) to encourage frank, open discussions on matters of policy between subordinates and superiors; (2) to protect against the premature disclosure of proposed policies before they are finally adopted; and (3) to protect the public from confusion that might result from the disclosure of reasons and

rationales that were not the ultimate ground for the agency action. *Russell*, 682 F.2d at 1048. See also *Coastal States Gas Corp. v. Dept. of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980).

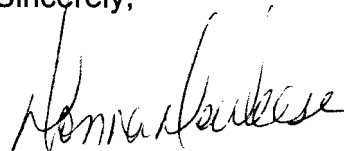
With respect to encouraging candid communications between subordinates and superiors, the privilege “serves to assure that subordinates will feel free to provide the decisionmaker with their uninhibited opinions and recommendations without fear of later being subject to public ridicule or criticism. . . .” *Coastal States*, 617 F.2d at 866. The deliberative process privilege applies to documents that are both “predecisional” and “deliberative.” *Norwood v. FAA*, 993 F.2d 570, 576 (6th Cir. 1993). “A document is predecisional when it is received by the decisionmaker on the subject of the decision prior to the time the decision is made, and deliberative when it reflects the give-and-take of the consultative process.” *Id.* (Citations omitted.)

We are asserting the attorney work product privilege as an additional basis. The attorney work-product privilege protects documents and other memoranda prepared by an attorney in contemplation of litigation. *Hickman v. Taylor*, 329 U.S. 495, 509-10 (1947). See also Fed. R. Civ. Proc. 26(b)(3). Its purpose is to protect the adversarial trial process by insulating the attorney’s preparation from scrutiny and ordinarily arises when some articulable claim, which is likely to lead to litigation, has arisen. *Coastal States*, 617 F.2d at 865. The privilege is not limited to civil proceedings, but rather extends to administrative proceedings and criminal proceedings as well. See *Martin v. Office of Special Counsel*, 819 F.2d 1181, 1187 (D.C. Cir. 1987) (applying Privacy Act 5 U.S.C. Section 552a(d)(5)).

Additionally, we assert the attorney-client privilege. The attorney-client privilege protects “confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice.” *Mead Data Central, Inc. v. U.S. Dept. of Air Force*, 566 F.2d 242, 252 (D.C. Cir. 1977). While it fundamentally encompasses facts divulged to the attorney by the client, it also encompasses the advice given to the client by the attorney based on those facts. The privilege also applies to agency counsel who provide guidance to the agency. See *In re Lindsay*, 148 F.3d 1100, 1104 (D.C. Cir. 1998); *Tax Analysts v. I.R.S.*, 117 F.3d 607, 618 (D.C. Cir. 1997).

The FOIA requires us to advise you of the judicial remedies granted in the Act. You may file a complaint in the United States District Court for the District in which you reside, or have your principal place of business, or in which the agency records are located, or in the District of Columbia.

Sincerely,



Donna DeWeese
Appeals Team Manager

National Archives at College Park

10/25/96



8601 Adelphi Road College Park, Maryland 20740-6001

Date : October 25, 1996

Reply to
Attn of : Richard W. Marcus

Subject : Job No. N1-58-96-4, RCS 101, Office of the Commissioner

To : NIRC
NN-E

This job consists of Records Control Schedule 101 for the Office of the Commissioner, Internal Revenue Service. The Office includes the Commissioner, Deputy Commissioner, the Chief of Staff, and their special assistants.

FOIA Exemption (b)(5)

FOIA EXEMPTION (b)(5)

Item 14, Presidential and Vice Presidential Tax returns. Despite the fact that IR Form 1040, Individual Tax Returns are disposable, the IRS handles presidential and vice presidential tax returns separately. Once processed, they are then transferred to a safe in the Commissioner's office. This group of forms, currently amounting to approximately 6 cubic feet, consists of almost every return filed between 1913 and 1996. The practice of segregating these returns (begun in the days before voluntary Presidential disclosure of tax returns) was originally viewed by the IRS as a means of providing privacy to Chief Executive and safekeeping of these intrinsically valuable documents. Only within the last five to ten years, has the Service acknowledged that these forms may have historical value. Upon the recommendation of the former agency historian, the records were refoldered in acid free folders.

FOIA EXEMPTION (b)(5)

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 35 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
5045 E. Butler Ave.
M/Stop 55201
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 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.