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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Thomas L. Kehmeier,
10 Plaintiff,

11 v.

12 United States Department of Justice Tax
13 Division,
14 Defendant.

No. CV-16-4257-PHX-DKD

ORDER

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16 Defendant U.S. Department of Justice, Tax Division (“DOJ”) moved to dismiss
17 under Federal Rule of Civil Procedure 12(b)(1) because the Court does not have subject
18 matter jurisdiction over Plaintiff Thomas Kehmeier’s complaint. (Doc. 9) Because the
19 Court agrees with this analysis, DOJ’s motion will be granted. This Court has
20 jurisdiction pursuant to 42 U.S.C. § 405(g) and, with the parties’ consent to Magistrate
21 Judge jurisdiction, pursuant to 28 U.S.C. § 636(c).

22 Background. Kehmeier, an experienced *pro per* litigant¹, submitted the following
23 request for records under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”):

24 All records identifying a federal statute imposing a tax that
25 expressly authorizes the Secretary, under Title 26 U.S.C. §
26 3402(a)(1), to prescribe tax tables or computational
procedures to use in measuring a tax.

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28 ¹ In the District of Arizona alone, Kehmeier has filed three other lawsuits against
the United States. *Kehmeier v. U.S.*, 2:16-CV-03318-BSB; *Kehmeier v. U.S.*, 2:13-CV-
02257-SRB; *Kehmeier v. U.S.*, 2:10-cv-02684-NVW.

1 (Doc. 1 at ¶ 5) After DOJ did not respond to his request, Kehmeier filed this suit alleging
2 that he is entitled to the requested documents. (Doc. 1) DOJ's motion to dismiss argues
3 that his request is for research not an "agency record" covered by FOIA. (Doc. 9)

4 Analysis. This Court's jurisdiction over Kehmeier's complaint "is dependent on a
5 showing that an agency has (1) 'improperly' (2) 'withheld' (3) 'agency records.'" *Spurlock v. F.B.I.*, 69 F.3d 1010, 1015 (9th Cir. 1995) (quoting *Kissinger v. Reporters*
6 *Committee for Freedom of the Press*, 445 U.S. 136, 150 (1980)). FOIA does not define
7 "agency record." 5 U.S.C. § 551(1). However, the case law is clear that "[a]n agency is
8 not required to provide copies of federal regulations or perform legal research for the
9 requester." *West v. Jackson*, 448 F.Supp.2d 207, 212 (D.D.C. 2006) (citing *Landmark*
10 *Legal Found. v. EPA*, 272 F.Supp.2d 59, 64 (D.D.C. 2003)). *See also Lawyers' Comm.*
11 *for Civil Rights of San Francisco Bay Area v. U.S. Dept. of Treasury*, 534 F.Supp.2d
12 1126, 1135 (N.D.Cal. 2008) (information or answers are not proper FOIA requests);
13 *Lamb v. I.R.S.*, 871 F.Supp. 301, 304 (E.D.Mich. 1994) ("requests for legal research" are
14 outside the scope of FOIA).
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16 DOJ argues that Kehmeier's request is for research and the Court agrees. The
17 request is for "records identifying a federal statute." (Doc. 1 at ¶ 5) This "seem[s] to be
18 nothing more than an effort to secure legal research regarding the Internal Revenue Code
19 from the I.R.S." *Hudgins v. I.R.S.*, 620 F.Supp. 19, 21 (D.C.D.C., 1985). This is outside
20 the scope of FOIA and, accordingly, outside the scope of the Court's jurisdiction.

21 Conclusion. Because Kehmeier's requested documents were not "agency
22 records," the Court does not have jurisdiction over his complaint and it must be
23 dismissed.

24 **IT IS THEREFORE ORDERED** that Defendant's Motion to Dismiss For Lack
25 of Subject Matter Jurisdiction is granted. (Doc. 9)

26 Dated this 17th day of February, 2017.

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David K. Duncan
United States Magistrate Judge