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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

V. STEVEN BOOTH,

CASE NO. CV F 09-0637 LJO SMS

Plaintiff,
vs.

 SUMMARY JUDGMENT DECISION
(Doc. 7.)

INTERNAL REVENUE SERVICE,
Defendant.

_____ /

INTRODUCTION

Defendants Internal Revenue Service (“IRS”) and United States of America (collectively “Government”) seek summary judgment that pro se plaintiff V. Steven Booth’s (“Mr. Booth’s”) failure to exhaust properly administrative remedies denies this Court jurisdiction over Mr. Booth’s claim for production of IRS records under the Freedom of Information Act (“FOIA”), 5 U.S.C. §§ 552, et seq. Mr. Booth filed no opposition papers. This Court considered the Government’s summary judgment motion on the record and without a hearing or oral argument, pursuant to Local Rule 78-230(c), (h). For the reasons discussed below, this Court GRANTS the Government summary judgment.

BACKGROUND

Mr. Booth’s FOIA Request

Mr. Booth sent two nearly identical March 3, 2009 letters addressed to:

1 District Director
2 c/o Internal Revenue Service
3 5104 N. Blyth Avenue, Suite 207
4 Fresno, CA 93722-6429
5 **Attn:** Disclosure Officer
6 RE: Request for Documents.

7 One letter is entitled “FREEDOM OF INFORMATION ACT REQUEST” and the other is
8 entitled “PRIVACY ACT REQUEST.” (Uppercase in original.) Each letter requested records regarding
9 an IRS criminal investigation of Mr. Booth.

10 In late 2008, the IRS had moved from the location to which Mr. Booth addressed the letters and
11 there is no current IRS office at the location. In her declaration, IRS senior disclosure specialist
12 Kathlyne Morris (“Ms. Morris”) states that she searched to verify whether the IRS received a March 3,
13 2009 letter from Mr. Booth. Ms. Morris declares: “I did not find any record of any letter received from
14 V. Steven Booth by any IRS office across the county in the year 2009.”

15 **Mr. Booth’s Claims**

16 On April 9, 2009, Mr. Booth filed this action to claim that the IRS failed to meet FOIA time
17 limits to respond to his request. Mr. Booth seeks an order to compel the IRS to produce requested
18 documents.

19 **DISCUSSION**

20 **Summary Judgment Standards**

21 The Government seeks summary judgment that Mr. Booth’s action is barred in that Mr. Booth
22 failed to send his FOIA request to the proper IRS office to exhaust administrative remedies.

23 F.R.Civ.P. 56(b) permits a “party against whom relief is sought” to seek “summary judgment on
24 all or part of the claim.” Summary judgment is appropriate when there exists no genuine issue as to any
25 material fact and the moving party is entitled to judgment as a matter of law. F.R.Civ.P. 56(c);
26 *Matsushita Elec. Indus. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct. 1348, 1356 (1986); *T.W.*
27 *Elec. Serv., Inc. v. Pacific Elec. Contractors Ass’n*, 809 F.2d 626, 630 (9th Cir. 1987). The purpose of
28 summary judgment is to “pierce the pleadings and assess the proof in order to see whether there is a
genuine need for trial.” *Matsushita Elec.*, 475 U.S. at 586, n. 11, 106 S.Ct. 1348; *International Union
of Bricklayers v. Martin Jaska, Inc.*, 752 F.2d 1401, 1405 (9th Cir. 1985).

1 On summary judgment, a court must decide whether there is a “genuine issue as to any material
2 fact,” not weigh the evidence or determine the truth of contested matters. F.R.Civ.P. 56(c); *Covey v.*
3 *Hollydale Mobilehome Estates*, 116 F.3d 830, 834 (9th Cir. 1997); *see Adickes v. S.H. Kress & Co.*, 398
4 U.S. 144, 157, 90 S.Ct. 1598 (1970); *Poller v. Columbia Broadcast System*, 368 U.S. 464, 467, 82 S.Ct.
5 486 (1962); *Loehr v. Ventura County Community College Dist.*, 743 F.2d 1310, 1313 (9th Cir. 1984).
6 The evidence of the party opposing summary judgment is to be believed and all reasonable inferences
7 that may be drawn from the facts before the court must be drawn in favor of the opposing party.
8 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S.Ct. 2505 (1986); *Matsushita*, 475 U.S. at 587,
9 106 S.Ct. 1348. The inquiry is “whether the evidence presents a sufficient disagreement to require
10 submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.”
11 *Anderson*, 477 U.S. at 251-252, 106 S.Ct. 2505.

12 F.R.Civ.P. 56(e)(2) requires a party opposing summary judgment to “set forth specific facts
13 showing that there is a genuine issue for trial. If the opposing party does not so respond, summary
14 judgment should, if appropriate, be entered against that party.” “In the absence of specific facts, as
15 opposed to allegations, showing the existence of a genuine issue for trial, a properly supported summary
16 judgment motion will be granted.” *Nilsson, Robbins, et al. v. Louisiana Hydrolec*, 854 F.2d 1538, 1545
17 (9th Cir. 1988). When a summary judgment motion is unopposed, a court must “determine whether
18 summary judgment is appropriate – that is, whether the moving party has shown itself to be entitled to
19 judgment as a matter of law.” *Anchorage Associates v. V.I. Bd. of Tax Review*, 922 F.2d 168, 175 (3rd
20 Cir. 1990). A court “cannot base the entry of summary judgment on the mere fact that the motion is
21 unopposed, but, rather must consider the merits of the motion.” *United States v. One Piece of Real*
22 *Property, etc.*, 363 F.3d 1099, 1101 (11th Cir. 2004). A court “need not sua sponte review all of the
23 evidentiary materials on file at the time the motion is granted, but must ensure that the motion itself is
24 supported by evidentiary materials.” *One Piece of Real Property*, 363 F.3d at 1101.

25 In a FOIA case, an agency may be granted summary judgment if its affidavits describe the
26 documents and the justifications for nondisclosure with reasonably specific detail and are not
27 controverted by contrary evidence in the record or by evidence of agency bad faith. *Military Audit*
28 *Project v. Casey*, 656 F.2d 724, 738 (D.C. Cir. 1981). As a general rule, “[d]iscovery in FOIA is rare

1 and should be denied where an agency's declarations are reasonably detailed, submitted in good faith and
2 the court is satisfied that no factual dispute remains.” *Schrecker v. Dep't of Justice*, 217 F.Supp.2d 29,
3 35 (D.D.C.2002), *aff'd*, 349 F.3d 657 (D.C.Cir.2003); *see also Judicial Watch, Inc. v. Dep't. of Justice*,
4 185 F.Supp.2d 54, 65 (D.D.C.2002) (noting that “[d]iscovery is not favored in lawsuits under the
5 FOIA”).

6 With these standards in mind, this Court turns to the Government’s challenges to Mr. Booth’s
7 FOIA requests.

8 **FOIA Administrative Exhaustion**

9 FOIA provides “a statutory right of public access to documents and records held by federal
10 government agencies.” *Gould, Inc. v. General Services Admin.*, 688 F.Supp. 689, 693 (D.D.C. 1988).
11 “FOIA vests jurisdiction in federal district courts to enjoin an ‘agency from withholding agency records
12 and to order the production of any agency records improperly withheld from the complainant.”
13 *Kissinger v. Reporters Comm. for Freedom of the Press*, 445 U.S. 136, 139, 100 S.Ct. 960, 963 (1980)
14 (quoting 5 U.S.C. § 552(a)(4)(B)). FOIA requires a records request to “reasonably” describe requested
15 records and to comply with “published rules stating the time, place, fees (if any), and procedures to be
16 followed.” *See* 5 U.S.C. § 552(a)(3)(A). “[O]nly a valid FOIA request can trigger an agency's FOIA
17 obligations, and . . . ‘failure to file a perfected request therefore constitutes failure to exhaust
18 administrative remedies.’” *Flowers v. Internal Revenue Service*, 307 F.Supp.2d 60, 67 (D. D.C. 2004)
19 (quoting *Dale v. Internal Revenue Service*, 238 F.Supp.2d 99, 103 (D. D.C. 2002)).

20 “[F]ull and timely exhaustion of administrative remedies is a prerequisite to judicial review under
21 FOIA.” *Judicial Watch, Inc. v. U.S. Naval Observatory*, 160 F.Supp.2d 111, 112 (D.D.C. 2001).
22 “Where no attempt to comply fully with agency procedures has been made, the courts will assert their
23 lack of jurisdiction under the exhaustion doctrine.” *In re Steele*, 799 F.2d 461, 465-66 (9th Cir.1986).
24 Prior to seeking judicial review, a records requester must exhaust his/her administrative remedies,
25 including filing a proper FOIA request. *Sands v. United States*, 1995 WL 552308, *3 (S.D. Fla. 1995);
26 *see Hedley v. United States*, 594 F.2d 1043, 1044 (5th Cir. 1979).

27 If a records requester fails to exhaust administrative remedies, the lawsuit may be dismissed for
28 lack of subject matter jurisdiction. *Heyman v. Merit Systems Protection Board*, 799 F.2d 1421, 1423

1 (9th Cir. 1986), *cert. denied*, 481 U.S. 1019 (1987); *Judicial Watch*, 160 F.Supp.2d at 112 (“Where
2 plaintiff has failed to exhaust its administrative remedies prior to filing with the court, the case is subject
3 to dismissal for lack of subject matter jurisdiction.”) “The exhaustion of remedy rule is not satisfied by
4 leapfrogging over any substantive step in the administrative process.” *Tuchinsky v. Selective Serv.*
5 *System*, 418 F.2d 155, 158 (7th Cir. 1969).

6 The Government notes that IRS regulations require a FOIA request to be addressed and mailed
7 to the office of the IRS official who is responsible for the control of the records requested, regardless
8 of where such records are maintained. *See* 26 C.F.R. § 601.702(c)(4)(i)(C). The Government explains
9 that, under IRS regulations, a Central California resident must address his/her FOIA request to the IRS
10 disclosure office in Oakland. *See* 26 C.F.R. § 601.702(h). The Government argues that Mr. Booth’s
11 FOIA request is invalid in the absence of IRS record of his March 3, 2009 letters given that Mr. Booth
12 failed to comply with IRS regulations and mailed his letter to a building which the IRS no longer
13 occupied. In the absence of a valid FOIA request, Government argues that this Court lacks jurisdiction
14 to warrant summary judgment in its favor.

15 The Government is correct that Mr. Booth fails to invoke this Court’s jurisdiction with his failure
16 to comply with IRS regulations to send his FOIA request to the correct location. This Court construes
17 Mr. Booth’s lack of opposition as his concession that his FOIA request is invalid and fails to trigger
18 FOIA obligations. Ms. Morris’ declaration is unchallenged that there is no IRS record of a letter from
19 Mr. Booth. The Government is entitled to summary judgment as a matter of law in the absence of
20 disputed material facts.

21 **CONCLUSION AND ORDER**

22 For the reasons discussed above, this Court:

- 23 1. GRANTS the Government summary judgment; and
24 2. DIRECTS the clerk to enter judgment in favor of defendants Internal Revenue Service
25 and United States of America and against plaintiff V. Steven Booth and to close this
26 action.

27 IT IS SO ORDERED.

28 **Dated: July 9, 2009** _____

/s/ Lawrence J. O'Neill _____

UNITED STATES DISTRICT JUDGE

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