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2
3 UNITED STATES DISTRICT COURT
4 SOUTHERN DISTRICT OF CALIFORNIA
5

6 TRUCEPT, INC. fka SMART-TEK
7 SOLUTIONS INC.,

8 Plaintiff,

9 v.

10 UNITED STATES INTERNAL
11 REVENUE SERVICE,

12 Defendant.

Case No.: 15-cv-0447-BTM-JMA

**ORDER GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT AND
DENYING PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT**

[ECF NOS. 38, 39]

13
14 The United States Internal Revenue Service ("IRS") and Plaintiff Trucept,
15 Inc. fka Smart-Tek Solutions Inc. have filed cross-motions for summary judgment
16 as to Plaintiff's claims under the Freedom of Information Act ("FOIA"), 5 U.S.C. §
17 552, et seq. (ECF Nos. 38, 39). For the reasons discussed below, the IRS's
18 motion will be granted and Plaintiff's motion will be denied.

19 **I. BACKGROUND**

20 This is one of five actions filed by related entities against the IRS.¹ Each
21 case is based on the claim that the IRS failed to comply with its obligations under
22 5 U.S.C. § 552 to respond to FOIA requests submitted by the plaintiffs. Plaintiffs
23 contend they submitted their requests after the IRS filed a series of liens against
24

25
26 ¹ The five actions (including this one) are: *Trucept, Inc., fka Smart Tek Solutions Inc. v. United States Internal*
27 *Revenue Service*, Case No. 15-cv-0447-BTM-JMA; *Smart-Tek Services, Inc. v. United States Internal Revenue*
28 *Service*, Case No. 15-cv-0449-BTM-JMA; *Smart-Tek Service Solutions Corp. v. United States Internal Revenue*
Service, Case No. 15-cv-0452-BTM-JMA; *Smart-Tek Automated Services, Inc. v. United States Internal Revenue*
Service, Case No. 15-cv-0453-BTM-JMA; and *American Marine LLC v. United States Internal Revenue Service*,
Case No. 15-cv-0455-BTM-JMA.

1 them between 2011 and 2013 holding them liable for payroll tax liabilities of other
2 corporations under alter ego and/or successor liability theories.

3 Plaintiff Trucept, Inc., fka Smart-Tek Solutions Inc. alleges it sent a written
4 FOIA request to the IRS on May 12, 2014. Compl. (ECF No. 1) ¶ 10. Under 5
5 U.S.C. § 552(a)(6)(A)(i), an agency has 20 business days following receipt of a
6 FOIA request to determine whether to comply with the request and must
7 “immediately” notify the requester of its determination. 5 U.S.C. § 552(a)(6)(A)(i).
8 On June 26, 2014, the IRS allegedly sent a response to Plaintiff in which it
9 acknowledged receipt of the request but “failed to make any determination about
10 the request.” Compl. ¶ 11. On February 27, 2015, having received no further
11 response from the IRS, Plaintiff initiated this action.

12 On October 7, 2016, the IRS filed a motion for summary judgment, arguing
13 that it had fully discharged its obligations under 5 U.S.C. § 552 and indicating that
14 it had completed its search for records and released 2,319 pages in full and 617
15 pages in part, of non-exempt documents responsive to Plaintiff’s FOIA request.
16 (ECF No. 25). On July 5, 2017, the Court granted in part and denied in part without
17 prejudice the IRS’s motion for summary judgment. (ECF No. 32). The Court held
18 that the declarations submitted by the IRS were insufficient to demonstrate the
19 adequacy of the IRS’s search because they (1) failed to explain how the IRS
20 interpreted Plaintiff’s FOIA request and the scope of documents the IRS
21 determined were responsive to the request and (2) failed to provide sufficient
22 information about the process by which the IRS reviewed 65 boxes of documents.
23 *Id.* at 7.

24 The IRS also indicated that it withheld, in full or in part, responsive
25 documents pursuant to the following FOIA exemptions: Exemption 3 (in
26 conjunction with 26 U.S.C. § 6103(a)), Exemption 5, Exemption 6, Exemption
27 7(A), Exemption 7(C), Exemption 7(D), and Exemption 7(E). The Court granted
28 the IRS’s motion for summary judgment as to the documents withheld under

1 Exemption 5, Exemption 7(A), and Exemption 7(D). *Id.* at 12, 14, 15.

2 The IRS has now filed a renewed motion for summary judgment as to the
3 remaining issues. (ECF No. 39). Plaintiff has also filed a motion for summary
4 judgment. (ECF No. 38).

5 **II. DISCUSSION**

6 A. FOIA Summary Judgment Standard

7 Summary judgment is appropriate if the evidence, when viewed in the light
8 most favorable to the non-moving party, demonstrates “there is no genuine dispute
9 as to any material fact.” Fed. R. Civ. P. 56(a); see *Celotex Corp. v. Catrett*, 477
10 U.S. 317, 322 (1986). The moving party bears the initial burden of showing there
11 is no material factual dispute and he or she is entitled to prevail as a matter of law.
12 *Celotex*, 477 U.S. at 323. If the moving party meets its burden, the nonmoving
13 party must go beyond the pleadings and identify specific facts which show a
14 genuine issue for trial. *Id.* at 324.

15 District courts are directed to conduct a *de novo* review of the adequacy of
16 an agency’s response to a FOIA request. 5 U.S.C. § 552(a)(4)(B); *U.S. Dep’t of*
17 *Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 755 (1989).
18 Because FOIA cases rarely involve material factual disputes, they “are typically
19 and appropriately decided on motions for summary judgment.” *Defenders of*
20 *Wildlife v. U.S. Border Patrol*, 623 F. Supp. 2d 83, 97 (D.D.C. 2009); see
21 *Shannahan v. Internal Revenue Serv.*, 637 F. Supp. 2d 902, 912 (W.D. Wash.
22 2009). Courts “follow a two-step inquiry when presented with a motion for
23 summary judgment in a FOIA case.” *Shannahan*, 637 F. Supp. 2d at 912.

24 First, the district court must determine whether the agency has established
25 that it fully discharged its obligation under FOIA to conduct an adequate search for
26 responsive records. *Zemansky v. U.S. Env’tl. Prot. Agency*, 767 F.2d 569, 571 (9th
27 Cir. 1985). To meet this burden, the agency must:

28 demonstrate that it has conducted a “search reasonably calculated to

1 uncover all relevant documents.” Further, the issue to be resolved is
2 not whether there might exist any other documents possibly responsive
3 to the request, but rather whether the search for those documents was
4 adequate. The adequacy of the search, in turn, is judged by a standard
5 of reasonableness and depends, not surprisingly, upon the facts of
6 each case. In demonstrating the adequacy of the search, the agency
may rely upon reasonably detailed, nonconclusory affidavits submitted
in good faith.

7 *Id.* (quoting *Weisberg v. U.S. Dep’t of Justice (“Weisberg II”)*, 745 F.2d 1476, 1485
8 (D.C. Cir. 1984)).

9 If the agency satisfies its initial burden, the court proceeds to the second step
10 and considers “whether the agency has proven that the information that it did not
11 disclose falls within one of nine FOIA exemptions.” *Shannahan*, 637 F. Supp. 2d
12 at 912 (quoting *Los Angeles Times Commc’ns, LLC v. Dep’t of the Army*, 442 F.
13 Supp. 2d 880, 894 (C.D. Cal. 2006)). Agencies seeking to withhold documents
14 pursuant to a FOIA exemption “have been required to supply the opposing party
15 and the court with a ‘*Vaughn* index,’ identifying each document withheld, the
16 statutory exemption claimed, and a particularized explanation of how disclosure of
17 the particular document would damage the interest protected by the claimed
18 exemption.” *Wiener v. Fed. Bureau of Investigation*, 943 F.2d 972, 977 (9th Cir.
19 1991); see *Vaughn v. Rosen*, 484 F.2d 820, 823-25 (D.C. Cir. 1973). “The purpose
20 of a *Vaughn* index ‘is . . . to afford the requester an opportunity to intelligently
21 advocate release of the withheld documents and to afford the court the opportunity
22 to intelligently judge the contest.’” *Shannahan*, 637 F. Supp. 2d at 912 (quoting
23 *Wiener*, 943 F.2d at 979).

24 Finally, “even if the agency satisfies the two-part test, it generally must still
25 disclose any reasonably segregable portions of the withheld documents.” *Id.*; 5
26 U.S.C. § 552(b) (“Any reasonably segregable portion of a record shall be provided
27 to any person requesting such record after deletion of the portions which are
28 exempt under this subsection.”). “The burden is on the agency to establish that all

1 reasonably segregable portions of a document have been segregated and
2 disclosed.” *Id.* (quoting *Pac. Fisheries Inc. v. United States*, 539 F.3d 1143, 1148
3 (9th Cir. 2008)).

4 B. Reasonableness of Search

5 The IRS contends it has conducted an adequate search for records
6 responsive to Plaintiff’s FOIA request. To fulfill its obligations under FOIA, “the
7 agency must show that it made a good faith effort to conduct a search for the
8 requested records, using methods which can be reasonably expected to produce
9 the information requested.” *Oglesby v. U.S. Dep’t of the Army*, 920 F.2d 57, 68
10 (D.C. Cir. 1990). The agency must show “[w]hat records were searched, by whom,
11 and through what process.” *Steinberg v. U.S. Dep’t of Justice*, 23 F.3d 548, 552
12 (D.C. Cir. 1994). An agency can meet its burden by submitting a “reasonably
13 detailed, nonconclusory” affidavit “in good faith.” *Id.* at 551 (quoting *Weisberg II*,
14 745 F.2d at 1485). Agency affidavits that “do not denote which files were searched
15 or by whom, do not reflect any systematic approach to document location, and do
16 not provide information specific enough to allow the plaintiff to challenge the
17 procedures utilized” are insufficient to fulfill the agency’s burden. *Weisberg v. U.S.*
18 *Dep’t of Justice*, 627 F.2d 365, 371 (D.C. Cir. 1980). In determining whether an
19 agency has met its burden to prove an adequate search, “the facts must be viewed
20 in the light most favorable to the requestor.” *Zemansky*, 767 F.2d at 571 (citing
21 *Weisberg II*, 745 F.2d at 1485).

22 In support of its contention that it conducted an adequate search for records
23 responsive to Plaintiff’s FOIA request, the IRS submits the declarations of Delphine
24 Thomas and Jacqueline Queener. (ECF No. 39-1). Thomas is a Disclosure
25 Specialist whose duties include responding to FOIA requests for IRS records,
26 which requires her to “have knowledge of the types of documents created and
27 maintained by the various divisions and functions of the [IRS] and an
28 understanding of the provisions of FOIA.” Thomas Decl. ¶ 1. Queener is an

1 attorney in the Office of the Chief Counsel of the IRS who was assigned to
2 Plaintiff's case and "personally reviewed and [is] familiar with all documents at
3 issue in this lawsuit." Queener Decl. ¶¶ 1, 3.

4 On June 20, 2014, the IRS received a FOIA request from Plaintiff seeking "a
5 complete copy of the administrative file" for Plaintiff "for tax forms 940, 941, 1120,
6 and 1065 for years 2007-2014." Thomas Decl. ¶ 4. Disclosure Specialist Irma
7 Rentas was initially assigned to Plaintiff's request. *Id.* ¶ 6. "[C]onsistent with
8 Disclosure Office procedures," Rentas entered Plaintiff's Taxpayer Identification
9 Number ("TIN") into the Integrated Data Retrieval Service ("IDRS"). *Id.* ¶¶ 7, 9.
10 IDRS is an electronic system that "manages data that has been retrieved from the
11 Master File System enabling [IRS] employees to take specific actions on taxpayer
12 account issues, track status, and post transaction updates back to the Master File."
13 *Id.* ¶ 7. The Master File System is the IRS's "nation-wide electronic information
14 system containing permanent taxpayer account information." *Id.* ¶ 8. Rentas
15 entered the following codes into IDRS in conjunction with Plaintiff's TIN: BMFOLT
16 (to retrieve all amounts, dates, and posted transactions pertaining to tax years
17 2007-2014), AMDISA (to retrieve a summary of all tax years and audits), and
18 AMDIS (to determine the examination status of Plaintiff's tax years). *Id.* ¶ 9.

19 From the IDRS record, Rentas learned that Plaintiff's collection case file was
20 in the possession of IRS Revenue Officer John Black. *Id.* ¶ 11. The IRS construed
21 Plaintiff's request for "administrative file" as a request for the "case file maintained
22 by a Revenue Officer who is assigned to that taxpayer's collection case(s)."
23 Thomas Supp. Decl. ¶ 5. Plaintiff "accepts the IRS's interpretation of its request."
24 (ECF No. 41 at 2).

25 Black informed the IRS Disclosure Office that documents responsive to
26 Plaintiff's requests were located within the commingled files maintained by Black
27 on Plaintiff and over twenty related entities. Thomas Decl. ¶ 12. The commingled
28 documents resulted in 65 boxes of documents, with the number of pages per box

1 ranging from a low of 600 pages to a high of around 4000 pages. *Id.* ¶¶ 13, 14.
2 The total number of pages in the 65 boxes was around 141,000. *Id.* ¶ 14. The 65
3 boxes of records were then scanned into electronic format and reviewed by
4 Disclosure Specialists Thomas, Athena Amparano, and Ed Pullman. Thomas
5 Supp. Decl. ¶¶ 9, 10, 15. The Disclosure Specialists conducted their review by
6 selecting a box of scanned records and “searched through each PDF file folder
7 page by page, looking for specific documents containing the plaintiff’s name or
8 TIN.” *Id.* ¶ 17.

9 Documents containing only the Plaintiff’s taxpayer return information were
10 marked as responsive to Plaintiff’s FOIA request. *Id.* ¶ 18. Some boxes contained
11 documents pertaining to Plaintiff as well as other taxpayers. Thomas Supp. Decl.
12 ¶ 11. Plaintiff submitted a Form 2848 “authorizing its attorney in fact to receive all
13 of, and only, the return information of plaintiff within [Black’s] commingled
14 administrative file.” Queener Supp. Decl. ¶ 12. Plaintiff “ha[d] not provided the
15 [IRS] with the authorization required by the FOIA Treasury regulations and derived
16 by section 6103 of the Internal Revenue Code to permit the [IRS] to disclose third
17 party taxpayer ‘return’ or ‘return information’ to plaintiff.” *Id.* ¶ 8. Therefore, if a
18 document contained Plaintiff’s return information as well as the return information
19 of one or more of the other FOIA requesting entities, it was marked as partially
20 responsive to Plaintiff’s FOIA request and partially responsive to each of the other
21 FOIA requesting entities whose return information was included on the document.
22 Thomas Supp. Decl. ¶ 19. If a document contained Plaintiff’s return information but
23 also the return information of other taxpayers who did not submit FOIA requests,
24 it was marked as partially responsive to Plaintiff’s request only. *Id.* ¶ 20.
25 “Documents that did not contain any of plaintiff’s return information were marked
26 as nonresponsive to plaintiff’s FOIA request.” *Id.* ¶ 21. Copies of responsive
27 documents were uploaded to the IRS’s Automated Freedom of Information Act
28 (“AFOIA”) system. *Id.* ¶ 23.

1 Upon completion of the search, the IRS located 3,056 pages responsive to
2 Plaintiff's FOIA request. Queener Decl. ¶ 12. "Of these, 2,319 pages were
3 released in full, 617 pages were released in part, and 120 pages were withheld in
4 full." *Id.*

5 The IRS has submitted "reasonably detailed, nonconclusory" affidavits that
6 show "what records were searched, by whom, and through what process." See
7 *Steinberg*, 23 F.3d at 552. The IRS's declarations indicate how the IRS interpreted
8 Plaintiff's FOIA request and its criteria to determine which documents from the 65
9 boxes were responsive to Plaintiff's request. Plaintiff argues that the IRS's search
10 was unreasonable because documents containing Plaintiff's taxpayer information
11 were commingled with documents containing other taxpayers' information and the
12 IRS "mark[ed] any document as non-responsive merely because it did not contain
13 Plaintiff's taxpayer information." (ECF No. 41 at 3). The Court finds the IRS's
14 approach of marking documents as non-responsive if they did not contain Plaintiff's
15 taxpayer information to be reasonable because Plaintiff's FOIA request only
16 requested its own, and not any other taxpayers' administrative file. The IRS has
17 conducted an adequate search in response to Plaintiff's FOIA request. The IRS's
18 motion for summary judgment is granted as to this issue.

19 C. Withholding of Responsive Documents Pursuant to FOIA Exemptions

20 The IRS indicates it withheld all or part of responsive documents pursuant to
21 FOIA exemptions.

22 1. Exemption 3 in Conjunction with 26 U.S.C. § 6103(a)

23 Pursuant to Exemption 3 and § 6103(a), the IRS withheld 62 pages in full
24 and 572 pages in part because the pages contained information that was "the
25 return information of taxpayers other than plaintiff." Queener Decl. ¶ 14.

26 Plaintiff argues that because the IRS has determined for tax liability purposes
27 that Plaintiff and other taxpayers are alter egos, and therefore one entity, the IRS
28 cannot withhold documents on the basis that they belong to other taxpayers. (ECF

1 No. 41 at 6). Plaintiff further contends that § 6103 no longer bars its request for
2 certain return information because the names of its alleged alter egos were publicly
3 disclosed in tax liens and a footnote in *Goldberg v. United States*, a related case.
4 See 2015 WL 4656361, at *1 n.2 (S.D. Fla. Aug. 5, 2015). (ECF No. 38-1 at 9).

5 The IRS argues its withholding is justified because the documents contain
6 statutorily protected third-party return information, and Plaintiff has failed to obtain
7 the requisite authorization for their disclosure. (ECF No. 39-1 at 11-12). The IRS
8 asserts it did not itself disclose taxpayer identities in the *Goldberg* case, and to the
9 extent a tax lien constitutes public disclosure, the withheld documents
10 nevertheless constitute protected return information. (ECF No. 39-1 at 13-17).
11 Finally, the IRS contends that a rule requiring disclosure upon assertion of alter
12 ego liability contradicts how the IRS treats separate taxpayers and would lead to
13 “absurd results.” (ECF No. 42 at 7-8). The Court agrees with the IRS in part.

14 FOIA Exemption 3, 5 U.S.C. § 552(b)(3), protects from disclosure matters
15 “specifically exempted by statute.” Section 6103 of the Internal Revenue Code,
16 26 U.S.C. § 6103, is one such statute. *Long v. U.S.*, 742 F.2d 1173, 1178 (9th
17 Cir. 1984). Section 6103 provides that returns and returns information “shall be
18 confidential,” subject to certain exceptions. 26 U.S.C. § 6103(a). “If § 6103
19 forbids the disclosure of material, it may not be produced in response to a
20 request under the FOIA.” *Church of Scientology of California v. I.R.S.*, 484 U.S.
21 9, 11 (1987). FOIA requesters are generally not entitled to information identifying
22 another taxpayer. See, e.g., *Willamette Industries, Inc. v. U.S.*, 689 F.2d 865,
23 867-69 (9th Cir. 1982) (treating another taxpayer’s identifying information as
24 exempt from FOIA request but requiring IRS to provide reasonable segregable
25 portions of record); *DeSalvo v. I.R.S.*, 861 F.2d 1217 (10th Cir. 1988)
26 (“Individuals are . . . not entitled to the tax returns or return information of others
27 unless a specific exception within the statute applies.”); *Linsteadt v. I.R.S.*, 729
28 F.2d 998, 1000 (5th Cir. 1984) (stating a FOIA requester “is not entitled to access

1 to the tax return or return information of other taxpayers”) (citing *Fruehauf Corp.*
2 *v. I.R.S.*, 566 F.2d 574, 578 (6th Cir. 1980)).

3 The IRS asserts that Plaintiff seeks return information that is protected and
4 cannot be disclosed without third party authorization. (ECF No. 39-1 at 11-12).
5 The Court agrees. Section 6103 specifically protects a taxpayer’s identity as
6 confidential “return information.” See 26 U.S.C. § 6103(a) (“Returns and return
7 information shall be confidential”); 26 U.S.C. § (b)(2)(A) (including “a
8 taxpayer’s identity” in the definition of “return information”). “Return information”
9 also encompasses “whether the taxpayer’s return was, is being, or will be
10 examined or subject to other investigation.” 26 U.S.C. § (b)(2)(A). IRS regulations
11 require that requests for another taxpayer’s return information, which includes their
12 identity, be accompanied by “a properly executed power of attorney, Privacy Act
13 consent, or tax information authorization, as appropriate.” 26 C.F.R. §
14 601.702(c)(5)(iii)(C). Plaintiff failed to obtain such consent here, despite its receipt
15 of a tax lien listing nineteen alleged alter egos. (See ECF 38-2, Bonar Decl. Exh.
16 A).

17 Plaintiff’s relies on *Lampert v. United States* to support its assertion that the
18 taxpayers’ identities are public information as a result of the tax lien and *Goldberg*
19 footnote, and therefore not subject to § 6103(a)’s disclosure prohibitions. 854 F.2d
20 335 (9th Cir. 1988). Plaintiff’s reliance is not entirely misplaced. In *Lampert*,
21 taxpayers alleged that government press releases detailing tax evasion charges
22 against the taxpayers constituted unauthorized disclosures of their return
23 information under 26 U.S.C. § 6103. *Id.* at 336. The Ninth Circuit rejected the
24 taxpayers’ arguments, reasoning that that “once information is lawfully disclosed
25 in court proceedings, ‘§ 6103(a)’s directive to keep return information confidential
26 is moot.’ ” *Id.* at 338 (quoting *Figur v. United States*, 662 F.Supp. 515, 517 (N.D.
27 Cal. 1987)). The Ninth Circuit held that “once return information is lawfully
28 disclosed in a judicial forum, its subsequent disclosure by press release does not

1 violate [the statute].” *Id.*

2 The IRS contends that because another party — not the IRS — publicly
3 disclosed taxpayers’ identities during the related *Goldberg* litigation, and because
4 the IRS actively asserted the privilege throughout discovery, the IRS did not waive
5 § 6103 protections in a court proceeding. (ECF No. 15-17). But the Court need
6 not reach this argument, as *Lampert* seems to at a minimum allow the IRS to
7 confirm that the entities listed on the public federal tax lien are among those whose
8 documents are included in the commingled file. See Bonar Decl. Exh. A. The
9 identities of Plaintiff’s alleged alter-egos have been “made a part of the public
10 domain” through legal process and the creation of a public record. *Lampert*, 854
11 at 338. It therefore follows that the identities of taxpayers named in the public tax
12 lien are no longer privileged under § 6103. See *id.* The IRS even concedes as
13 much. (ECF No. 39-1 at 14). However, the Court agrees with the IRS that the
14 documents containing the taxpayers’ other return information remain protected.
15 See generally 26 U.S.C. § 6103(b) (enumerating other protected return
16 information). That the IRS named other taxpayers publicly in connection with
17 Plaintiff does not entitle Plaintiff to those taxpayers’ undisclosed, non-public
18 documents through the FOIA.

19 Plaintiff’s alter ego argument is also unavailing. The Internal Revenue Code
20 treats taxpayers as separate entities for tax assessment purposes irrespective of
21 whether they are designated alter egos for collection purposes. See *Portsmouth*
22 *Ambulance, Inc. v. U.S.*, 756 F.3d 494, 501 (6th Cir. 2014) (reasoning “the mere
23 application of an alter-ego appellation does not transform separate individuals or
24 companies into a single entity”). Plaintiff cites to an unreported district court case,
25 *George v. Internal Revenue Service*, 2007 WL 1450309 at *1 n.3 (N.D. Cal., May
26 14, 2007), as evidence that the IRS has previously treated a FOIA requester and
27 its alter ego as a single entity for both tax liability and disclosure purposes. (ECF
28 No. 38-1 at 12). But *George* is neither binding nor does it hold that there is in fact

1 an alter ego exception to § 6103. *See id.*

2 For the forgoing reasons, the IRS's motion for summary judgment is granted
3 as to Exemption 3.

4 2. Exemption 6

5 Exemption 6 restricts from disclosure "personnel and medical files and
6 similar files the disclosure of which would constitute a clearly unwarranted invasion
7 of personal privacy." 5 U.S.C. § 552(b)(6). To determine whether information has
8 been properly withheld under Exemption 6 requires a court to "balance the privacy
9 interests or personal nature of the information sought against the public interest
10 that would be served by disclosure." *Chamberlain v. Kurtz*, 589 F.2d 827, 841-42
11 (5th Cir. 1979); *see Horowitz v. Peace Corps*, 428 F.3d 271, 278 (D.C. Cir. 2005).

12 The IRS withheld 36 pages in full and 54 pages in part pursuant to Exemption
13 6. Queener Decl. ¶ 20. According to Queener, the information being withheld "to
14 protect personally identifying information of plaintiff and of third parties" consists of
15 the "social security numbers of plaintiff's employees, the bank account, credit card,
16 or driver license numbers of any individual taxpayer, the home addresses,
17 telephone numbers, or email addresses of third parties, or taxpayer identification
18 numbers, Federal and state, of plaintiff or any other third party." Queener Supp.
19 Decl. ¶ 16.

20 The Court finds the referenced information was properly withheld under
21 Exemption 6, because it consists of personal information of individuals that falls
22 within the ambit of information typically subject to privacy protection, and the
23 privacy interests of the individuals involved outweigh any public interest that might
24 be served by disclosure. *See Chamberlain*, 589 F.2d at 841-42; *Akin, Gump,*
25 *Strauss, Hauer & Feld, L.L.P. v. U.S. Dep't of Justice*, 503 F. Supp. 2d 373, 382
26 (D.D.C. 2007) ("When the material in the government's control is a compilation of
27 information about private citizens, rather than a record of government actions,
28 there is little legitimate public interest that would outweigh the invasion of privacy

1 because the information reveals little or nothing about an agency's own conduct.”).
2 The Court also finds that the IRS complied with its duty to reasonably segregate
3 and produce all non-exempt information. See Queener Decl. ¶ 13. Accordingly, the
4 Court grants the IRS’s motion for summary judgment as to its withholding of
5 information pursuant to Exemption 6.

6 3. Exemption 7(C)

7 Exemption 7(C) requires withholding of records or information compiled for
8 law enforcement purposes, but only to the extent the production of such
9 information “could reasonably be expected to constitute an unwarranted invasion
10 of personal privacy.” 5 U.S.C. § 552(b)(7)(C). “It is well established that the IRS
11 has the requisite law enforcement purpose to fall within the scope of FOIA
12 Exemption 7(C).” *Heggstad v. U.S. Dep’t of Justice*, 182 F. Supp. 2d 1, 13 (D.D.C.
13 2000). “[U]nless access to the names and addresses of private individuals
14 appearing in files within the ambit of Exemption 7(C) is necessary in order to
15 confirm or refute compelling evidence that the agency is engaged in illegal activity,
16 such information is exempt from disclosure.” *SafeCard Servs., Inc.*, 926 F.2d at
17 1206; *see also Martin v. Dep’t of Justice*, 488 F.3d 446, 457 (D.C. Cir. 2007) (“third
18 parties who may be mentioned in investigatory files . . . have an obvious and
19 substantial privacy interest in their information”) (internal quotations omitted);
20 *Blackwell v. F.B.I.*, 646 F.3d 37, 41 (D.C. Cir. 2011) (“privacy interests are
21 particularly difficult to overcome when law enforcement information regarding third
22 parties is implicated”); *Marcusse*, 959 F. Supp. 2d at 128 (“as a general matter, the
23 identification of an individual in a law enforcement file will engender comment and
24 speculation and carries a stigmatizing connotation Therefore, absent
25 exceptional circumstances, the balance of interests categorically favors
26 withholding the names of third parties, as such information is not probative of an
27 agency's performance of its statutory responsibilities.”) (internal citations and
28 quotations omitted).

1 Under Exemption 7(C), the IRS has withheld 17 pages of documents,
2 including “emails and a memorandum of interview concerning plaintiff in which
3 personal identifying information for taxpayers other than plaintiff was withheld.”
4 Queener Decl. ¶ 23. Plaintiff does not assert that the IRS engaged in illegal activity
5 and characterizes the public interest as shedding light on how the IRS made its
6 tax liability conclusions with respect to Plaintiff and other affected entities. See
7 Decl. Bonar; ECF No. 41 at 8. Therefore, the Court finds the referenced information
8 regarding third-parties was properly withheld under Exemption 7(C). See *Vento v.*
9 *I.R.S.*, 714 F. Supp. 2d 137, 149 (D.D.C. 2010) (“The FOIA was fundamentally
10 designed to inform the public about agency action and not to benefit private
11 litigants.”). The Court also finds that the IRS complied with its duty to reasonably
12 segregate and produce all non-exempt information. See Queener Decl. ¶ 13.
13 Accordingly, the Court grants the IRS’s motion for summary judgment as to its
14 withholding of information pursuant to Exemption 7(C).

15 4. Exemption 7(E)

16 Exemption 7(E) protects information compiled for law enforcement purposes
17 from disclosure to the extent it “would disclose techniques and procedures for law
18 enforcement investigations or prosecutions, or would disclose guidelines for law
19 enforcement investigations or prosecutions if such disclosure could reasonably be
20 expected to risk circumvention of the law.” 5 U.S.C. § 552(b)(7)(E). To establish
21 this exemption, “the Government must show that the technique that would be
22 disclosed under the FOIA request is a technique unknown to the general public.”
23 *Pully v. Internal Revenue Serv.*, 939 F. Supp. 429, 438 (E.D. Va. 1996) (citing
24 *Malloy v. Dep’t of Justice*, 457 F. Supp. 543, 545 (D.D.C. 1978)); see *Wilkinson v.*
25 *Fed. Bureau of Investigation*, 633 F. Supp. 336, 349 (C.D. Cal. 1986) (to justify
26 withholding under Exemption 7(E), “the government will have the burden of proving
27 that these techniques are not generally known to the public”).

28 The IRS indicates it withheld 5 pages in full and 4 pages in part pursuant to

1 Exemption 7(E). Queener Decl. ¶ 29. The IRS relies on the declaration of
2 Queener, who states the redacted information relates to Plaintiff’s “Risk Score,”
3 “which is a technique used by the [IRS] to prioritize case assignments given the
4 [IRS’s] resource constraints. The Risk Score is a technique utilized by the [IRS] to
5 ensure the effective enforcement of the nation’s tax law, and is a technique
6 unknown to the general public.” Queener Supp. Decl. ¶ 18.

7 The Court finds the IRS’s evidence sufficient to show that disclosure of the
8 referenced information would disclose techniques and procedures for law
9 enforcement investigations that could reasonably be expected to risk
10 circumvention of the law. The Court also finds that the IRS complied with its duty
11 to reasonably segregate and produce all non-exempt information. See Queener
12 Decl. ¶ 13. Accordingly, the IRS’s motion for summary judgment is granted as to
13 its withholding of information under this exemption.

14 **III. CONCLUSION AND ORDER**

15 The Court concludes with the reminder that “FOIA is not designed ‘as a
16 substitute for civil discovery.’ ” *Shannahan v. I.R.S.*, 672 F.3d 1142 (9th Cir.
17 2012) (quoting *Baldrige v. Shapiro*, 455 U.S. 345, 360 n.14 (1982)). As another
18 district court reasoned, if the Court were to “hold [Plaintiff] was entitled to the
19 third-party return information [it] seeks, [the Court] would have to disclose that
20 same information to the general public too.” *Greenberger v. I.R.S.*, 283
21 F.Supp.3d 1354, 1372 (N.D. Ga. 2017) (citing *Forest Serv. Emps. For Envtl*
22 *Ethics v. U.S. Forest Serv.*, 524 F.3d 1021, 1025 (9th Cir. 2008) (“FOIA provides
23 every member of the public with equal access to public documents and, as such,
24 information released in response to one FOIA request must be released to the
25 public at large.”)).

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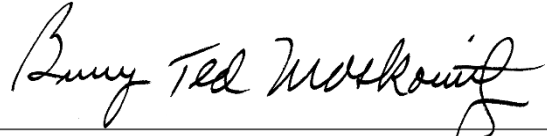
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1 For this reason and those discussed above, Plaintiff's motion for summary
2 judgment is DENIED and the IRS's motion for summary judgment is GRANTED.
3 (ECF Nos. 38, 39). The Clerk shall enter a final judgment accordingly.

4 IT IS SO ORDERED.

5 Dated: September 27, 2018



6
7 Barry Ted Moskowitz, Chief Judge
8 United States District Court
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