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6 UNITED STATES DISTRICT COURT  
7 SOUTHERN DISTRICT OF CALIFORNIA  
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9 SMART-TEK SERVICE  
10 SOLUTIONS CORP.,

11 Plaintiff,

12 v.

13 UNITED STATES INTERNAL  
14 REVENUE SERVICE,

15 Defendant.

Case No.: 15-cv-0452-BTM-LL

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

**[ECF NOS. 42, 43]**

16 The United States Internal Revenue Service ("IRS") and Plaintiff Smart-Tek  
17 Service Solutions Corp. have filed cross-motions for summary judgment as to  
18 Plaintiff's claims under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552,  
19 et seq. (ECF Nos. 42, 43). For the reasons discussed below, the IRS's motion  
20 will be granted and Plaintiff's motion will be denied.

21 **I. BACKGROUND**

22 This is one of five actions filed by related entities against the IRS.<sup>1</sup> Each  
23 case is based on the claim that the IRS failed to comply with its obligations under  
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26 <sup>1</sup> 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-LL; *Smart-Tek Automated Services, Inc. v. United States Internal Revenue*  
*Service*, Case No. 15-cv-0453-BTM-LL; and *American Marine LLC v. United States Internal Revenue Service*,  
Case No. 15-cv-0455-BTM-LL.

1 5 U.S.C. § 552 to respond to FOIA requests submitted by the plaintiffs. Plaintiffs  
2 contend they submitted their requests after the IRS filed a series of liens against  
3 them between 2011 and 2013 holding them liable for payroll tax liabilities of other  
4 corporations under alter ego and/or successor liability theories.

5 Plaintiff Smart-Tek Service Solutions Corp. alleges it sent a written FOIA  
6 request to the IRS on May 12, 2014. Compl. (ECF No. 1) ¶ 10. Under 5 U.S.C. §  
7 552(a)(6)(A)(i), an agency has 20 business days following receipt of a FOIA  
8 request to determine whether to comply with the request and must “immediately”  
9 notify the requester of its determination. 5 U.S.C. § 552(a)(6)(A)(i). On September  
10 29, 2014, the IRS allegedly sent a response to Plaintiff acknowledging receipt of  
11 the request but “failed to make any determination about the request.” Compl. ¶  
12 11. On February 27, 2015, having received no further response from the IRS,  
13 Plaintiff initiated this action.

14 On October 7, 2016, the IRS filed a motion for summary judgment, arguing  
15 that it had fully discharged its obligations under 5 U.S.C. § 552 and indicating that  
16 it had completed its search for records and released 1,598 pages in full and 369  
17 pages in part, of non-exempt documents responsive to Plaintiff’s FOIA request.  
18 (ECF No. 29). On July 10, 2017, the Court granted in part and denied in part  
19 without prejudice the IRS’s motion for summary judgment. (ECF No. 36). The Court  
20 held that the declarations submitted by the IRS were insufficient to demonstrate  
21 the adequacy of the IRS’s search because they (1) failed to explain how the IRS  
22 interpreted Plaintiff’s FOIA request and the scope of documents the IRS  
23 determined were responsive to the request and (2) failed to provide sufficient  
24 information about the process by which the IRS reviewed 65 boxes of documents.  
25 *Id.* at 7.

26 The IRS also indicated that it withheld, in full or in part, responsive  
27 documents pursuant to the following FOIA exemptions: Exemption 3 (in  
28 conjunction with 26 U.S.C. § 6103(a)), Exemption 3 (in conjunction with 26 U.S.C.

1 § 6103(e)(7)), Exemption 5, Exemption 6, Exemption 7(A), Exemption 7(D), and  
2 Exemption 7(E). The Court granted the IRS's motion for summary judgment as to  
3 the documents withheld under Exemption 5, Exemption 7(A), Exemption 7(D) and  
4 Exemption 3 (in conjunction with 26 U.S.C. § 6103(e)(7)). *Id.* at 12, 14-16, 18.

5 The IRS has now filed a renewed motion for summary judgment as to the  
6 remaining issues. (ECF No. 43). Plaintiff has also filed a motion for summary  
7 judgment. (ECF No. 42).

## 8 **II. DISCUSSION**

### 9 A. FOIA Summary Judgment Standard

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

18 District courts are directed to conduct a *de novo* review of the adequacy of  
19 an agency's response to a FOIA request. 5 U.S.C. § 552(a)(4)(B); *U.S. Dep't of*  
20 *Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 755 (1989).  
21 Because FOIA cases rarely involve material factual disputes, they "are typically  
22 and appropriately decided on motions for summary judgment." *Defenders of*  
23 *Wildlife v. U.S. Border Patrol*, 623 F. Supp. 2d 83, 97 (D.D.C. 2009); see  
24 *Shannahan v. Internal Revenue Serv.*, 637 F. Supp. 2d 902, 912 (W.D. Wash.  
25 2009). Courts "follow a two-step inquiry when presented with a motion for  
26 summary judgment in a FOIA case." *Shannahan*, 637 F. Supp. 2d at 912.

27 First, the district court must determine whether the agency has established  
28 that it fully discharged its obligation under FOIA to conduct an adequate search for

1 responsive records. *Zemansky v. U.S. Env'tl. Prot. Agency*, 767 F.2d 569, 571 (9th  
2 Cir. 1985). To meet this burden, the agency must:

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

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

14 If the agency satisfies its initial burden, the court proceeds to the second step  
15 and considers “whether the agency has proven that the information that it did not  
16 disclose falls within one of nine FOIA exemptions.” *Shannahan*, 637 F. Supp. 2d  
17 at 912 (quoting *Los Angeles Times Commc'ns, LLC v. Dep't of the Army*, 442 F.  
18 Supp. 2d 880, 894 (C.D. Cal. 2006)). Agencies seeking to withhold documents  
19 pursuant to a FOIA exemption “have been required to supply the opposing party  
20 and the court with a ‘*Vaughn* index,’ identifying each document withheld, the  
21 statutory exemption claimed, and a particularized explanation of how disclosure of  
22 the particular document would damage the interest protected by the claimed  
23 exemption.” *Wiener v. Fed. Bureau of Investigation*, 943 F.2d 972, 977 (9th Cir.  
24 1991); see *Vaughn v. Rosen*, 484 F.2d 820, 823-25 (D.C. Cir. 1973). “The purpose  
25 of a *Vaughn* index ‘is . . . to afford the requester an opportunity to intelligently  
26 advocate release of the withheld documents and to afford the court the opportunity  
27 to intelligently judge the contest.” *Shannahan*, 637 F. Supp. 2d at 912 (quoting  
28 *Wiener*, 943 F.2d at 979).

Finally, “even if the agency satisfies the two-part test, it generally must still  
disclose any reasonably segregable portions of the withheld documents.” *Id.*; 5

1 U.S.C. § 552(b) (“Any reasonably segregable portion of a record shall be provided  
2 to any person requesting such record after deletion of the portions which are  
3 exempt under this subsection.”). “The burden is on the agency to establish that all  
4 reasonably segregable portions of a document have been segregated and  
5 disclosed.” *Id.* (quoting *Pac. Fisheries Inc. v. United States*, 539 F.3d 1143, 1148  
6 (9th Cir. 2008)).

#### 7 B. Reasonableness of Search

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

25 In support of its contention that it conducted an adequate search for records  
26 responsive to Plaintiff’s FOIA request, the IRS submits the declarations of Delphine  
27 Thomas and Christopher Valvardi (ECF No. 43-1). Thomas is a Disclosure  
28 Specialist whose duties include responding to FOIA requests for IRS records,

1 which requires her to “have knowledge of the types of documents created and  
2 maintained by the various divisions and functions of the [IRS].” Thomas Decl. ¶ 2.  
3 Valvardi is an attorney in the Office of the Associate Chief Counsel of the IRS  
4 whose duties “require knowledge of the types of documents created and  
5 maintained by the various divisions and functions of the [IRS], and an  
6 understanding of the provisions of the FOIA which exempt certain types of  
7 documents from disclosure in response to a FOIA request.” Valvardi Decl. ¶ 1-2.

8 On May 29, 2014, the IRS received a FOIA request from Plaintiff seeking “a  
9 complete copy of the administrative file” for Plaintiff. Thomas Decl. ¶ 9. Disclosure  
10 Specialist Ed Pullman reviewed the request and contacted Plaintiff, who narrowed  
11 the request to records regarding forms 940, 941, and 1120 for the years 2007-  
12 2014. *Id.* ¶ 11. According to Pullman’s case history notes dated July 25, 2015, and  
13 pursuant to established practice, Pullman entered Plaintiff’s Taxpayer  
14 Identification Number (“TIN”) into the Integrated Data Retrieval Service (“IDRS”).  
15 *Id.* ¶ 12; Thomas Supp. Decl. ¶ 6. Pullman entered the following codes into IDRS  
16 in conjunction with Plaintiff’s TIN: BMFOLI (to retrieve an index of all the tax  
17 modules in the Business Master File for Plaintiff’s TIN), BMFOLT (to retrieve all  
18 amounts, dates, and posted transactions pertaining to tax years 2007-2014), and  
19 SUMRY (to provide a summary of all available tax modules under Plaintiff’s TIN).  
20 Thomas Decl. ¶ 12.

21 Pullman learned that Plaintiff’s collection case file was in the possession of  
22 IRS Revenue Officer John Black. *Id.* ¶ 14. The IRS construed Plaintiff’s request  
23 for “administrative file” as a request for the “case file maintained by a Revenue  
24 Officer who is assigned to that taxpayer’s collection case(s).” Thomas Supp. Decl.  
25 8. Plaintiff accepts the IRS’s interpretation of its FOIA request. (ECF No. 44 at 2).

26 Black informed the IRS Disclosure Office that documents responsive to  
27 Plaintiff’s requests were located within the commingled files maintained by Black  
28 on Plaintiff and over twenty related entities. Thomas Decl. ¶ 14. The commingled

1 documents resulted in 65 boxes of documents, with the number of pages per box  
2 ranging from a low of 600 pages to a high of around 4000 pages. *Id.* ¶ 15. The  
3 total number of pages in the 65 boxes was around 141,000. *Id.* The 65 boxes of  
4 records were then scanned into electronic format and reviewed by Disclosure  
5 Specialists Thomas, Athena Amparano, and Ed Pullman. Thomas Supp. Decl. ¶¶  
6 13-14. The Disclosure Specialists conducted their review by selecting a box of  
7 scanned records and “visually searching page-by-page for information pertaining  
8 to plaintiff, such as plaintiff’s name or employer identification number (‘EIN’).” *Id.*  
9 ¶ 15.

10 Documents containing only the Plaintiff’s taxpayer return information were  
11 marked as responsive to Plaintiff’s FOIA request. *Id.* ¶ 17. Some boxes contained  
12 documents pertaining to Plaintiff as well as other taxpayers. *Id.* ¶ 18. Thomas  
13 “checked the authorization for the plaintiff’s designated representative with power  
14 of attorney (‘POA’) using the CFINK command in IDRS” and “noted that the POA  
15 had authorization for some, but not all, of the taxpayers named in the records.” *Id.*  
16 Plaintiff submitted a Form 2848 “authorizing its attorney in fact to receive only the  
17 return information of plaintiff that would be found within [Black’s] commingled  
18 administrative file.” Valvardi Supp. Decl. ¶ 17. Plaintiff did not provide the IRS with  
19 “valid consents from those other taxpayers authorizing the [IRS] to disclose their  
20 tax return information to plaintiff.” *Id.* ¶ 18. Therefore, if a document contained  
21 Plaintiff’s return information as well as the return information of one or more of the  
22 other FOIA requesting entities, it was marked as partially responsive to Plaintiff’s  
23 FOIA request and partially responsive to each of the other FOIA requesting entities  
24 whose return information was included on the document. Thomas Supp. Decl. ¶  
25 21. If a document contained Plaintiff’s return information but also the return  
26 information of other taxpayers who did not submit FOIA requests, it was marked  
27 as partially responsive to Plaintiff’s request only. *Id.* ¶ 22. “Documents that did not  
28 contain any of plaintiff’s return information were marked as nonresponsive to

1 plaintiff's FOIA request." *Id.* ¶ 23. Copies of responsive documents were uploaded  
2 to the IRS's Automated Freedom of Information Act ("AFOIA") system. *Id.* ¶ 25.

3 The IRS located and reviewed a total of 2129 pages responsive to Plaintiff's  
4 FOIA request. Valvardi Decl. ¶ 8. The IRS determined that 1598 pages could be  
5 released to Plaintiff in their entirety, 369 pages could be released in part, and 162  
6 pages needed to be withheld in full. *Id.*

7 The IRS has submitted "reasonably detailed, nonconclusory" affidavits that  
8 show "what records were searched, by whom, and through what process." See  
9 *Steinberg*, 23 F.3d at 552. The IRS's declarations indicate how the IRS interpreted  
10 Plaintiff's FOIA request and its criteria to determine which documents from the 65  
11 boxes were responsive to Plaintiff's request. Plaintiff argues that the IRS's search  
12 was unreasonable because documents containing Plaintiff's taxpayer information  
13 were commingled with documents containing other taxpayers' information and the  
14 IRS "mark[ed] any document as non-responsive merely because it did not contain  
15 Plaintiff's taxpayer information." (ECF No. 44 at 3). The Court finds the IRS's  
16 approach of marking documents as non-responsive if they did not contain Plaintiff's  
17 taxpayer information to be reasonable because Plaintiff's FOIA request only  
18 requested its own, and not any other taxpayers' administrative file. The IRS has  
19 conducted an adequate search in response to Plaintiff's FOIA request. The IRS's  
20 motion for summary judgment is granted as to this issue.

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1 C. Withholding of Responsive Documents Pursuant to FOIA Exemptions

2 The IRS indicates it withheld all, or part, of responsive documents pursuant  
3 to FOIA exemptions.

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

5 Pursuant to Exemption 3 and § 6103(a), the IRS withheld documents  
6 because the pages contained information that was “the return information of  
7 taxpayers other than plaintiff.” (ECF No. 43-2 Valvardi Decl. ¶ 13).

8 Plaintiff argues that because the IRS has determined for tax liability purposes  
9 that Plaintiff and other taxpayers are alter egos, and therefore one entity, the IRS  
10 cannot withhold documents on the basis that they belong to other taxpayers. (ECF  
11 No. 42-1 at 11; ECF No. 44 at 6). Plaintiff further contends that § 6103 no longer  
12 bars its request for certain return information because the names of its alleged  
13 alter egos were publicly disclosed in tax liens and a footnote in *Goldberg v. United*  
14 *States*, a related case. See 2015 WL 4656361, at \*1 n.2 (S.D. Fla. Aug. 5, 2015).  
15 (ECF No. 42-1 at 9).

16 The IRS argues it need not disclose the return information of alter-ego  
17 taxpayers because Plaintiff did not request such information, and even if Plaintiff  
18 had, such a request would be “invalid on its face” because Plaintiff failed to secure  
19 the requisite authorization for the disclosure of third party documents. (ECF No.  
20 43-1 at 11-12; ECF No. 49 at 5). The IRS asserts it did not itself disclose taxpayer  
21 identities in the *Goldberg* case, and to the extent a tax lien constitutes public  
22 disclosure, the withheld documents nevertheless constitute protected return  
23 information. (ECF No. 43-1 at 13-17). Finally, the IRS contends that a rule  
24 requiring disclosure upon assertion of alter ego liability contradicts how the IRS  
25 treats separate taxpayers and would lead to “absurd results.” (ECF No. 45 at 7-8).  
26 The Court agrees with the IRS in part.

27 FOIA Exemption 3, 5 U.S.C. § 552(b)(3), protects from disclosure matters  
28 “specifically exempted by statute.” Section 6103 of the Internal Revenue Code,

1 26 U.S.C. § 6103, is one such statute. *Long v. U.S.*, 742 F.2d 1173, 1178 (9th  
2 Cir. 1984). Section 6103 provides that returns and returns information “shall be  
3 confidential,” subject to certain exceptions. 26 U.S.C. § 6103(a). “If § 6103  
4 forbids the disclosure of material, it may not be produced in response to a  
5 request under the FOIA.” *Church of Scientology of California v. I.R.S.*, 484 U.S.  
6 9, 11 (1987). FOIA requesters are generally not entitled to information identifying  
7 another taxpayer. *See, e.g., Willamette Indus., Inc. v. United States*, 689 F.2d  
8 865, 867-69 (9th Cir. 1982) (treating another taxpayer’s identifying information as  
9 exempt from FOIA request but requiring IRS to provide reasonable segregable  
10 portions of record); *DeSalvo v. I.R.S.*, 861 F.2d 1217 (10th Cir. 1988)  
11 (“Individuals are . . . not entitled to the tax returns or return information of others  
12 unless a specific exception within the statute applies.”); *Linsteadt v. I.R.S.*, 729  
13 F.2d 998, 1000 (5th Cir. 1984) (stating a FOIA requester “is not entitled to access  
14 to the tax return or return information of other taxpayers”) (citing *Fruehauf Corp.*  
15 *v. I.R.S.*, 566 F.2d 574, 578 (6th Cir. 1980)).

16 As an initial matter, the Court finds that Plaintiff did not actually request the  
17 return information of alter ego entities. Plaintiff requested “a complete copy of  
18 the administrative file” for Plaintiff “for tax forms 940, 941, and 1120 for years  
19 2007-2014.” (ECF No. 29-4 Thomas Decl. at ¶ 9). The request fails to specify  
20 that it seeks the identities and information of other taxpayers connected with  
21 Plaintiff’s administrative file. *Id.* The Court further notes that the 35 day window  
22 in which to resubmit or amend the request has since expired. *See* 26 C.F.R. §  
23 601.702(c)(1)(i).

24 Even if Plaintiff had sufficiently stated the scope of its request, 26 U.S.C.  
25 § 6103 specifically protects a taxpayer’s identity as confidential “return  
26 information.” *See* 26 U.S.C. § 6103(a) (“Returns and return information shall be  
27 confidential . . . .”); 26 U.S.C. § (b)(2)(A) (including “a taxpayer’s identity” in the  
28 definition of “return information”). “Return information” also encompasses “whether

1 the taxpayer's return was, is being, or will be examined or subject to other  
2 investigation." 26 U.S.C. § (b)(2)(A). IRS regulations require that requests for  
3 another taxpayer's return information, which includes their identity, be  
4 accompanied by "a properly executed power of attorney, Privacy Act consent, or  
5 tax information authorization, as appropriate." 26 C.F.R. § 601.702(c)(5)(iii)(C).  
6 Plaintiff failed to obtain such consent here, despite its receipt of a tax lien listing  
7 nineteen alleged alter egos. (See ECF 42-2, Bonar Decl. Exh. A).

8 Plaintiff's relies on *Lampert v. United States* to support its assertion that the  
9 taxpayers' identities are public information as a result of the tax lien and *Goldberg*  
10 footnote, and therefore not subject to § 6103(a)'s disclosure prohibitions. 854 F.2d  
11 335 (9th Cir. 1988). Plaintiff's reliance is not entirely misplaced. In *Lampert*,  
12 taxpayers alleged that government press releases detailing tax evasion charges  
13 against the taxpayers constituted unauthorized disclosures of their return  
14 information under 26 U.S.C. § 6103. *Id.* at 336. The Ninth Circuit rejected the  
15 taxpayers' arguments, reasoning that that "once information is lawfully disclosed  
16 in court proceedings, '§ 6103(a)'s directive to keep return information confidential  
17 is moot.'" *Id.* at 338 (quoting *Figur v. United States*, 662 F.Supp. 515, 517 (N.D.  
18 Cal. 1987)). The Ninth Circuit held that "once return information is lawfully  
19 disclosed in a judicial forum, its subsequent disclosure by press release does not  
20 violate [the statute]." *Id.*

21 The IRS contends that because another party — not the IRS — publicly  
22 disclosed taxpayers' identities during the related *Goldberg* litigation, and because  
23 the IRS actively asserted the privilege throughout discovery, the IRS did not waive  
24 § 6103 protections in a court proceeding. (ECF No. 43-1 at 14-16). But the Court  
25 need not reach this argument, as *Lampert* seems to at a minimum allow the IRS  
26 to confirm that the entities listed on the public federal tax lien are among those  
27 whose documents are included in the commingled file. See Bonar Decl. Exh. A.  
28 The identities of Plaintiff's alleged alter-egos have been "made a part of the public

1 domain” through legal process and the creation of a public record. *Lampert*, 854  
2 at 338. It therefore follows that the identities of taxpayers named in the public tax  
3 lien are no longer privileged under § 6103. See *id.* However, the Court agrees with  
4 the IRS that the documents containing the taxpayers’ other return information  
5 remain protected. See generally 26 U.S.C. § 6103(b) (enumerating other protected  
6 return information). That the IRS named other taxpayers publicly in connection  
7 with Plaintiff does not entitle Plaintiff to those taxpayers’ undisclosed, non-public  
8 documents through the FOIA.

9 Plaintiff’s alter ego argument is also unavailing. The Internal Revenue Code  
10 treats taxpayers as separate entities for tax assessment purposes irrespective of  
11 whether they are designated alter egos for collection purposes. See *Portsmouth*  
12 *Ambulance, Inc. v. United States*, 756 F.3d 494, 501 (6th Cir. 2014) (reasoning  
13 “the mere application of an alter-ego appellation does not transform separate  
14 individuals or companies into a single entity”). By arguing that alter egos are  
15 entitled to one another’s tax returns, Plaintiff would in fact merge the entities into  
16 one taxpayer and render itself liable for the tax obligations of another taxpayer.

17 Plaintiff cites to an unreported district court case, *George v. Internal Revenue*  
18 *Service*, 2007 WL 1450309 at \*1 n.3 (N.D. Cal., May 14, 2007), as evidence that  
19 the IRS has previously treated a FOIA requester and its alter ego as a single entity  
20 for both tax liability and disclosure purposes. (ECF No. 42-1 at 11-12). But *George*  
21 is neither binding nor does it hold that there is in fact an alter ego exception to §  
22 6103. See *id.* And although Plaintiff could in theory achieve disclosure of alter ego  
23 return information in a tax administration proceeding under 26 U.S.C. § 6103(h)(4),  
24 Plaintiff cannot do the same through a FOIA proceeding. See 26 U.S.C. §  
25 6103(h)(4) (providing “[a] return or return information may be disclosed in a Federal  
26 . . . proceeding pertaining to tax administration but only . . . if such return or return  
27 information directly relates to a transactional relationship between a person who is  
28 party to the proceeding and the taxpayer which directly affects the resolution of an

1 issue in the proceeding”); *Safeway, Inc. v. I.R.S.*, 2006 WL 3041079 at \*7-8 (N.D.  
2 Cal. Oct. 24, 2006) (holding FOIA litigation not a proceeding within the meaning of  
3 § 6103(h)(4)). *See also Chamberlain v. Kurtz*, 589 F.3d 827, 838 (5th Cir. 1979)  
4 (going further to state “[n]othing in the legislative history of section 6103 suggests  
5 that subsection (h)(4) was intended to govern disclosures of information to the  
6 taxpayer himself” and noting pertinent committee reports “discuss only disclosure  
7 to third party law enforcement officials”).

8 Finally, a rule providing that putative alter egos are entitled to one another’s  
9 tax return information would, as the IRS argues, yield paradoxical results. (ECF  
10 No. 45 at 8). If the IRS discloses another taxpayer’s information pursuant to such  
11 a rule, only so that the requester can use that information to disprove alter ego  
12 status, the disclosure automatically violates § 6103(a) and conflicts with its core  
13 purpose of protecting taxpayer privacy. *See Church of Scientology of California v.*  
14 *I.R.S.*, 484 U.S. 9, 16 (1987) (“Congress did not intend [§ 6103] to allow the  
15 disclosure of otherwise confidential return information merely by the redaction of  
16 identifying details.”); *Cause of Action v. I.R.S.*, 125 F.Supp.3d 145, 163 (D.D.C.  
17 2015) (“The core purpose of section 6103 is to protect taxpayer privacy.”) (internal  
18 quotations and alterations omitted). Plaintiff’s suggested approach runs counter  
19 to the purpose of § 6103 and is untenable.

20 For the foregoing reasons, the IRS’s motion for summary judgment is  
21 granted as to Exemption 3.

## 22 2. Exemption 6

23 Exemption 6 restricts from disclosure “personnel and medical files and  
24 similar files the disclosure of which would constitute a clearly unwarranted invasion  
25 of personal privacy.” 5 U.S.C. § 552(b)(6). To determine whether information has  
26 been properly withheld under Exemption 6 requires a court to “balance the privacy  
27 interests or personal nature of the information sought against the public interest  
28 that would be served by disclosure.” *Chamberlain v. Kurtz*, 589 F.2d 827, 841-42

1 (5th Cir. 1979); see *Horowitz v. Peace Corps*, 428 F.3d 271, 278 (D.C. Cir. 2005).

2 According to Valvardi, the information being withheld under Exemption 6  
3 consists of “taxpayer identification numbers (social security numbers, entity  
4 identification numbers, and return preparer identification numbers), credit card or  
5 bank account numbers, home addresses, personal phone numbers, or other  
6 similar information which would identify an individual taxpayer and could be used  
7 to compromise that individual’s identity.” Valvardi Decl. ¶ 22. Further, the IRS is  
8 not asserting Exemption 6 for withholding “any return or return information of the  
9 unrelated corporations, nor any corporate entities,” but rather only for “taxpayers  
10 who are private individuals and are not business entities.” Valvardi Supp. Decl. ¶  
11 21.

12 The Court finds the referenced information was properly withheld under  
13 Exemption 6, because it consists of personal information of individuals that falls  
14 within the ambit of information typically subject to privacy protection, and the  
15 privacy interests of the individuals involved outweigh any public interest that might  
16 be served by disclosure. See *Chamberlain*, 589 F.2d at 841-42. The Court also  
17 finds that the IRS complied with its duty to reasonably segregate and produce all  
18 non-exempt information. See Valvardi Decl. ¶ 9. Accordingly, the Court grants the  
19 IRS’s motion for summary judgment as to its withholding of information pursuant  
20 to Exemption 6.

### 21 3. Exemption 7(E)

22 Exemption 7(E) protects information compiled for law enforcement purposes  
23 from disclosure to the extent it “would disclose techniques and procedures for law  
24 enforcement investigations or prosecutions, or would disclose guidelines for law  
25 enforcement investigations or prosecutions if such disclosure could reasonably be  
26 expected to risk circumvention of the law.” 5 U.S.C. § 552(b)(7)(E). To establish  
27 this exemption, “the Government must show that the technique that would be  
28 disclosed under the FOIA request is a technique unknown to the general public.”

1 *Pully v. Internal Revenue Serv.*, 939 F. Supp. 429, 438 (E.D. Va. 1996) (citing  
2 *Malloy v. Dep't of Justice*, 457 F. Supp. 543, 545 (D.D.C. 1978)); see *Wilkinson v.*  
3 *Fed. Bureau of Investigation*, 633 F. Supp. 336, 349 (C.D. Cal. 1986) (to justify  
4 withholding under Exemption 7(E), “the government will have the burden of proving  
5 that these techniques are not generally known to the public”).

6 The IRS indicates it withheld five pages pursuant to Exemption 7(E).  
7 According to Valvardi, the redacted pages contain notes that “include discussions  
8 of several techniques and procedures typically used by examiners to gather  
9 evidence about taxpayers, and to identify the relationships among various entities.”  
10 Valvardi Supp. Decl. ¶ 23. These include (1) “the parameters of certain modes of  
11 coordination among various operating divisions within the IRS and IRS Chief  
12 Counsel, and among the IRS and other agencies,” (2) “methods of analyzing  
13 information gathered in investigations in order to determine specific forms of  
14 liability,” and (3) “techniques used when investigating and interviewing taxpayers  
15 under examination in order to effectively gather information needed to determine  
16 the taxpayer’s liability.” *Id.* ¶¶ 24-26. The IRS asserts that none of these techniques  
17 and procedures are known to the general public. *Id.*

18 The Court finds the IRS’s evidence sufficient to show that disclosure of the  
19 referenced information would disclose techniques and procedures for law  
20 enforcement investigations that could reasonably be expected to risk  
21 circumvention of the law. The Court also finds that the IRS complied with its duty  
22 to reasonably segregate and produce all non-exempt information. See Valvardi  
23 Decl. ¶ 9. Accordingly, the IRS’s motion for summary judgment is granted as to its  
24 withholding of information under this exemption.

### 25 **III. CONCLUSION AND ORDER**

26 The Court concludes with the reminder that “FOIA is not designed ‘as a  
27 substitute for civil discovery.’ ” *Shannahan v. I.R.S.*, 672 F.3d 1142 (9th Cir.  
28 2012) (quoting *Baldrige v. Shapiro*, 455 U.S. 345, 360 n.14 (1982)). As another

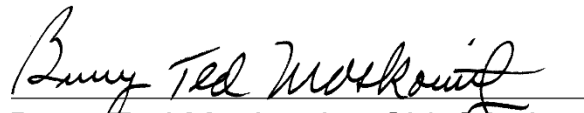
1 district court reasoned, if the Court were to “hold [Plaintiff] was entitled to the  
2 third-party return information [it] seeks, [the Court] would have to disclose that  
3 same information to the general public too.” *Greenberger v. I.R.S.*, 283  
4 F.Supp.3d 1354, 1372 (N.D. Ga. 2017) (citing *Forest Serv. Emps. For Envtl*  
5 *Ethics v. U.S. Forest Serv.*, 524 F.3d 1021, 1025 (9th Cir. 2008) (“FOIA provides  
6 every member of the public with equal access to public documents and, as such,  
7 information released in response to one FOIA request must be released to the  
8 public at large.”)).

9 Finally, Plaintiff’s appeal to fairness in light of the I.R.S.’s assertion of alter  
10 ego liability for third parties’ unpaid taxes is unavailing. Even the I.R.S.  
11 recognizes that in an action challenging the imposition of liability Plaintiff will  
12 probably obtain the third party information it seeks. (ECF No. 45 at n.2). But this  
13 FOIA action is not an action challenging the liens.

14 For the reasons discussed above, the IRS’s motion for summary judgment  
15 is GRANTED (ECF No. 43) and Plaintiff’s motion for summary judgment is  
16 DENIED (ECF No. 42).

17 IT IS SO ORDERED.

18 Dated: November 26, 2018

19   
20 Barry Ted Moskowitz, Chief Judge  
21 United States District Court  
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