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6 UNITED STATES DISTRICT COURT
7 SOUTHERN DISTRICT OF CALIFORNIA
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9 SMART-TEK AUTOMATED
10 SERVICES INC.,
11
12 Plaintiff,
13 v.
14 UNITED STATES INTERNAL
15 REVENUE SERVICE,
16 Defendant.

Case No.: 15-cv-0453-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 Automated Services Inc. 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.¹ Each
23 case is based on the claim that the IRS failed to comply with its obligations under
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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-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 Automated Services Inc. 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 June 26,
10 2014, the IRS allegedly sent a response to Plaintiff in which it acknowledged
11 receipt of the request but “failed to make any determination about the request.”
12 Compl. ¶ 11. On February 27, 2015, having received no further response from the
13 IRS, 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 14,544 pages in full, 3,479
17 pages in part, and withheld 53 pages in full that were responsive to Plaintiff’s FOIA
18 request. (ECF No. 26). On July 20, 2017, the Court granted in part and denied in
19 part without prejudice the IRS’s motion for summary judgment. (ECF No. 36). The
20 Court held that the declarations submitted by the IRS were insufficient to
21 demonstrate the adequacy of the IRS’s search because they (1) failed to explain
22 how the IRS interpreted Plaintiff’s FOIA request and the scope of documents the
23 IRS determined were responsive to the request, (2) failed to provide sufficient
24 information about the process by which the IRS reviewed 65 boxes of documents,
25 and (3) failed to address whether the IRS’s subsequent release of two productions
26 of documents indicated that the search was still ongoing. *Id.* at 7-8.

27 The IRS also indicated that it withheld, in full or in part, responsive
28 documents pursuant to the following FOIA exemptions: Exemption 3 (in

1 conjunction with 26 U.S.C. § 6103(a)), Exemption 3 (in conjunction with 26 U.S.C.
2 § 6103(e)(7)), Exemption 5, Exemption 6, Exemption 7(A), Exemption 7(C), and
3 Exemption 7(D). The Court granted the IRS's motion for summary judgment as to
4 the documents withheld under Exemption 6, Exemption 7(A), and Exemption 3 (in
5 conjunction with 26 U.S.C. § 6103(e)(7)). *Id.* at 15, 16, 19.

6 The IRS has now filed a renewed motion for summary judgment as to the
7 remaining issues. (ECF No. 42). Plaintiff has also filed a motion for summary
8 judgment. (ECF No. 43). The IRS is not renewing its motion for summary judgment
9 as to the issues of Exemption 5, Exemption 7(C), and Exemption 7(D) because
10 they are now moot. All portions of documents withheld under Exemption 5 and
11 Exemption 7(D) have already been validly withheld pursuant to Exemption 7(A)
12 and Exemption 3 (in conjunction with 26 U.S.C. § 6103(e)(7)). Maher Supp. Decl.
13 ¶ 10. Further, the IRS intends to release the 126 pages of documents withheld
14 pursuant to Exemption 7(C) that were not also validly withheld pursuant to
15 Exemption 6. *Id.* Therefore, the only remaining issues are (1) whether the IRS
16 conducted an adequate search and (2) whether the IRS can withhold documents
17 pursuant to Exemption 3 (in conjunction with 26 U.S.C. § 6103(a)).

18 **II. DISCUSSION**

19 A. FOIA Summary Judgment Standard

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

28 District courts are directed to conduct a *de novo* review of the adequacy of

1 an agency's response to a FOIA request. 5 U.S.C. § 552(a)(4)(B); *U.S. Dep't of*
2 *Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 755 (1989).
3 Because FOIA cases rarely involve material factual disputes, they "are typically
4 and appropriately decided on motions for summary judgment." *Defenders of*
5 *Wildlife v. U.S. Border Patrol*, 623 F. Supp. 2d 83, 97 (D.D.C. 2009); see
6 *Shannahan v. Internal Revenue Serv.*, 637 F. Supp. 2d 902, 912 (W.D. Wash.
7 2009). Courts "follow a two-step inquiry when presented with a motion for
8 summary judgment in a FOIA case." *Shannahan*, 637 F. Supp. 2d at 912.

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

13 demonstrate that it has conducted a "search reasonably calculated to
14 uncover all relevant documents." Further, the issue to be resolved is
15 not whether there might exist any other documents possibly responsive
16 to the request, but rather whether the search for those documents was
17 adequate. The adequacy of the search, in turn, is judged by a standard
18 of reasonableness and depends, not surprisingly, upon the facts of
19 each case. In demonstrating the adequacy of the search, the agency
20 may rely upon reasonably detailed, nonconclusory affidavits submitted
21 in good faith.

22 *Id.* (quoting *Weisberg v. U.S. Dep't of Justice* ("*Weisberg II*"), 745 F.2d 1476, 1485
23 (D.C. Cir. 1984)).

24 If the agency satisfies its initial burden, the court proceeds to the second step
25 and considers "whether the agency has proven that the information that it did not
26 disclose falls within one of nine FOIA exemptions." *Shannahan*, 637 F. Supp. 2d
27 at 912 (quoting *Los Angeles Times Commc'ns, LLC v. Dep't of the Army*, 442 F.
28 Supp. 2d 880, 894 (C.D. Cal. 2006)). Agencies seeking to withhold documents
pursuant to a FOIA exemption "have been required to supply the opposing party
and the court with a 'Vaughn index,' identifying each document withheld, the

1 statutory exemption claimed, and a particularized explanation of how disclosure of
2 the particular document would damage the interest protected by the claimed
3 exemption.” *Wiener v. Fed. Bureau of Investigation*, 943 F.2d 972, 977 (9th Cir.
4 1991); see *Vaughn v. Rosen*, 484 F.2d 820, 823-25 (D.C. Cir. 1973). “The purpose
5 of a *Vaughn* index ‘is ... to afford the requester an opportunity to intelligently
6 advocate release of the withheld documents and to afford the court the opportunity
7 to intelligently judge the contest.” *Shannahan*, 637 F. Supp. 2d at 912 (quoting
8 *Wiener*, 943 F.2d at 979).

9 Finally, “even if the agency satisfies the two-part test, it generally must still
10 disclose any reasonably segregable portions of the withheld documents.” *Id.*; 5
11 U.S.C. § 552(b) (“Any reasonably segregable portion of a record shall be provided
12 to any person requesting such record after deletion of the portions which are
13 exempt under this subsection.”). “The burden is on the agency to establish that all
14 reasonably segregable portions of a document have been segregated and
15 disclosed.” *Id.* (quoting *Pac. Fisheries Inc. v. United States*, 539 F.3d 1143, 1148
16 (9th Cir. 2008)).

17 B. Reasonableness of Search

18 The IRS contends it has conducted an adequate search for records
19 responsive to Plaintiff’s FOIA request. To fulfill its obligations under FOIA, “the
20 agency must show that it made a good faith effort to conduct a search for the
21 requested records, using methods which can be reasonably expected to produce
22 the information requested.” *Oglesby v. U.S. Dep’t of the Army*, 920 F.2d 57, 68
23 (D.C. Cir. 1990). The agency must show “[w]hat records were searched, by whom,
24 and through what process.” *Steinberg v. U.S. Dep’t of Justice*, 23 F.3d 548, 552
25 (D.C. Cir. 1994). An agency can meet its burden by submitting a “reasonably
26 detailed, nonconclusory” affidavit “in good faith.” *Id.* at 551 (quoting *Weisberg II*,
27 745 F.2d at 1485). Agency affidavits that “do not denote which files were searched
28 or by whom, do not reflect any systematic approach to document location, and do

1 not provide information specific enough to allow the plaintiff to challenge the
2 procedures utilized” are insufficient to fulfill the agency’s burden. *Weisberg v. U.S.*
3 *Dep’t of Justice*, 627 F.2d 365, 371 (D.C. Cir. 1980). In determining whether an
4 agency has met its burden to prove an adequate search, “the facts must be viewed
5 in the light most favorable to the requestor.” *Zemansky*, 767 F.2d at 571 (citing
6 *Weisberg II*, 745 F.2d at 1485).

7 In support of its contention that it conducted an adequate search for records
8 responsive to Plaintiff’s FOIA request, the IRS submits the declarations of Delphine
9 Thomas and Joseph Maher Jr. (ECF No. 42-1). Thomas is a Disclosure Specialist
10 whose duties include responding to FOIA requests for IRS records, which requires
11 her to “have knowledge of the types of documents created and maintained by the
12 various divisions and functions of the IRS.” Thomas Decl. ¶ 1. Maher is a docket
13 attorney in the Office of the Associate Chief Counsel of the IRS whose duties
14 “require knowledge of the types of documents created and maintained by the
15 various divisions and functions of the IRS, and an understanding of the provisions
16 of the FOIA that exempt certain types of documents from disclosure in response
17 to a request.” Maher Decl. ¶ 1.

18 On May 29, 2014, the IRS received a FOIA request from Plaintiff seeking “a
19 complete copy of the administrative file” for Plaintiff. Thomas Decl. ¶ 6. Disclosure
20 Specialist Ed Pullman was initially assigned to Plaintiff’s request. *Id.* ¶ 7. On June
21 20, 2014, Pullman received a voicemail from Plaintiff clarifying that its request was
22 for the administrative files for the tax forms 940, 941, and 1120 for tax years 2007-
23 2014. *Id.* ¶ 8. Pursuant to established practice, Pullman entered Plaintiff’s
24 Taxpayer Identification Number (“TIN”) into the Integrated Data Retrieval Service
25 (“IDRS”). *Id.* ¶¶ 9, 12. IDRS is an electronic system that “manages data that has
26 been retrieved from the Master File enabling [IRS] employees to take specific
27 actions on taxpayer account issues, track status, and post transaction updates
28 back to the Master File.” *Id.* ¶ 10. The Master File System is the IRS’s “nation-

1 wide electronic information system containing taxpayer account information.” *Id.*
2 ¶ 11. Pullman entered the following codes into IDRS in conjunction with Plaintiff’s
3 TIN: BMFOLI (to retrieve an index of all the tax modules of the input TIN), BMFOLT
4 (to retrieve all amounts, dates, and posted transactions pertaining to tax years
5 2007-2014), and SUMRY (to display a summary of a taxpayer’s account, which
6 includes all tax modules). *Id.* ¶ 12.

7 From the IDRS record, Pullman learned that Plaintiff’s collection case file
8 was in the possession of IRS Revenue Officer John Black. *Id.* ¶ 13. The IRS
9 construed Plaintiff’s request for “administrative file” as a request for the Revenue
10 Officer’s “case files for employment taxes reported on Forms 940 and 941 and
11 income taxes reported on the Form 1120 for [Plaintiff] for the tax years 2007-2014,
12 inclusive.” Thomas Supp. Decl. ¶ 12.

13 Black informed the IRS Disclosure Office that documents responsive to
14 Plaintiff’s requests were located within the commingled files maintained by Black
15 on Plaintiff and over twenty related entities. Thomas Decl. ¶ 15. The commingled
16 documents resulted in 65 boxes of documents, with the number of pages per box
17 ranging from a low of 600 pages to a high of around 4000 pages. *Id.* ¶ 16. The
18 total number of pages in the 65 boxes was around 141,000. *Id.* The 65 boxes of
19 records were then scanned into electronic format and reviewed by Disclosure
20 Specialists Thomas, Athena Amparano, and Ed Pullman. Thomas Supp. Decl. ¶¶
21 14-16. The Disclosure Specialists conducted their review by selecting a box of
22 scanned records and “visually searched through the PDF files page by page,
23 looking for specific documents containing the plaintiff’s name or employer
24 identification number (‘EIN’).” *Id.* ¶¶ 17-18.

25 Documents containing only the Plaintiff’s taxpayer return information were
26 marked as responsive to Plaintiff’s FOIA request. *Id.* ¶ 19. Some boxes contained
27 documents pertaining to Plaintiff as well as other taxpayers. *Id.* ¶ 20. Thomas
28 “checked the authorization for the plaintiff’s designated representative with power

1 of attorney ('POA') using the CFINK command in IDRS" and "noted that the POA
2 had authorization for some, but not all, of the taxpayers named in the records." *Id.*
3 Along with its FOIA request, Plaintiff submitted a Form 2848 "authorizing its
4 attorney in fact to receive only the return information of plaintiff within [Black's]
5 commingled administrative file." Maher Supp. Decl. ¶ 13. The third-party taxpayers
6 whose return information was within the commingled file did not provide Plaintiff or
7 the IRS "with written consents to release [their] information pursuant to Internal
8 Revenue Code Section 6103(c)." *Id.* ¶ 14. Therefore, if a document contained
9 Plaintiff's return information as well as the return information of one or more of the
10 other FOIA requesting entities, it was marked as partially responsive to Plaintiff's
11 FOIA request and partially responsive to each of the other FOIA requesting entities
12 whose return information was included on the document. Thomas Supp. Decl. ¶
13 21. If a document contained Plaintiff's return information but also the return
14 information of other taxpayers who did not submit FOIA requests, it was marked
15 as partially responsive to Plaintiff's request only. *Id.* ¶ 22. "Documents that did not
16 contain any of plaintiff's return information were marked as nonresponsive to
17 plaintiff's FOIA request." *Id.* ¶ 23. Copies of responsive documents were uploaded
18 to the IRS's Automated Freedom of Information Act ("AFOIA") system, which
19 tracks and processes FOIA requests. *Id.* ¶¶ 25, 27.

20 Upon completion of the search, the IRS located 18,076 pages responsive to
21 Plaintiff's FOIA request. Maher Decl. ¶ 6. Plaintiff received "a total of 14,544 pages
22 in full, 3,479 partially redacted pages, and 53 fully redacted pages." *Id.* ¶ 8. The
23 IRS released the documents to Plaintiff in five separate batches on July 30,
24 September 11, November 12, and November 13, 2015 and August 1, 2016. Maher
25 Supp. Decl. ¶ 6. The IRS completed its search for responsive records prior to the
26 release of Batch 4 on November 13, 2015. *Id.* ¶ 7. The delayed subsequent release
27 of Batch 5 on August 1, 2016 was due to an inadvertent exclusion and was not an
28 indication that the IRS's search was still ongoing. *Id.*

1 The IRS has submitted “reasonably detailed, nonconclusory” affidavits that
2 show “what records were searched, by whom, and through what process.” See
3 *Steinberg*, 23 F.3d at 552. The IRS’s declarations indicate how the IRS interpreted
4 Plaintiff’s FOIA request and its criteria to determine which documents from the 65
5 boxes were responsive to Plaintiff’s request. Plaintiff argues that the IRS’s search
6 was unreasonable because documents containing Plaintiff’s taxpayer information
7 were commingled with documents containing other taxpayers’ information and the
8 IRS “mark[ed] any document as non-responsive merely because it did not contain
9 Plaintiff’s taxpayer information.” (ECF No. 44 at 3). The Court finds the IRS’s
10 approach of marking documents as non-responsive if they did not contain Plaintiff’s
11 taxpayer information to be reasonable because Plaintiff’s FOIA request only
12 requested its own, and not any other taxpayers’ administrative file. (See ECF No.
13 26, Exh. A). The IRS has conducted an adequate search in response to Plaintiff’s
14 FOIA request. The IRS’s motion for summary judgment is granted as to this issue.

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

16 After the Court’s prior order granting in part the IRS’s motion for summary
17 judgment on documents withheld under Exemption 6, Exemption 7(A), and
18 Exemption 3 (in conjunction with 26 U.S.C. § 6103(e)(7)), there remain 5 pages
19 withheld in full and 335 pages withheld in part pursuant to Exemption 3 (in
20 conjunction with 26 U.S.C. § 6103(a)). (ECF No. 42-2 Maher Supp. Decl. ¶ 15).

21 Plaintiff argues that because the IRS has determined for tax liability purposes
22 that Plaintiff and other taxpayers are alter egos, and therefore one entity, the IRS
23 cannot withhold documents on the basis that they belong to other taxpayers. (ECF
24 No. 43-1 at 11; ECF No. 44 at 6). Plaintiff further contends that § 6103 no longer
25 bars its request for certain return information because the names of its alleged
26 alter egos were publicly disclosed in tax liens and a footnote in *Goldberg v. United*
27 *States*, a related case. See 2015 WL 4656361, at *1 n.2 (S.D. Fla. Aug. 5, 2015).
28 (ECF No. 43-1 at 9).

1 The IRS argues it need not disclose the return information of alter-ego
2 taxpayers because Plaintiff did not request such information, and even if Plaintiff
3 had, such a request would be “invalid on its face” because Plaintiff failed to secure
4 the requisite authorization for the disclosure of third party documents. (ECF No. 49
5 at 4-6). The IRS asserts it did not itself disclose taxpayer identities in the *Goldberg*
6 case, and to the extent a tax lien constitutes public disclosure, the withheld
7 documents nevertheless constitute protected return information. (ECF No. 42 at
8 14-17). Finally, the IRS contends that a rule requiring disclosure upon assertion
9 of alter ego liability contradicts how the IRS treats separate taxpayers and would
10 lead to “absurd results.” (ECF No. 45 at 7-8). The Court agrees with the IRS in
11 part.

12 FOIA Exemption 3, 5 U.S.C. § 552(b)(3), protects from disclosure matters
13 “specifically exempted by statute.” Section 6103 of the Internal Revenue Code, 26
14 U.S.C. § 6103, is one such statute. *Long v. U.S.*, 742 F.2d 1173, 1178 (9th Cir.
15 1984). Section 6103 provides that returns and returns information “shall be
16 confidential,” subject to certain exceptions. 26 U.S.C. § 6103(a). “If § 6103 forbids
17 the disclosure of material, it may not be produced in response to a request under
18 the FOIA.” *Church of Scientology of California v. I.R.S.*, 484 U.S. 9, 11 (1987).
19 FOIA requesters are generally not entitled to information identifying another
20 taxpayer. See, e.g., *Willamette Indus., Inc. v. United States*, 689 F.2d 865, 867-69
21 (9th Cir. 1982) (treating another taxpayer’s identifying information as exempt from
22 FOIA request but requiring IRS to provide reasonable segregable portions of
23 record); *DeSalvo v. I.R.S.*, 861 F.2d 1217 (10th Cir. 1988) (“Individuals are . . . not
24 entitled to the tax returns or return information of others unless a specific exception
25 within the statute applies.”); *Linsteadt v. I.R.S.*, 729 F.2d 998, 1000 (5th Cir. 1984)
26 (stating a FOIA requester “is not entitled to access to the tax return or return
27 information of other taxpayers”) (citing *Fruehauf Corp. v. I.R.S.*, 566 F.2d 574, 578
28 (6th Cir. 1980)).

1 As an initial matter, the Court finds that Plaintiff did not actually request the
2 return information of alter ego entities. Plaintiff requested “a complete copy of the
3 administrative file for the above-referenced taxpayers.” (ECF No. 26-6 Thomas
4 Decl. Exh. A). The request references only Plaintiff’s TIN, and attaches a POA for
5 that number alone. *Id.* The request fails to specify that it seeks the identities and
6 information of other taxpayers connected with Plaintiff’s administrative file. *Id.* The
7 Court further notes that the 35 day window in which to resubmit or amend the
8 request has since expired. See 26 C.F.R. § 601.702(c)(1)(i).

9 Even if Plaintiff had sufficiently stated the scope of its request, 26 U.S.C.
10 § 6103 specifically protects a taxpayer’s identity as confidential “return
11 information.” See 26 U.S.C. § 6103(a) (“Returns and return information shall be
12 confidential”); 26 U.S.C. § (b)(2)(A) (including “a taxpayer’s identity” in the
13 definition of “return information”). “Return information” also encompasses “whether
14 the taxpayer’s return was, is being, or will be examined or subject to other
15 investigation.” 26 U.S.C. § (b)(2)(A). IRS regulations require that requests for
16 another taxpayer’s return information, which includes their identity, be
17 accompanied by “a properly executed power of attorney, Privacy Act consent, or
18 tax information authorization, as appropriate.” 26 C.F.R. § 601.702(c)(5)(iii)(C).
19 Plaintiff failed to obtain such consent here, despite its receipt of a tax lien listing
20 nineteen alleged alter egos. (See ECF 43-2, Bonar Decl. Exh. A).

21 Plaintiff’s relies on *Lampert v. United States* to support its assertion that the
22 taxpayers’ identities are public information as a result of the tax lien and *Goldberg*
23 footnote, and therefore not subject to § 6103(a)’s disclosure prohibitions. 854 F.2d
24 335 (9th Cir. 1988). Plaintiff’s reliance is not entirely misplaced. In *Lampert*,
25 taxpayers alleged that government press releases detailing tax evasion charges
26 against the taxpayers constituted unauthorized disclosures of their return
27 information under 26 U.S.C. § 6103. *Id.* at 336. The Ninth Circuit rejected the
28 taxpayers’ arguments, reasoning that that “once information is lawfully disclosed

1 in court proceedings, ‘§ 6103(a)’s directive to keep return information confidential
2 is moot.’ ” *Id.* at 338 (quoting *Figur v. United States*, 662 F.Supp. 515, 517 (N.D.
3 Cal. 1987)). The Ninth Circuit held that “once return information is lawfully
4 disclosed in a judicial forum, its subsequent disclosure by press release does not
5 violate [the statute].” *Id.*

6 The IRS contends that because another party — not the IRS — publicly
7 disclosed taxpayers’ identities during the related *Goldberg* litigation, and because
8 the IRS actively asserted the privilege throughout discovery, the IRS did not waive
9 § 6103 protections in a court proceeding. (ECF No. 42 at 14-18). But the Court
10 need not reach this argument, as *Lampert* seems to at a minimum allow the IRS
11 to confirm that the entities listed on the public federal tax lien are among those
12 whose documents are included in the commingled file. See Bonar Decl. Exh. A.
13 The identities of Plaintiff’s alleged alter-egos have been “made a part of the public
14 domain” through legal process and the creation of a public record. *Lampert*, 854
15 at 338. It therefore follows that the identities of taxpayers named in the public tax
16 lien are no longer privileged under § 6103. See *id.* However, the Court agrees with
17 the IRS that the documents containing the taxpayers’ other return information
18 remain protected. See *generally* 26 U.S.C. § 6103(b) (enumerating other protected
19 return information). That the IRS named other taxpayers publicly in connection
20 with Plaintiff does not entitle Plaintiff to those taxpayers’ undisclosed, non-public
21 documents through the FOIA.

22 Plaintiff’s alter ego argument is also unavailing. The Internal Revenue Code
23 treats taxpayers as separate entities for tax assessment purposes irrespective of
24 whether they are designated alter egos for collection purposes. See *Portsmouth*
25 *Ambulance, Inc. v. United States*, 756 F.3d 494, 501 (6th Cir. 2014) (reasoning
26 “the mere application of an alter-ego appellation does not transform separate
27 individuals or companies into a single entity”). By arguing that alter egos are
28 entitled to one another’s tax returns, Plaintiff would in fact merge the entities into

1 one taxpayer and render itself liable for the tax obligations of another taxpayer.

2 Plaintiff cites to an unreported district court case, *George v. Internal Revenue*
3 *Service*, 2007 WL 1450309 at *1 n.3 (N.D. Cal., May 14, 2007), as evidence that
4 the IRS has previously treated a FOIA requester and its alter ego as a single entity
5 for both tax liability and disclosure purposes. (ECF No. 43-1 at 11-12). But *George*
6 is neither binding nor does it hold that there is in fact an alter ego exception to §
7 6103. See *id.* And although Plaintiff could in theory achieve disclosure of alter ego
8 return information in a tax administration proceeding under 26 U.S.C. § 6103(h)(4),
9 Plaintiff cannot do the same through a FOIA proceeding. See 26 U.S.C. §
10 6103(h)(4) (providing “[a] return or return information may be disclosed in a Federal
11 . . . proceeding pertaining to tax administration but only . . . if such return or return
12 information directly relates to a transactional relationship between a person who is
13 party to the proceeding and the taxpayer which directly affects the resolution of an
14 issue in the proceeding”); *Safeway, Inc. v. I.R.S.*, 2006 WL 3041079 at *7-8 (N.D.
15 Cal. Oct. 24, 2006) (holding FOIA litigation not a proceeding within the meaning of
16 § 6103(h)(4)). See also *Chamberlain v. Kurtz*, 589 F.3d 827, 838 (5th Cir. 1979)
17 (going further to state “[n]othing in the legislative history of section 6103 suggests
18 that subsection (h)(4) was intended to govern disclosures of information to the
19 taxpayer himself” and noting pertinent committee reports “discuss only disclosure
20 to third party law enforcement officials”).

21 Finally, a rule providing that putative alter egos are entitled to one another’s
22 tax return information would, as the IRS argues, yield paradoxical results. (ECF
23 No. 43 at 8). If the IRS discloses another taxpayer’s information pursuant to such
24 a rule, only so that the requester can use that information to disprove alter ego
25 status, the disclosure automatically violates § 6103(a) and conflicts with its core
26 purpose of protecting taxpayer privacy. See *Church of Scientology of California v.*
27 *I.R.S.*, 484 U.S. 9, 16 (1987) (“Congress did not intend [§ 6103] to allow the
28 disclosure of otherwise confidential return information merely by the redaction of

1 identifying details.”); *Cause of Action v. I.R.S.*, 125 F.Supp.3d 145, 163 (D.D.C.
2 2015) (“The core purpose of section 6103 is to protect taxpayer privacy.”) (internal
3 quotations and alterations omitted). Plaintiff’s suggested approach runs counter
4 to the purpose of § 6103 and is untenable.

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

7 **III. CONCLUSION AND ORDER**

8 The Court concludes with the reminder that “FOIA is not designed ‘as a
9 substitute for civil discovery.’ ” *Shannahan v. I.R.S.*, 672 F.3d 1142 (9th Cir.
10 2012) (quoting *Baldrige v. Shapiro*, 455 U.S. 345, 360 n.14 (1982)). As another
11 district court reasoned, if the Court were to “hold [Plaintiff] was entitled to the
12 third-party return information [it] seeks, [the Court] would have to disclose that
13 same information to the general public too.” *Greenberger v. I.R.S.*, 283
14 F.Supp.3d 1354, 1372 (N.D. Ga. 2017) (citing *Forest Serv. Emps. For Env’tl*
15 *Ethics v. U.S. Forest Serv.*, 524 F.3d 1021, 1025 (9th Cir. 2008) (“FOIA provides
16 every member of the public with equal access to public documents and, as such,
17 information released in response to one FOIA request must be released to the
18 public at large.”)).

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

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1 For the reasons discussed above, the IRS's motion for summary judgment
2 is GRANTED (ECF No. 42) and Plaintiff's motion for summary judgment is
3 DENIED (ECF No. 43).

4 IT IS SO ORDERED.

5 Dated: November 26, 2018


Barry Ted Moskowitz, Chief Judge
United States District Court

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