

1
2
3
4
5 UNITED STATES DISTRICT COURT
6 SOUTHERN DISTRICT OF CALIFORNIA
7

8 AMERICAN MARINE, LLC,
9 Plaintiff,
10 v.
11 UNITED STATES INTERNAL
12 REVENUE SERVICE,
13 Defendant.

Case No.: 15-cv-0455-BTM-LL

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

[ECF NOS. 41, 45]

14
15 The United States Internal Revenue Service ("IRS") and Plaintiff American
16 Marine LLC, have filed cross-motions for summary judgment as to Plaintiff's claims
17 under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, et seq. (ECF Nos.
18 41, 45). For the reasons discussed below, the IRS's motion will be granted and
19 Plaintiff's motion will be denied.

20 **I. BACKGROUND**

21 This is one of five actions filed by related entities against the IRS.¹ Each
22 case is based on the claim that the IRS failed to comply with its obligations under
23 5 U.S.C. § 552 to respond to FOIA requests submitted by the plaintiffs. Plaintiffs
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 contend they submitted their requests after the IRS filed a series of liens against
2 them between 2011 and 2013 holding them liable for payroll tax liabilities of other
3 corporations under alter ego and/or successor liability theories.

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

13 On October 7, 2016, the IRS filed a motion for summary judgment, arguing
14 that it had fully discharged its obligations under 5 U.S.C. § 552 and indicating that
15 it had completed its search for records and released 4,723 pages in full and 1,192
16 pages in part, of non-exempt documents responsive to Plaintiff’s FOIA request.
17 (ECF No. 26). On July 26, 2017, the Court granted in part and denied in part
18 without prejudice the IRS’s motion for summary judgment. (ECF No. 35). The Court
19 held that the declarations submitted by the IRS were insufficient to demonstrate
20 the adequacy of the IRS’s search because they (1) failed to explain how the IRS
21 interpreted Plaintiff’s FOIA request and the scope of documents the IRS
22 determined were responsive to the request and (2) failed to provide sufficient
23 information about the process by which the IRS reviewed 65 boxes of documents.
24 *Id.* at 7.

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

1 IRS's motion for summary judgment as to the documents withheld under
2 Exemption 5, Exemption 7(A), Exemption 7(D) and Exemption 3 in conjunction
3 with 26 U.S.C. § 6103(e)(7) but not 26 U.S.C. § 6103(a). *Id.* at 12, 13, 15-16, 18.

4 The IRS has now filed a renewed motion for summary judgment as to the
5 remaining issues. (ECF No. 45). Plaintiff has also filed a motion for summary
6 judgment. (ECF No. 41).

7 **II. DISCUSSION**

8 A. FOIA Summary Judgment Standard

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

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

26 First, the district court must determine whether the agency has established
27 that it fully discharged its obligation under FOIA to conduct an adequate search for
28 responsive records. *Zemansky v. U.S. Env'tl. Prot. Agency*, 767 F.2d 569, 571 (9th

1 Cir. 1985). To meet this burden, the agency must:

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

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

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

28 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
U.S.C. § 552(b) (“Any reasonably segregable portion of a record shall be provided

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

6 B. Reasonableness of Search

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

24 In support of its contention that it conducted an adequate search for records
25 responsive to Plaintiff’s FOIA request, the IRS submits the declarations of Delphine
26 Thomas and Jacqueline Queener. (ECF No. 45). Thomas is a Disclosure
27 Specialist whose duties include responding to FOIA requests for IRS records,
28 which requires her to “have knowledge of the types of documents created and

1 maintained by the various divisions and functions of the [IRS] and an
2 understanding of the provisions of FOIA.” Thomas Decl. ¶ 1. Queener is an
3 attorney in the Office of the Chief Counsel of the IRS who was assigned to
4 Plaintiff’s case and “personally reviewed and [is] familiar with all documents at
5 issue in this lawsuit.” Queener Decl. ¶¶ 1, 3.

6 On June 23, 2014, the IRS received a FOIA request from Plaintiff seeking “a
7 complete copy of the administrative file” for Plaintiff “for tax forms 940, 941, 1120,
8 and 1065 for years 2007-2014.” Thomas Decl. ¶ 4. Disclosure Specialist Athena
9 Amparano was initially assigned to Plaintiff’s request. *Id.* ¶ 6. “[C]onsistent with
10 Disclosure Office procedures,” Amparano entered Plaintiff’s Taxpayer
11 Identification Number (“TIN”) into the Integrated Data Retrieval Service (“IDRS”).
12 *Id.* ¶¶ 7, 9. IDRS is an electronic system that “manages data that has been
13 retrieved from the Master File System enabling [IRS] employees to take specific
14 actions on taxpayer account issues, track status, and post transaction updates
15 back to the Master File.” *Id.* ¶ 7. The Master File System is the IRS’s “nation-wide
16 electronic information system containing permanent taxpayer account
17 information.” *Id.* ¶ 8. Amparano entered the following codes into IDRS in
18 conjunction with Plaintiff’s TIN: BMFOLI (to retrieve an index of all the tax modules
19 of the input TIN), BMFOLZ (to retrieve all amounts, dates, audit history, and posted
20 transactions pertaining to tax years 2007-2014), and CC SUMRY (to display a
21 summary of a taxpayer’s account by taxable year, including status, outstanding
22 balance, and various other indicators). *Id.* ¶ 9.

23 From the IDRS record, Amparano learned that Plaintiff’s collection case file
24 was in the possession of IRS Revenue Officer John Black. *Id.* ¶ 11. The IRS
25 construed Plaintiff’s request for “administrative file” as a request for the “case file
26 maintained by a Revenue Officer who is assigned to that taxpayer’s collection
27 case(s).” Thomas Supp. Decl. ¶ 5. Plaintiff “accepts the IRS’s interpretation of its
28 request.” (ECF No. 47 at 2).

1 Black informed the IRS Disclosure Office that documents responsive to
2 Plaintiff's requests were located within the commingled files maintained by Black
3 on Plaintiff and over twenty related entities. Thomas Decl. ¶¶ 11, 12. The
4 commingled documents resulted in 65 boxes of documents, with the number of
5 pages per box ranging from a low of 600 pages to a high of around 4000 pages.
6 *Id.* ¶ 13. The total number of pages in the 65 boxes was around 141,000. *Id.* The
7 65 boxes of records were then scanned into electronic format and reviewed by
8 Disclosure Specialists Thomas, Amparano, and Ed Pullman. Thomas Supp. Decl.
9 ¶¶ 13, 15. The Disclosure Specialists conducted their review by selecting a box of
10 scanned records and "viewed every document on a page-by-page basis, and
11 identified the taxpayer's name(s) and/or taxpayer identification number(s) ('TIN')
12 on each document." Thomas Supp. Decl. ¶ 13. "By identifying the taxpayer name
13 and TIN on each document, the [IRS] was able to search [Black's] entire
14 commingled administrative file once and locate all of the records within the file
15 responsive, in whole or in part, to each of the seven (7) related FOIA requests." *Id.*
16 ¶ 14.

17 Documents containing only the Plaintiff's taxpayer return information were
18 marked as responsive to Plaintiff's FOIA request. *Id.* ¶ 18. Some boxes contained
19 documents pertaining to Plaintiff as well as other taxpayers. *Id.* ¶ 12. Plaintiff
20 submitted a Form 2848 "authorizing its attorney in fact to receive all and only the
21 return and return information of plaintiff within [Black's] commingled administrative
22 file." Queener Supp. Decl. ¶ 12. Plaintiff "ha[d] not provided the [IRS] with the
23 authorization required by the FOIA Treasury regulations and derived by section
24 6103 of the Internal Revenue Code to permit the [IRS] to disclose third party
25 taxpayer 'return' or 'return information' to plaintiff." *Id.* ¶ 8. Therefore, if a document
26 contained Plaintiff's return information as well as the return information of one or
27 more of the other FOIA requesting entities, it was marked as partially responsive
28 to Plaintiff's FOIA request and partially responsive to each of the other FOIA

1 requesting entities whose return information was included on the document.
2 Thomas Supp. Decl. ¶ 19. If a document contained Plaintiff's return information but
3 also the return information of other taxpayers who did not submit FOIA requests,
4 it was marked as partially responsive to Plaintiff's request only. *Id.* ¶ 20.
5 "Documents that did not contain any of plaintiff's return information were marked
6 as nonresponsive to plaintiff's FOIA request." *Id.* ¶ 21. Copies of responsive
7 documents were uploaded to the IRS's Automated Freedom of Information Act
8 ("AFOIA") system. *Id.* ¶ 23.

9 Upon completion of the search, the IRS located 5,960 pages responsive to
10 Plaintiff's FOIA request. Queener Decl. ¶ 13. "Of these, 4,723 pages were
11 released in full, 1,192 pages were released in part, and 45 pages were withheld in
12 full." *Id.*

13 The IRS has submitted "reasonably detailed, nonconclusory" affidavits that
14 show "what records were searched, by whom, and through what process." See
15 *Steinberg*, 23 F.3d at 552. The IRS's declarations indicate how the IRS interpreted
16 Plaintiff's FOIA request and its criteria to determine which documents from the 65
17 boxes were responsive to Plaintiff's request. Plaintiff argues that the IRS's search
18 was unreasonable because documents containing Plaintiff's taxpayer information
19 were commingled with documents containing other taxpayers' information and the
20 IRS "mark[ed] any document as non-responsive merely because it did not contain
21 Plaintiff's taxpayer information." (ECF No. 47 at 3). The Court finds the IRS's
22 approach of marking documents as non-responsive if they did not contain Plaintiff's
23 taxpayer information to be reasonable because Plaintiff's FOIA request only
24 requested its own, and not any other taxpayers' administrative file. The IRS has
25 conducted an adequate search in response to Plaintiff's FOIA request. The IRS's
26 motion for summary judgment is granted as to this issue.

27 //

28 //

1 C. Withholding of Responsive Documents Pursuant to FOIA Exemptions

2 The IRS indicates it withheld all, or portions of, responsive documents
3 pursuant 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 17 pages in full
6 and 913 pages in part because the pages contained information that was “the
7 return information of taxpayers other than plaintiff.” Queener Decl. ¶ 15.

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. 41-1 at 11; ECF No. 47 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. 41-1 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 45-1 at 11-12; ECF No. 51 at 6). 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 are nevertheless protected return information.
23 (ECF No. 45-1 at 13-17). Finally, the IRS contends that a rule requiring disclosure
24 upon assertion of alter ego liability contradicts how the IRS treats separate
25 taxpayers and would lead to “absurd results.” (ECF No. 46 at 7-8). The Court
26 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. 26-5 Thomas Decl. at ¶ 4). 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. § 6103 (b)(2)(A) (including “a taxpayer’s identity” in
28 the definition of “return information”). “Return information” also encompasses

1 “whether the taxpayer’s return was, is being, or will be examined or subject to other
2 investigation.” 26 U.S.C. § 6103 (b)(2)(A). IRS regulations require that requests
3 for 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 41-2, 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. 45-1 at 15-17). 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.* The IRS even concedes as
4 much. (ECF No. 45-1 at 14). However, the Court agrees with the IRS that the
5 documents containing the taxpayers’ other return information remain protected.
6 See generally 26 U.S.C. § 6103(b) (enumerating other protected return
7 information). That the IRS named other taxpayers publicly in connection with
8 Plaintiff does not entitle Plaintiff to those taxpayers’ undisclosed, non-public
9 documents through the FOIA.

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

18 Plaintiff cites to an unreported district court case, *George v. Internal Revenue*
19 *Service*, 2007 WL 1450309 at *1 n.3 (N.D. Cal., May 14, 2007), as evidence that
20 the IRS has previously treated a FOIA requester and its alter ego as a single entity
21 for both tax liability and disclosure purposes. (ECF No. 41-1 at 11). But *George* is
22 neither binding nor does it hold that there is in fact an alter ego exception to §
23 6103. See *id.* And although Plaintiff could in theory achieve disclosure of alter ego
24 return information in a tax administration proceeding under 26 U.S.C. § 6103(h)(4),
25 Plaintiff cannot do the same through a FOIA proceeding. See 26 U.S.C. §
26 6103(h)(4) (providing “[a] return or return information may be disclosed in a Federal
27 . . . proceeding pertaining to tax administration but only . . . if such return or return
28 information directly relates to a transactional relationship between a person who is

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

9 Finally, a rule providing that putative alter egos are entitled to one another’s
10 tax return information would, as the IRS argues, yield paradoxical results. (ECF
11 No. 46 at 8). If the IRS discloses another taxpayer’s information pursuant to such
12 a rule, only so that the requester can use that information to disprove alter ego
13 status, the disclosure automatically violates § 6103(a) and conflicts with its core
14 purpose of protecting taxpayer privacy. *See Church of Scientology of California v.*
15 *I.R.S.*, 484 U.S. 9, 16 (1987) (“Congress did not intend [§ 6103] to allow the
16 disclosure of otherwise confidential return information merely by the redaction of
17 identifying details.”); *Cause of Action v. I.R.S.*, 125 F.Supp.3d 145, 163 (D.D.C.
18 2015) (“The core purpose of section 6103 is to protect taxpayer privacy.”) (internal
19 quotations and alterations omitted). Plaintiff’s suggested approach runs counter
20 to the purpose of § 6103 and is untenable.

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

23 2. Exemption 6

24 Exemption 6 restricts from disclosure “personnel and medical files and
25 similar files the disclosure of which would constitute a clearly unwarranted invasion
26 of personal privacy.” 5 U.S.C. § 552(b)(6). “The Supreme Court has adopted a
27 broad view of Exemption 6, stating: ‘we do not think that Congress meant to limit
28 Exemption 6 to a narrow class of files containing only a discrete kind of personal

1 information. Rather, “[t]he exemption [was] intended to cover detailed Government
2 records on an individual which can be identified as applying to that individual.’ ”
3 *Ireland v. I.R.S.*, 2017 WL 1731679 (C.D. Cal. May 1, 2017) (quoting *U.S. Dep’t of*
4 *State v. Washington Post Co.*, 456 U.S. 595, 602 (1982)). To determine whether
5 information has been properly withheld under Exemption 6 requires a court to
6 “balance the privacy interests or personal nature of the information sought against
7 the public interest that would be served by disclosure.” *Chamberlain v. Kurtz*, 589
8 F.2d 827, 841-42 (5th Cir. 1979); see *Horowitz v. Peace Corps*, 428 F.3d 271, 278
9 (D.C. Cir. 2005).

10 The IRS withheld 7 pages in full and 536 pages in part pursuant to Exemption
11 6. Queener Decl. ¶ 24. According to Queener, “this exemption is claimed only to
12 protect personally identifying information of plaintiff and of third parties.” Queener
13 Supp. Decl. ¶ 16. The information being withheld consists of the “social security
14 numbers of plaintiff’s employees, the bank account, credit card, or driver license
15 numbers of any individual taxpayer, the home addresses, telephone numbers, or
16 email addresses of individual taxpayers other than plaintiff, or taxpayer
17 identification numbers, Federal and state, of plaintiff or any other third party.”
18 Queener Supp. Decl. ¶ 16.

19 The Court finds the referenced information was properly withheld under
20 Exemption 6, because it consists of personal information of individuals that falls
21 within the ambit of information typically subject to privacy protection, and the
22 privacy interests of the individuals involved outweigh any public interest that might
23 be served by disclosure. See *Chamberlain*, 589 F.2d at 841-42; *Akin, Gump,*
24 *Strauss, Hauer & Feld, L.L.P. v. U.S. Dep’t of Justice*, 503 F. Supp. 2d 373, 382
25 (D.D.C. 2007) (“When the material in the government’s control is a compilation of
26 information about private citizens, rather than a record of government actions,
27 there is little legitimate public interest that would outweigh the invasion of privacy
28 because the information reveals little or nothing about an agency’s own conduct.”).

1 The Court also finds that the IRS complied with its duty to reasonably segregate
2 and produce all non-exempt information. Queener Supp. Decl. ¶ 14. Accordingly,
3 the Court grants the IRS's motion for summary judgment as to its withholding of
4 information pursuant to Exemption 6.

5 3. Exemption 7(E)

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

18 The IRS indicates it withheld two pages pursuant to Exemption 7(E).
19 Queener Decl. ¶ 29. The IRS relies on the declaration of Queener, who states the
20 redacted information relates to Plaintiff's “Risk Score,” “which is a technique used
21 by the [IRS] to prioritize case assignments given the [IRS's] resource constraints.
22 The Risk Score is a technique utilized by the [IRS] to ensure the effective
23 enforcement of the nation's tax law, and is a technique unknown to the general
24 public.” Queener Supp. Decl. ¶ 18.

25 The Court finds the IRS's evidence sufficient to show that disclosure of the
26 referenced information would disclose techniques and procedures for law
27 enforcement investigations that could reasonably be expected to risk
28 circumvention of the law. The Court also finds that the IRS complied with its duty

1 to reasonably segregate and produce all non-exempt information. See Queener
2 Decl. ¶ 14. Accordingly, the IRS's motion for summary judgment is granted as to
3 its withholding of information under this exemption.

4 **III. CONCLUSION AND ORDER**

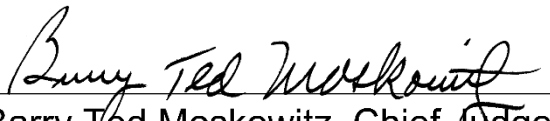
5 The Court concludes with the reminder that "FOIA is not designed 'as a
6 substitute for civil discovery.'" *Shannahan v. I.R.S.*, 672 F.3d 1142 (9th Cir.
7 2012) (quoting *Baldrige v. Shapiro*, 455 U.S. 345, 360 n.14 (1982)). As another
8 district court reasoned, if the Court were to "hold [Plaintiff] was entitled to the
9 third-party return information [it] seeks, [the Court] would have to disclose that
10 same information to the general public too." *Greenberger v. I.R.S.*, 283
11 F.Supp.3d 1354, 1372 (N.D. Ga. 2017) (citing *Forest Serv. Emps. For Envtl*
12 *Ethics v. U.S. Forest Serv.*, 524 F.3d 1021, 1025 (9th Cir. 2008) ("FOIA provides
13 every member of the public with equal access to public documents and, as such,
14 information released in response to one FOIA request must be released to the
15 public at large.")).

16 Finally, Plaintiff's appeal to fairness in light of the I.R.S.'s assertion of alter
17 ego liability for third parties' unpaid taxes is unavailing. Even the I.R.S.
18 recognizes that in an action challenging the imposition of liability Plaintiff will
19 probably obtain the third party information it seeks. (ECF No. 46 at n.3). But this
20 FOIA action is not an action challenging the liens.

21 For the reasons discussed above, the IRS's motion for summary judgment
22 is GRANTED (ECF No. 45) and Plaintiff's motion for summary judgment is
23 DENIED (ECF No. 41). The Clerk shall enter final judgment for the I.R.S.

24 IT IS SO ORDERED.

25 Dated: November 19, 2018

26 
27 Barry Ted Moskowitz, Chief Judge
28 United States District Court

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28