

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

LATHAM & WATKINS, LLP
555 ELEVENTH STREET N.W.
SUITE 1000
WASHINGTON, DC 20004

Plaintiff,

v.

MARK W. EVERSON
COMMISSIONER OF INTERNAL REVENUE
ATTENTION: CC:PA:DPL
1111 CONSTITUTION AVENUE N.W.
WASHINGTON, DC 20224

Defendant.

Civil Case No.

COMPLAINT

COMPLAINT FOR INJUNCTIVE RELIEF

Plaintiff, Latham & Watkins LLP ("Latham"), for its complaint against Defendant, the Internal Revenue Service ("IRS"), alleges as follows:

I. NATURE OF THIS ACTION

1. This is an action under the Freedom of Information Act, 5 U.S.C. section 552 ("FOIA"), as amended, for injunctive and other appropriate relief and seeking the disclosure and release of agency records, consisting of all materials subject to disclosure, including but not limited to any and all background files, pertaining to Revenue Ruling 2002-6, 2002-1 C.B. 460 and the Treasury's 1999 Priority Guidance Plan released March 10, 1999 titled: Insurance Companies and Products ... 3. Guidance under section 807.

II. THE PARTIES

2. Plaintiff Latham, the requester of the agency records that have been improperly withheld, is a law firm with its main office located at 633 West Fifth Street, Suite 4000, Los Angeles, California 90071. The requesting office is located at 555 Eleventh Street NW, Suite 1000, Washington, District of Columbia 20004.

3. Defendant IRS is an agency of the government of the United States, and has possession and control of the records requested by plaintiff. IRS is an agency within the meaning of 5 U.S.C. 552(f).

III. JURISDICTION AND VENUE

4. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. section 552(a)(4)(B). This Court also has jurisdiction over this action pursuant to 28 U.S.C. section 1331.

5. Venue is proper in this District pursuant to 5 U.S.C. section 552(a)(4)(B).

IV. FACTUAL ALLEGATIONS

FOIA REQUEST PERTAINING TO REVENUE RULING 2002-6

6. Plaintiff sent to Defendant a request dated April 7, 2006 for all materials subject to disclosure, including but not limited to any and all background files, pertaining to Revenue Ruling 2002-6, 2002-1 C.B. 460.

7. Defendant responded on April 18, 2006 stating that it was unable to respond within the statutorily prescribed time of 20 business days. Defendant then invoked the additional ten-day statutory extension, which extended the statutory response date to May 22, 2006. Defendant also stated that it did not anticipate being able to address Plaintiff's request by the statutorily extended date and requested additional time to respond to Plaintiff's request, with a response to be expected by July 7, 2006.

8. On September 29, 2006, Plaintiff contacted Defendant to inquire about the status of its request and was told that the request was still pending.

9. In a letter dated January 31, 2007, 209 days after the deadline stated in its April 18, 2006 correspondence, Defendant requested additional time to respond to Plaintiff's request. The letter states that a response should be expected by June 8, 2007.

10. On March 1, 2007, Plaintiff contacted Defendant via telephone concerning Defendant's letter dated January 31, 2007 to check on the status of the request. Plaintiff was informed that Chief Counsel has not reviewed the documents as of yet, and therefore no documents could be provided to date. Additionally, Plaintiff was informed that a search memo was sent to Chief Counsel on April 17, 2006 and no information has been provided in response to the search memo.

11. In a letter dated March 5, 2007, Defendant states that Plaintiff has not made any inquiry as to the status of Plaintiff's request dated April 7, 2006 and if Defendant does not receive a response by April 9, 2007, then it will close Plaintiff's request.

12. On April 2, 2007, Plaintiff responded to Defendant's March 5, 2007 letter stating that it was still interested in the documents.

13. Defendant failed to respond to Plaintiff's April 7, 2006 FOIA request within the statutorily provided period, and did not issue a determination with regard to Plaintiff's request at the time of filing this Complaint.

**FOIA REQUEST PERTAINING TO THE TREASURY'S
1999 PRIORITY GUIDANCE PLAN RELEASED MARCH 10, 1999
PERTAINING TO GUIDANCE UNDER SECTION 807**

14. Plaintiff sent to Defendant a request dated April 7, 2006 for all background files pertaining to items listed in the Treasury's 1999 Priority Guidance Plan released March 10, 1999 titled: Insurance Companies and Products ... 3. Guidance under section 807.

15. Defendant responded on April 18, 2006 stating that the 1999 Priorities for Tax Regulations and Other Administrative Guidance was created jointly by the Department of Treasury, Office of Tax Policy and Defendant. Therefore, the FOIA request was being transferred to the Department of Treasury and the 20-day statutory window for responding to requests will begin when the request is received by the Department of Treasury.

16. On August 9, 2006, Plaintiff submitted additional detail, which clarified the information sought, by specifying that the project was headed up by Louise Epstein at Treasury and involved the application of Actuarial Guidelines 33 and 34.

17. On September 29, 2006, the Department of Treasury, in response to a FOIA request for all of its background files pertaining to items listed in the Treasury's 1999 Priority Guidance Plan released March 10, 1999 titled: Insurance Companies and Products ... 3.

Guidance under section 807, stated that in addition to the documents provided, it identified nine documents consisting of 97 pages, which were responsive, but not provided because they originated at IRS. Therefore, the Department of Treasury forwarded these documents to Defendant for review.

18. In a letter dated January 31, 2007, Defendant requested additional time to respond to Plaintiff's request. The letter states that a response should be expected by June 8, 2007.

19. On March 1, 2007, Plaintiff contacted Defendant via telephone concerning Defendant's letter dated January 31, 2007 to check on the status of the request. Defendant confirmed that during November 2006, the Department of Treasury had transferred nine documents, which consisted of 97 pages that had originated at the IRS Chief Counsel, back to Defendant to review. Chief Counsel has not reviewed the documents as of yet, and therefore no documents could be provided to date.

20. Defendant failed to respond to Plaintiff's April 7, 2006 FOIA request within the statutorily provided period, and did not issue a determination with regard to Plaintiff's request at the time of filing this Complaint.

V. REQUESTED RELIEF

21. Latham incorporates by reference paragraphs 1 through 20 as though fully set forth herein.

22. By operation of law (as set forth in 5 U.S.C. section 552(a)(6)(C)(i), 26 C.F.R. section 601.702(c)(12), and 31 C.F.R. section 1.5(k)), Plaintiff has exhausted its administrative remedies with respect to this matter.

23. Plaintiff has a statutory right, pursuant to 5 U.S.C. section 552(a)(3), to the records it seeks, and there is no legal basis for defendant's failures to respond to plaintiff's requests and to disclose the requested documents.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

- A. Order Defendant to disclose the requested records in their entireties and make copies available to Plaintiff;
- B. Provide for expeditious proceedings in this action;
- C. Award Plaintiff its costs and reasonable attorneys' fees incurred in this action; and
- D. Grant such other relief as the Court may deem just and proper.

Dated: April 6, 2007

Respectfully submitted,

LATHAM & WATKINS LLP



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