

Department
of the
Treasury

Internal
Revenue
Service

Office of
Chief Counsel

Notice

CC-2006-016

July 6, 2006

Subject: Procedures for Identifying Certain
FOIA and Other Information
Requests

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into the CCDM

PURPOSE

This Notice establishes procedures that employees may use to identify multiple requests for Service information or records that are the subject of discovery requests (in a litigation context) and Freedom of Information Act requests.

BACKGROUND

Taxpayers involved in examinations or in litigation may use the FOIA to obtain records or other information, in addition to, or in lieu of, information to which they may be entitled through an information request or through the discovery process. Counsel employees may be unaware that taxpayers or their representatives have obtained this information through the FOIA or that there are FOIA requests seeking information, e.g., background files of regulations and PLR files, relating to common issues. The following procedures have been developed to assist in identifying these requests.

DISCUSSION

I. Contact From Disclosure Offices Regarding FOIA Requests Made During Litigation or Requests from Multiple Taxpayers for the Same Types of Information

Disclosure personnel are directed to contact Counsel employees if their offices receive FOIA requests seeking Counsel records or other records in which Counsel would have an interest. See IRM 11.3.13.3. While some requests on their face may indicate Counsel's involvement or interest, other requests may not. Upon receipt of a FOIA request, Disclosure personnel search the Service's Integrated Data Retrieval System (IDRS) to determine the status and location of records responsive to the FOIA request. There are specific IDRS codes for matters in litigation. Whenever a request specifically seeks Counsel records, or if a litigation code is discovered, Disclosure personnel are directed to contact the Counsel office in possession of the files in which the responsive records are located. Disclosure personnel and the Counsel employee responsible for the file shall discuss the FOIA request and the litigation to determine what records may be released to the taxpayer as well as to ensure consistency in asserting privileges, redacting records, or withholding records entirely.

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II. Chief Counsel Employees May Request Searches of E-DIMS

In some instances, e.g., when the FOIA request does not seek records relating to a pending litigation, but rather seeks records pertaining to a particular subject matter or issue, Disclosure personnel may not be able to identify Counsel's involvement or interest in a FOIA request based upon a review of the records requested. The Service's Electronic Disclosure Information Management System (E-DIMS) tracks all FOIA requests¹ filed nationwide with the Service. Among other information, E-DIMS organizes FOIA request data and contains the following searchable fields:

- Requester (the person in whose name the request was filed)
- Taxpayer name (if different than the requester)
- Nature or subject of the records sought
- Date the FOIA request was received by the Disclosure Office
- Location of the Disclosure Office that processed the FOIA request
- Name of the FOIA request case worker
- Description of the records that were provided to the requester
- Case History Notes regarding the processing of the FOIA request

To facilitate coordination regarding FOIA requests that relate to ongoing litigation or examinations in which Counsel has some involvement or interest, Counsel now has access to E-DIMS through the Office of Associate Chief Counsel (Procedure & Administration), Legal Processing Division, Disclosure and Litigation Support Branch. Upon receipt of a new assignment relating to an examination or litigation, Counsel employees may submit an email request to the "FOIA EDIMS Search" mailbox asking the Disclosure and Litigation Support Branch to search E-DIMS to determine if a FOIA request has been made by, or on behalf of, the taxpayer. The email must be sent using "normal sensitivity." Counsel employees should provide the Disclosure and Litigation Support Branch with as much information as possible in order to assist the branch personnel in formulating an E-DIMS query most likely to produce accurate and complete results. If the Disclosure and Litigation Support Branch finds that the taxpayer has made a FOIA request, the Counsel employee will be informed of the request. Counsel employees should then contact Disclosure personnel in the office where the request was or is being processed for more information. Counsel employees are encouraged to re-submit E-DIMS searches to the Disclosure and Litigation Support Branch periodically throughout the course of the litigation or examination to determine if subsequent FOIA requests have been made.

If a Counsel employee learns of a FOIA request from, or on behalf of, a taxpayer under examination (for which they are providing legal advice and assistance) or in litigation, the Counsel employee should work with Disclosure personnel to coordinate the search for responsive records, and to consider whether release of any of the records sought in the FOIA request would have an adverse effect on the current litigation or examination. If the records responsive to the request are from functions other than Counsel, Disclosure personnel should

¹ E-DIMS also includes data on subpoenas or other requests for IRS information.

