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[Third Party Communication:

UILC: 6103.02-00, 6103.02-02, 9999.92- Date of Communication: Month DD, YYYY]  
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Number: **201515028**

Release Date: 4/10/2015

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**From:** [REDACTED]  
**Sent:** Tuesday, March 17, 2015 11:17:10 AM  
**To:** [REDACTED]  
**Cc:**  
**Bcc:**  
**Subject:** RE: need advice for FOIA on case you handled

Hi

I have been assigned to your question regarding the disclosure of third party settlements to a requestor in a FOIA case. In this case, the requestor is seeking settlement documents for third parties in related transactions. The requestor has not obtained the consent of the third parties. The requestor has provided a letter in which he states that FOIA exemptions (b)(6) and (b)(5) are inapplicable to the settlement documents and cites the case of Norwood v. FAA. However, the requestor fails to address section 6103 (and FOIA exemption (b)(3) in conjunction with section 6103) which is controlling in this case and which prohibits the disclosure of third party settlement documents based on the facts you have presented.

FOIA exemption 3 exempts material specifically exempted from disclosure by statute other than 5 U.S.C. § 552(b), provided that such statute: (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld. 5 U.S.C. § 552(b)(3). Section 6103 of the Internal Revenue Code, which consists of detailed provisions that concern the disclosure of returns and return information, has been held to be a statute meeting the criteria of FOIA subsection (b)(3). See Church of Scientology v. IRS, 484 U.S. 9, 11 (1987); Chamberlain v. Kurtz, 589 F.2d 827 (5th Cir. 1979).

Section 6103 provides that returns and return information are confidential and may only be disclosed as authorized by Title 26. Return information is defined as any information received, prepared, collected, etc by the IRS with respect to a return or with respect to the determination of the existence, or possible existence, of liability under the Code. I.R.C. § 6103(b)(2)(A). The definition of return information also includes closing agreements, similar agreements, and any background information related to the agreement or request for the agreement. Id. § 6103(b)(2)(D).

In this case, it is our understanding that the requestor is seeking settlement documents (unclear whether these are closing agreements or not) entered into between the IRS and third parties, and the documents surrounding those settlements. These documents are return information as defined in the Code. If they are closing or similar agreements, they are return information as defined in section 6103(b)(2)(D). If they are not, they are still return information as they were created by the IRS as part of a determination of a taxpayer's liability under the Code and are therefore return information under section 6103(b)(2)(A). Accordingly, they may only be disclosed as authorized by the Code.

Unless the requestor has some covered relationship with the third parties (partner in a partnership, corporate officer, etc) then the requestor may only receive third party return information if the third parties consent. Absent the consent, the information is exempt from disclosure under FOIA exemption (b)(3) in conjunction with section 6103.

Thanks,