

Information on a TIGTA Determination to Withhold Records Exempt From The Freedom of Information Act – 5 U.S.C. § 552

Appeal Rights

You may file an appeal with the Treasury Inspector General for Tax Administration (TIGTA) within 35 days after we (1) determine to withhold records, (2) determine that no records exist, or (3) deny a fee waiver or a favorable fee category. If some records are released at a later date, you may file within 35 days after the date the last records were released.

The appeal must be in writing, must be signed by you, and must contain the following information:

your name and address
description of the requested records
date of the request (and a copy, if possible)
date of the letter denying the request (and a copy, if possible).

Mail your appeal to: Freedom of Information Appeal
Treasury IG for Tax Administration
Attn: IG:CC Room 700A
1125 – 15th Street, NW
Washington, DC 20005

Judicial Review

If we deny your appeal, or if we do not send you a reply within 20 days (not counting Saturdays, Sundays, or legal public holidays) after the date we receive the appeal, you may file a complaint with the U.S. District Court in the district where (1) you reside, (2) your principal place of business is located, or (3) the records are located. You may also file in the District Court for the District of Columbia.

The court will treat your complaint according to the Federal Rules of Civil Procedure (F.R.C.P.). Service of process is governed by Rule 4(d)(4) and (5), which requires that a copy of the summons and complaint be (1) personally served on the United State Attorney for the district in which the lawsuit is brought; (2) sent by registered or certified mail to the Attorney General of the United States at Washington, C.C.; and (3) sent by registered or certified mail to the Treasury Inspector General for Tax Administration, Attn: IG:CC, Room 700A, 1125 – 15th Street, NW, Washington, D.C. 20005.

In such a court case, the burden is on the Treasury Inspector General for Tax Administration to justify withholding the requested records, determining that no records exist, or denying a fee waiver or a favorable fee category. The court may assess against the United States reasonable attorney fees and other litigation costs incurred by the person who takes the case to court and who substantially prevails. You will have substantially prevailed if the court determines, among other factors, that you had to file the lawsuit to obtain the records you requested and that the Treasury Inspector General for Tax Administration had no reasonable grounds to withhold the records. See internal Revenue Service Regulations 26 CFR 601.702 for further details.

Exemptions

The Freedom of Information Act, 5 U.S.C. § 552, does not apply to matters that are –

- (b)(1) (A) specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and
- (B) are, in fact, properly classified under such an Executive Order;

- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempt from disclosure by statute (other than section 552b of this title), provided that the 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;

Note: subsection (b)(3) protects information exempted by certain qualifying statutes, such as Internal Revenue Code section 6103, which protects tax returns and information generated by and collected by the IRS with regard to a taxpayer.

- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files that disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information
 - (A) could reasonably be expected to interfere with enforcement proceedings,
 - (B) would deprive a person of a right to a fair trial or an impartial adjudication,
 - (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy,
 - (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source.
 - (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonable be expected to risk circumvention of the law, or
 - (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.