

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

NATIONAL TREASURY EMPLOYEES UNION )  
1750 H Street, NW )  
Washington, DC 20006 )

Plaintiff, )

v. )

Civil Action No. \_\_\_\_\_

INTERNAL REVENUE SERVICE )  
1111 Constitution Avenue, NW, )  
Washington, DC 20224 )

Defendant. )

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

This is an action under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as amended, to secure the release of records responsive to the June 20, 2006 FOIA request that the National Treasury Employees Union (NTEU) submitted to the Internal Revenue Service (IRS). The FOIA request sought documents related to IRS's private debt collection initiative, specifically contact information for the companies who bid to perform the work, the contracts entered with the winning bidders, and any documents related to the protests filed by the losing companies.

This lawsuit raises matters of serious public concern about a controversial program. The National Taxpayer Advocate recently called for legislative action to repeal the entire private debt collection initiative, in part because there is an unacceptable lack of transparency in the program. See National Taxpayer

Advocate's 2006 Annual Report to Congress, 458, 461 (available at <http://www.irs.gov/advocate/article/0,,id=165806,00.html>).

Transparency of IRS operations is essential "to maintaining the public's trust and confidence in the government." Id. at 461. IRS "surrender[s] an important part of the public's trust" by keeping important information about the initiative cloaked in secrecy. Id. IRS has no legal authority for withholding the documents requested by NTEU and should disclose them promptly.

#### JURISDICTION AND VENUE

1. This Court has jurisdiction over this cause of action under 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B) because this is an action to enforce the requirements of the FOIA.

2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) and 5 U.S.C. § 552(a)(4)(B).

#### PARTIES

3. Plaintiff National Treasury Employees Union is an unincorporated association that has its principal place of business at 1750 H Street, NW, Washington, DC 20006. Pursuant to Title VII of the Civil Service Reform Act of 1978, Public Law 95-454, 92 Stat. 1111, NTEU is the exclusive bargaining representative of approximately 155,000 federal employees, including approximately 94,000 IRS employees. NTEU represents the interests of these individuals by, inter alia, negotiating collective bargaining agreements, arbitrating grievances under

such agreements, filing unfair labor practice charges, petitioning Congress for favorable working conditions, pay, and benefits, and litigating employees' collective and individual rights in the federal courts.

4. Defendant Internal Revenue Service is a federal agency within the Department of the Treasury. IRS is subject to the requirements of the FOIA. IRS has possession of and control over the records that NTEU seeks.

#### STATEMENT OF CLAIM

5. By letter dated June 20, 2006, NTEU requested that the IRS FOIA Disclosure Officer provide the following information:

- A copy of the contracts awarded to the three private debt collection companies selected to perform tax collection work for IRS pursuant to RFQ No. TIRNO-05-Q-00187;
- The names, addresses, and telephone numbers of all of the entities that submitted bids in response to RFQ No. TIRNO-05-Q-00187; and
- All documents in IRS's possession concerning all bid protests filed by disappointed bidders in connection with RFQ No. TIRNO-05-Q-00187, including but not limited to the protests, the IRS's agency reports, and any other submissions by the protesters, intervenors, or IRS.

6. The IRS had not responded to the request when NTEU counsel called the disclosure office on or about September 5, 2006. NTEU counsel spoke with an individual identifying himself as Al Adams, who requested that the FOIA request be faxed to him. NTEU counsel faxed the FOIA request to the fax number provided by

Mr. Adams on September 5, 2006.

7. IRS has offered no response to the FOIA request. NTEU counsel has been unable to reach Mr. Adams since the September 5, 2006 call, and messages left on Mr. Adams voicemail have gone unanswered.

8. More than ten working days have passed since IRS received NTEU's June 20, 2006 request, and since the request was re-sent via facsimile on September 5, 2006. See 26 C.F.R. § 601.702(c)(7)(i) (requiring initial determination to be made within ten days of date of request).

9. IRS did not seek a ten-day extension of the statutory deadline for responding to the request, as permitted under 26 C.F.R. § 601.702(c)(9)(i). Even if it had, the deadline for responding would still have passed months ago.

10. IRS policy does not permit the filing of an administrative appeal on the ground that IRS failed to respond to a request. See IRS FOIA Guide (Jan. 12, 2004), at 14 (available at [http://www.irs.gov/pub/irs-utl/irs\\_foia\\_guide.pdf](http://www.irs.gov/pub/irs-utl/irs_foia_guide.pdf)).

11. Because NTEU has not received a determination from IRS concerning its request and IRS has not produced any materials in response to NTEU's appeal, NTEU has exhausted its administrative remedies. See 26 C.F.R. § 601.702(c)(10).

12. NTEU has a statutory right to disclosure of the records requested in its June 20, 2006 request, and there is no legal

basis for the failure of IRS to respond to NTEU's request within the statutory deadline nor for its failure to produce the requested documents.

#### CAUSE OF ACTION

13. Plaintiff reasserts and incorporates herein the allegations set forth in paragraphs 1 through 12.

14. Under Section 552(a)(3) of the FOIA, 5 U.S.C. § 552(a)(3), IRS must produce, upon request, documents not specifically exempted by FOIA or for which disclosure is not otherwise prohibited by law.

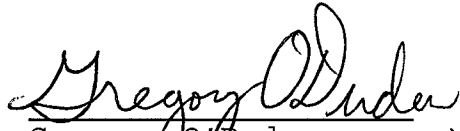
15. NTEU has requested documents that are not specifically exempted by FOIA and for which disclosure is not otherwise prohibited by law. IRS's failure to respond to NTEU's request and to disclose the requested documents violates the FOIA.

#### REQUEST FOR RELIEF

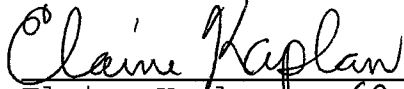
WHEREFORE, plaintiff NTEU respectfully requests that this Court:

- (1) Declare that IRS's failure to release the records requested by NTEU is unlawful;
- (2) Order IRS to make the requested records available to NTEU;
- (3) Award NTEU its costs, reasonable attorneys' fees, and other disbursements in this action; and
- (4) Grant any additional appropriate relief.

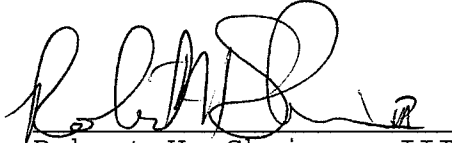
Respectfully submitted,



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Date: 7/19/2007

Counsel for Plaintiff