

Reproduced with permission from Daily Tax Report 63 DTR K-2, (April 2, 2015). Copyright 2015 by The Bureau of National Affairs, Inc. (800-372-1033) <<http://www.bna.com>>

Source: Daily Tax Report: News Archive > 2015 > April > 04/02/2015 > Tax Decisions & Rulings > FOIA: Federal District Court Orders IRS to Improve Response to Nonprofit's FOIA Requests

63 DTR K-2

FOIA

Federal District Court Orders IRS to Improve Response to Nonprofit's FOIA Requests



By Alison Bennett

April 1 — The U.S. District Court for the District of Columbia found the IRS's response to an anti-whaling nonprofit's Freedom of Information Act request was inadequate and that the agency didn't justify its decision to withhold documents sought in connection with an audit (*LinkSea Shepherd Conservation Soc'y v. IRS*, D.D.C., No. 1:13-cv-01422, 3/31/15).

In a March 31 memorandum opinion, the court directed the Internal Revenue Service to conduct additional searches, provide more detailed reasons for any withholdings, and release any non-exempt material in response to requests by Sea Shepherd Conservation Society, a tax-exempt group that faced an audit—now closed—in 2013.

The group, which is dedicated to preservation of oceanic habits and wildlife, claimed its audit was triggered by pressure on the U.S. from both the Institute of Cetacean Research—which it said illegally hunts whales—and the Japanese government. The society filed FOIA requests with the IRS to get information about what triggered its audit, among other reasons.

Important Opinion

Christopher Rizek, a member of Caplin & Drysdale and counsel on the *Sea Shepherd* case, said the court's opinion is important from a FOIA perspective because "it's significant enough that we got the court to do in camera review, deny the IRS summary judgment, and remand the case to the IRS for further review."

Speaking to Bloomberg BNA April 1, Rizek said it is also key because the court noted what he called "pretty good evidence" that the U.S. government may have encouraged the IRS to launch an audit of Sea Shepherd as a result of its negotiations with the Japanese government on the controversial question of whaling.

While the court wasn't asked to decide on that question, "If there was a potentially improper purpose for starting an audit, the public has a right to know that," Rizek said.

Sea Shepherd has maintained that in response to its campaigns against Cetacean, the Japanese government and Cetacean have targeted the conservation group diplomatically and in court.

Classified Cables

In its March 31 opinion, the court noted two classified cables authored by U.S. government officials and published in January 2011 by the online organization WikiLeaks, which reflect conversations between the U.S. and Japanese governments about Sea Shepherd's activities and tax-exempt status.

One described a discussion between Japanese government officials and a representative of the U.S. Commerce Department, in which the Japanese representative said Sea Shepherd's whaling protests could limit Japanese government flexibility in whaling negotiations and expressed appreciation for the U.S. initiative to "address" Sea Shepherd's tax-exempt status.

The Commerce official said she believed it would be possible to demonstrate the group doesn't deserve exempt status.

Audit Started

Following litigation against Sea Shepherd by Cetacean and other plaintiffs at the end of 2011, the IRS launched an extensive audit of Sea Shepherd in January 2013—an audit that closed in 2014 with no change.

Sea Shepherd made a FOIA request seeking all records related to itself in IRS files dated from Jan. 1, 2006, to May 13, 2013.

The court said the defendant failed to conduct an adequate search for records under FOIA and that it hadn't

BNA Snapshot

Holding: IRS didn't adequately respond to a anti-whaling nonprofit's FOIA request seeking documents in connection with an audit.

Takeaway: Court takes note of plaintiff's assertion that audit may have resulted from pressure on U.S. from a whaling group and Japanese government, while not deciding that question.

Next Steps: Court denies summary judgment to IRS, remands case to agency for further review of FOIA requests.

demonstrated that most of its withholdings were justified.

To contact the reporter on this story: Alison Bennett in Washington at abennett@bna.com

To contact the editor responsible for this story: Cheryl Saenz at csaenz@bna.com

For More Information

Text of the decision is in TaxCore.

Contact us at <http://www.bna.com/contact/index.html> or call 1-800-372-1033

ISSN 1522-8800

Copyright © 2015, The Bureau of National Affairs, Inc.. Reproduction or redistribution, in whole or in part, and in any form, without express written permission, is prohibited except as permitted by the BNA Copyright Policy.