

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF MISSOURI**

THE STATE OF MISSOURI,	)	
ex rel. ANDREW BAILEY, in his official	)	
capacity as Missouri Attorney General,	)	
	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. _____
	)	
INTERNAL REVENUE SERVICE,	)	
	)	
Defendant.	)	

**COMPLAINT**

1. Andrew Bailey, Representing the State of Missouri (“Plaintiff”), brings this action against the Internal Revenue Service (“IRS” or “Defendant”). This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for injunctive and other appropriate relief and seeking the disclosure and release of agency records improperly withheld from Plaintiff by Defendant.

**NATURE OF THE ACTION**

2. The Missouri Attorney General’s Office (“AGO”) has sought to gain public records on behalf of Missouri citizens but has faced federal stonewalling. Instead of promptly providing the AGO narrowly limited requested documents, the IRS has attempted to place the burden back on the requester to unreasonably guess the location of the documents. This game of “hide and seek” violates the spirit and letter of FOIA which states that an agency shall

withhold information only if they the agency “reasonably foresees that disclosure would harm an interest protected by an exemption” or if “disclosure is prohibited by law.” 5 U.S.C. § 552(a)(8)(A)(i).

3. FOIA is designed to create transparency within the Federal Government. “Since 1967, the Freedom of Information Act (FOIA) has provided the public the right to request access to records from any federal agency. It is often described as the law that keeps citizens in the know about their government.”<sup>1</sup>

4. On information and belief, the IRS has obstructed the implementation of a crucial economic relief measure designed to support thousands of small businesses in Missouri. This measure, known as the Employee Retention Credit (ERC), was enacted by the United States Congress under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), subsequently amended by the Taxpayer Certainty and Disaster Tax Relief Act (Relief Act), and Section 3134 of the IRS Code. This legislation was intended to refund a portion of federal taxes to businesses that retained their employees during the state of emergency declared by the President in 2020 and 2021. The IRS’s decision to suspend this tax credit has inflicted significant financial harm on numerous Missouri businesses. The federal government's COVID-19

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<sup>1</sup> <https://www.foia.gov/about.html>.

policies and subsequent lockdowns caused severe disruptions in supply chains and resulted in substantial economic losses. These policies were pivotal in forcing many Missouri businesses to permanently shut down. While some businesses managed to survive the initial challenges, many continue to face ongoing struggles. The ERC, established by Congress, served as a vital financial support that sustained these businesses during the pandemic, despite the adverse impacts of government-mandated closures. It is imperative for Missourians to ascertain whether the IRS has hindered the lawful implementation of this tax relief measure.

5. In seeking to find public records held by the federal government, the Missouri Attorney General's office has access to resources that are often not available to private citizens. This includes the benefit of attorneys and support staff who are able to advocate on behalf of the people of Missouri and to file FOIA requests on matters of public concern. However, if federal agencies are allowed to sidestep requests by the AGO and avoid producing the requested documents, how can a citizen ever hope to cut through the "red tape" and take advantage of the rights granted by FOIA? The actions of the IRS are only the tip of the iceberg and are emblematic of a larger pattern and practice of federal agencies using delay and diversion to avoid producing documents requested under FOIA. It is time for the games to end. Consequently, the state of Missouri brings this lawsuit to vindicate the rights granted by the federal

FOIA statute.

## **JURISDICTION AND VENUE**

6. This case seeks declaratory, injunctive, and other appropriate relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201–02; FOIA, 5 U.S.C. § 552(a)(4)(B); and Federal Rule of Civil Procedure 57.

7. This court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331.

8. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B), as Plaintiff State of Missouri resides in the Eastern Division of the Eastern District of Missouri. Missouri is a resident of every judicial district and division within its sovereign territory, including this judicial district and division. *See, e.g., Texas v. Garland*, 2023 WL 4851893, at \*3 (N.D. Tex. July 28, 2023) (noting that a “state resides at every point within its boundaries”) (brackets accepted) (quoting *Atlanta & F.R. Co. v. W. Ry. Co. of Ala.*, 50 F. 790, 791 (5th Cir. 1892)); *see also Florida v. United States*, No. 3:21-cv-1066, 2022 WL 2431443, at \*2 (N.D. Fla. Jan. 18, 2022) (“It is well established that a state ‘resides at every point within its boundaries.’” (brackets accepted) (quoting *Atlanta & F.R. Co.*, 50 F. at 791)); *California v. Azar*, 911 F.3d 558, 569–70 (9th Cir. 2018) (“[A] state with multiple judicial districts ‘resides’ in every district within its borders.”); *Utah v. Walsh*, No. 2:23-CV-016-Z, 2023 WL 2663256, at \*3 (N.D.

Tex. Mar. 28, 2023) (“Texas resides everywhere in Texas.”); *Alabama v. U.S. Army Corps of Eng’rs*, 382 F. Supp. 2d 1301, 1329 (N.D. Ala. 2005) (“[C]ommon sense dictates that a state resides throughout its sovereign borders.”).

## **PARTIES**

9. Plaintiff State of Missouri is a sovereign state of the United States, and Andrew Bailey is the Missouri Attorney General, who represents and is the relator for the State of Missouri in this action.

10. Upon information and belief, the IRS is a cabinet-level agency of the United States of America with its principal place of business located at 1111 Constitution Avenue NW, Washington DC, and is a federal agency within the meaning of 5 U.S.C. § 552(f).

## **STATUTORY FRAMEWORK**

11. The FOIA, 5 U.S.C. § 552, requires agencies of the federal government to release requested records that are “reasonably describe[d]” in the request to the public unless one or more specific statutory exemptions apply. *Id.* at § 552(a)(3)(A) (reasonable description), (b) (exemptions).

12. “The reasonable description requirement shall not be used by officers or employees of the Internal Revenue as a device for improperly withholding records from the public.” 26 C.F.R § 601.702(c)(5)(i).

13. An agency must respond to a party making a FOIA request within twenty (20) working days, notifying that party of at least the agency’s

determination whether or not to fulfill the request and of the requestor's right to appeal the agency's determination to the agency head. 5 U.S.C.

§ 552(a)(6)(A)(i).

14. 26 C.F.R § 601.702 allows for the IRS to ask for specificity and to narrow requests that would result in voluminous records.

15. Under the IRS's regulations, a proper FOIA request "must describe the records in reasonably sufficient detail to enable the IRS employees who are familiar with the subject matter of the request to locate the records without placing an unreasonable burden upon the IRS." 26 C.F.R. § 601.702(c)(5)(i); see § 601.702(c)(4)(D).

16. An agency may extend the 20-day limit by notifying the requestor in writing of "unusual circumstances" necessitating an extension and the date on which a determination of the request is expected. 5 U.S.C. § 552(a)(6)(B)(i).

17. An agency's failure to comply with any timing requirement is a constructive denial of the FOIA request and satisfies the requestor's requirement to exhaust administrative remedies. 5 U.S.C. § 552(a)(6)(C)(i).

18. This Court has jurisdiction, upon receipt of a complaint, to "...enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." 5 U.S.C. § 552(a)(4)(B).

19. FOIA requires federal government agencies to release requested

agency records to the public unless one or more specific statutory exemptions apply. 5 U.S.C. § 552(a)(3)(A).

20. FOIA states:

(C) In responding under this paragraph to a request for records, an agency shall make reasonable efforts to search for the records in electronic form or format, except when such efforts would significantly interfere with the operation of the agency's automated information system.

(D) For purposes of this paragraph, the term 'search' means to review, manually or by automated means, agency records for the purpose of locating those records which are responsive to a request.

5 U.S.C.A. § 552(a)(3).

## **FACTS**

21. The Attorney General made a FOIA request to the IRS by letter on May 17, 2024. The letter requested the following:

1. All communications and documents relating to the decision to issue guidance on or about September 14, 2023, ultimately released to the public in the form of a document entitled "To protect taxpayers from scams, IRS orders immediate stop to new Employee Retention Credit processing amid surge of questionable claims; concerns from tax pros".  
<https://www.irs.gov/newsroom/to-protect-taxpayers->

from-scams-irs-orders-immediate-stop-to-new-employee-retention-credit-processing-amid-surge-of-questionable-claims-concerns-from-tax-pros (This search may be limited in time from May 1, 2023 to September 30, 2023).

2. All communications and documents relating to the decision to issue guidance on or about February 13, 2024, ultimately released to the public in the form of a document entitled “IRS shares 7 warning signs Employee Retention Credit claims may be incorrect; urges businesses to revisit eligibility, resolve issues now before March 22”.

<https://www.irs.gov/newsroom/irs-shares-7-warning-signs-employee-retention-credit-claims-may-be-incorrect-urges-businesses-to-revisit-eligibility-resolve-issues-now-before-march-22> (This search may be limited in time from January 1, 2024 to February 29, 2024).

3. Both Request No. 1 and Request No. 2 above may be further limited to include only communications



and documents that include one or more of the following terms:

- “White House”
- “Executive Office of the President” or “EOP”
- “Daniel Werfel”
- “Commissioner”
- “intimidate”; “intimidates”; “intimidated”
- “discourage”; “discourages”; “discouraged”
- “tsunami”
- “supply chain” or “supply chain disruption”
- “government order” or “governmental order”

22. The IRS acknowledged receipt of the Attorney General’s FOIA request on May 31, 2024 (via an email dated June 11, 2024), and assigned it Case Number #2024-18009.

23. On June 11, 2024, the IRS sent the Attorney General’s Office an email in connection with the Attorney General’s FOIA Request, which asked Plaintiff to provide the specific IRS employee(s) and/or IRS office location(s) in which the IRS should search for documents. In pertinent part, the IRS demanded the following details, which not only are unknown to the Attorney General but are also almost certain to be unknowable to anyone outside of the agency.

To process your request, we need the following information.

- Please provide the specific IRS employee(s) and/or IRS office location(s) to search for records responsive to your FOIA request. We ask that you clarify whether your FOIA request seeks all communications and records of the IRS Commissioner, or if there any additional IRS employee(s)' records or IRS offices you wish to search. Information about the IRS Organizational Structure and its offices can be found in Internal Revenue Manual section 1.1, *Organizational Staffing*, on the IRS website at the following URL.

<https://www.irs.gov/irm/part1>

A true and correct copy of the IRS's June 11 email is attached as Exhibit A.

24. On June 18, 2024, the IRS sent the Attorney General's Office an "interim" letter in connection with the Attorney General's FOIA Request. This communication reiterated the unreasonable request from the IRS's June 11 email for details unknown to the AGO. A true and correct copy of IRS's June 18 Letter is attached as Exhibit B.

25. The IRS still has not substantively responded to the Attorney General's FOIA request, even though more than twenty (20) working days have passed since the IRS received Plaintiff's FOIA request on May 31, 2024 (as acknowledged in the IRS's June 11, 2024 email).

### **COUNT I:**

#### **VIOLATION OF THE FOIA STATUTE BY FAILURE TO COMPLY WITH STATUTORY DEADLINES**

26. Paragraphs 1 through 25 are hereby incorporated by reference as if set forth fully here.

27. The Attorney General properly asked for records within the IRS's control.

28. The IRS's failure to timely respond to the Attorney General's request violates the statutory deadline imposed by the FOIA statute, including the deadline set forth in 5 U.S.C. § 552(a)(6)(A)(i).

29. The IRS did not provide any notice that its response and/or production of documents would be delayed, citing "unusual circumstances" pursuant to 5 U.S.C. § 552(a)(6)(B)(i). And in fact, on information and belief, there are no "unusual circumstances" here.

30. The IRS did not allege that it could not comply with the request because it was too "voluminous" under 26 C.F.R § 601.702. And in fact, on information and belief, it is not too "voluminous."

31. The IRS did not allege that it was permitted to delay its response for any other reason, and in fact, on information and belief, it is not permitted to do so.

32. Agency regulations do not require that a FOIA request provide the agency with the specific IRS employee or office locations to search for records. 26 C.F.R. § 601.702(c)(5)(i); *see* § 601.702(c)(4)(D).

33. The IRS failed to produce any records responsive to the request or to demonstrate that responsive records are exempt from production. Nor has the IRS indicated when it will produce responsive records. 5 U.S.C. § 552(a)(3)(A).

34. The IRS failed to respond to the FOIA request within the time

period mandated by statute and has thus improperly and unlawfully withheld the requested IRS records.

35. Though there is a provision under which the 20-day time period for IRS response can toll, that provision only applies for “one request to the requester for information” and that such informational request be “reasonable.” 5 U.S.C. § 552(a)(6)(A)(ii)(I). Here it is not, as the Attorney General does not have, and likely no one outside the IRS has, the information requested by the IRS.

36. The Attorney General has constructively exhausted applicable administrative remedies under FOIA because the IRS failed to meet FOIA’s statutory requirements on timing of document production. 5 U.S.C. § 552(a)(6)(C)(i).

37. The IRS has wrongfully withheld agency records. The Attorney General is entitled to declaratory and injunctive relief ordering the IRS to release and disclose the requested records.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff State of Missouri and its relator, Attorney General Andrew Bailey, request the following relief:

- (a) A declaration that the IRS violated FOIA by failing to lawfully satisfy the Attorney General’s May 17, 2024 FOIA Request;

- (b) an order that the IRS produce all responsive agency records within ten (10) business days of the court's judgment in this matter; and
- (c) such other relief as deemed just and proper by the court.

Respectfully submitted,

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