UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THE STATE OF NEW YORK, by LETITIA JAMES, Attorney General of the State of New York, and

THE STATE OF NEW JERSEY, by GURBIR S. GREWAL, Attorney General of the State of New Jersey,

Plaintiffs,

-against-

THE UNITED STATES DEPARTMENT OF THE TREASURY and THE INTERNAL REVENUE SERVICE,

Defendants.

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Case No. 19-cv-4024 (JMF)

Plaintiffs' Memorandum of Law in Support of Their Motion for Summary Judgment

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page**

Statutes and Rules

INTRODUCTION

In July 2018, the IRS and Treasury Department announced a policy change that would significantly alter the annual federal disclosure requirements for a wide array of non-profit entities that includes 501(c)(4) social welfare organizations, labor organizations, and business leagues. Because this change could considerably curtail the effectiveness of state regulation in the tax-exempt sector, New York and New Jersey submitted public-record requests to the IRS and the Treasury Department to better understand the agencies' determinations regarding the need for and process of implementing these sub-regulatory changes. Yet more than nine months later — in conceded violation of the statutory timeframes the agencies are required to follow under federal law — the Treasury Department has not produced a single piece of paper; and the IRS has produced less than 2% of the records it identifies as potentially-responsive, with a proposed timeframe for completing production that would stretch an astonishing five years into the future.

Plaintiffs commenced this action on May 6, 2019 to enforce well-established agency disclosure obligations. Defendants do not dispute their status as agencies subject to the Freedom of Information Act. They acknowledge the existence of a significant volume of potentially-responsive records, and they do not assert that they have timely responded to Plaintiffs' requests. In three submissions to the Court since May, Defendants argue that Plaintiffs' requests are burdensome, that special circumstances warrant extension of their time to respond, and that certain material requested is exempt from production. The record of Defendants' conduct, however, demonstrates only that Defendants have violated FOIA by failing to respond within the statutorily prescribed time limit and have unlawfully withheld responsive records without establishing a basis for non-disclosure. Plaintiffs accordingly file this motion for summary judgment to compel Defendants' compliance with straightforward transparency requirements under federal law.

BACKGROUND

On July 16, 2018, Defendants announced that the IRS will no longer require certain tax-exempt groups organized under section 501(c) to disclose the names and addresses of their substantial contributors on the Schedule B to their annual Return (Forms 990 and 990-EZ). *See* Press Release, Treasury Department and IRS Announce Significant Reform to Protect Personal Donor Information to Certain Tax-Exempt Organizations (July 16, 2018), *available at* https://home.treasury.gov/news/press-releases/sm426 (last visited July 29, 2019). The IRS implemented this change through Revenue Procedure 2018-38, without administrative notice or opportunity for public comment, and the change has prompted significant public inquiry, *see, e.g.*, Letter from Sen. Robert P. Casey, Jr. and Sen. Ron Wyden to Hon. Charles P. Rettig, Commissioner, Internal Revenue Service (July 11, 2019), *available at* http://src.bna.com/JRn (last visited July 29, 2019), as well as litigation, including an Administrative Procedure Act lawsuit filed by the State of New Jersey to challenge the validity of the IRS's new rule, *see Bullock, et al. v. IRS, et al.*, 4:18-cv-00103 (D. Mont.).

On October 22, 2018, Plaintiffs jointly submitted letter requests to the Defendants for documents and communications regarding the Revenue Procedure's development. *See* Plaintiffs' Statement of Undisputed Material Facts Pursuant to Local Civil Rule 56.1 ("Rule 56.1 Stmt."), at ¶¶ 1, 2. Plaintiffs addressed their letters to each agency's respective FOIA office and asked both agencies to produce substantially the same categories of material dating from a roughly ten-month period between January 1, 2018 and the date of each agency's search. During the six months that followed prior to commencement of this action, Plaintiffs received no response from the Treasury Department. The IRS provided several letter updates beginning in November 2018 that confirmed receipt of Plaintiffs' requests and commencement of an internal IRS disclosure review. *Id.* at ¶¶ 3-7. In its first letter response on November 18, 2018, the IRS admitted that the statutory deadline

for it to respond expired on December 5, 2018. *Id.* at ¶ 4. On March 26, 2019, the IRS provided a production containing fewer than 400 pages that it identified as a partial response to one of seven categories in Plaintiffs' requests. *Id.* at ¶ 8.

In May 2019, Plaintiffs commenced this action to obtain the judicial relief provided by 5 U.S.C. § 552(a)(4)(B). The complaint asserts two claims: that Defendants have violated FOIA by failing to respond to Plaintiffs' requests within the statutorily prescribed time limit and that Defendants have unlawfully withheld requested information. On May 22, the parties confirmed in a joint submission to the Court that they did not require discovery in this action and did not require an initial conference. Joint Letter dated May 22, 2019, Docket No. 18, at 1. The IRS provided a second partial production on June 21, but redacted nearly three-quarters of the production invoking the deliberative process privilege recognized in FOIA Exemption (b)(5). Rule 56.1 Stmt. ¶ 9.

On June 11, 2019, Defendants filed an Answer to the Complaint in which they identify three defenses to Plaintiffs' claims: that the Complaint fails to state a claim upon which relief can be granted; that some or all of the documents requested may be exempt from production; and that Defendants have exercised due diligence in processing Plaintiffs' requests but require additional time to process the requests due to exceptional circumstances. Answer, Docket No. 20, at 7. The Defendants' own representations to the Court regarding review efforts undertaken to date disprove each of these defenses.

During the nearly three months since Plaintiffs filed their Complaint, the Defendants have provided two summary updates to the Court regarding the status of their ongoing disclosure review. Neither Defendant has identified exceptional circumstances that prevent timely production or demonstrated due diligence in its efforts to respond, and neither proposes a reasonable production timeline to resolve Plaintiffs' claims.

On May 22 — seven months from the date of Plaintiffs' requests — Defendants reported that they had not yet completed collection of potentially-responsive material or identified the total volume of potentially-responsive material in their respective files. Joint Letter dated May 22, 2019, Docket No. 18, at 1. Defendants represented to the Court that the IRS would be prepared to propose a schedule for completion of its production on or before June 21 and that the Treasury Department would propose a schedule for commencement of its own production on the same date. *Id.* Neither agency provided those schedules on June 21.

On June 27 — more than eight months after receiving Plaintiffs' requests — Defendants provided a second update to the Court. The Treasury Department confirmed that it had not begun production and could not yet identify a schedule for production but indicated that it had completed collection of potentially-responsive material and would be in a position to propose the schedule originally promised on June 21 one month later, on July 19. Rule 56.1 Stmt. ¶ 11. The IRS reported that it had completed production of all responsive hard copy material but had identified an estimated 55,000 to 56,000 pages of potentially-responsive electronic material, to be collected from a total of 48 individual custodians, for review. *Id.* at ¶ 12. Without having reviewed any of the newly identified material, the IRS predicted that "the majority of this material will be exempt from production pursuant to FOIA exemption (b)(5)." *Id.* The IRS proposed a schedule by which it would review 1,000 pages of electronic material per month and thus complete review of all potentially-responsive electronic files in or about January or February of 2024. *Id.* The IRS did not identify a proposal for prioritizing among particular custodians or categories of documents captured by its collection and instead asked Plaintiffs to narrow or revise their requests in light of a general representation that the material collected was voluminous, contained numerous draft documents, and would likely be exempt from disclosure. The IRS simultaneously maintained that

no index of material withheld from production was required "at this stage of the litigation." *Id.* at ¶ 10.

Defendants provided a third update to Plaintiffs via email, as directed by the Court, on July 17, 2019. *Id.* at ¶ 13. The Treasury Department reported that it had identified 613 potentially-responsive documents for review and proposed to process 50 of those documents per month so that its production would be complete in approximately July 2020, 21 months after Plaintiffs submitted their requests. *Id.* The IRS reported that it had completed collection of potentially-responsive electronic files and was preparing the material for review but made no change to its proposal for a five-year rolling production. *Id.* at ¶ 14.

Taken together, Defendants' updates demonstrate that substantive efforts to identify and collect potentially-responsive material did not begin at either agency prior to the filing of this action. Moreover, in almost three months that this action has been pending, only the IRS has made a production of any kind. That production, roughly three quarters of which was redacted in whole or in part without explanation in a corresponding index, amounts to approximately 1% of the total volume of material that the IRS now identifies as potentially responsive to Plaintiffs' requests. The schedule that Defendants propose for their respective reviews will deliver a completed FOIA response 69 months after the submission of Plaintiffs' requests.

The facts material to Plaintiffs' claims are not in dispute. Defendants have failed to meet their obligations under FOIA and Plaintiffs are entitled to judgment as a matter of law. Plaintiffs respectfully request that the Court declare Defendants' failure to timely respond unlawful and order Defendants to search for and disclose within 90 days all records responsive to Plaintiffs' requests.

STANDARD OF REVIEW

Summary judgment is the usual mechanism for resolving a FOIA dispute. *Brennan Ctr. for Justice* v. *U.S. Dep't of Justice*, 377 F. Supp. 3d 428, 433 (S.D.N.Y. 2019). Summary judgment is appropriate if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56. The Court evaluating a motion for summary judgment must "construe the evidence in the light most favorable to the non-moving party and draw all inferences in its favor," *id.* (citations omitted), but "unsupported allegations do not create a material issue of fact," *Weinstock* v. *Columbia Univ.*, 224 F.3d 33, 41 (2d Cir. 2000). "A motion for summary judgment cannot . . . be defeated on the basis of conclusory assertions, speculation, or unsupported alternative explanations of facts." *City of New York* v. *FedEx Ground Package Sys., Inc.*, 351 F. Supp. 3d 456, 473 (S.D.N.Y 2018) (citing *Major League Baseball Props., Inc.* v. *Salvino, Inc.*, 542 F.3d 290, 310 (2d Cir. 2008)). In order to prevail on a motion for summary judgment in a FOIA case, the defending agency bears the burden of showing that its search was adequate and that any withheld documents fall within an exemption to the FOIA. *Carney* v. *U.S. Dep't of Justice*, 19 F.3d 807, 812 (2d Cir. 1994) (citing 5 U.S.C. § 552(a)(4)(B)).

ARGUMENT

1. FOIA Outlines Clear Disclosure Requirements That Defendants Have Failed to Meet.

FOIA provides Plaintiffs with the right to request and receive any of Defendants' records not subject to a specifically-enumerated statutory exemption from disclosure. 5 U.S.C. § 552(a)(3)(A). "The basic purpose of FOIA reflect[s] a general philosophy of full agency disclosure unless information is exempted under clearly delineated statutory language." *Bloomberg L.P.* v. *Bd. of Governors of the Fed. Reserve Sys.*, 601 F.3d 143, 147 (2d Cir. 2014) (citations and quotation marks omitted). The standards that govern Defendants' response to a lawfully-submitted

FOIA request are clear: the statute's provisions establish "a default rule in favor of Government disclosure, providing that an 'agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules . . . shall make the records promptly available to any person.'" *Am. Civil Liberties Union* v. *Nat'l Security Agency*, 925 F.3d 576, 588 (2d Cir. 2019) (citations omitted). "FOIA requires the executive, in response to duly made demands, to promptly produce requested documents, or to provide justification why the documents may be exempt from production." *Brennan Ctr. for Justice* v. *U.S. Dep't of State*, 300 F. Supp. 3d 540, 546 (S.D.N.Y. 2008) (citations and quotation marks omitted).

Defendants do not challenge the timing or specificity of Plaintiffs' requests and do not assert that they failed to receive the requests. The IRS acknowledged Plaintiffs' requests in multiple letters and has provided two partial productions of responsive material. The IRS admits in submissions to this Court that it has identified a significant volume of additional, potentially-responsive material for review. The Treasury Department has separately confirmed that it identifies approximately 600 documents in its own records as potentially responsive to Plaintiffs' requests.

FOIA's disclosure provisions require agency adherence to a prompt timeline for response. *See* 5 U.S.C. § 552(a)(6)(C)(i) ("Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request."). *Cf.* 5 U.S.C. § 552(a)(6)(A). "FOIA requires that the agency make the records 'promptly available,' which depending on the circumstances typically would mean within days or a few weeks of a 'determination,' not months or years." *Nat'l Day Laborer Organizing Network* v. *U.S. Immigration and Customs Enforcement*, 236 F. Supp. 3d 810, 815 (S.D.N.Y. 2017) (citing *Citizens for Responsibility & Ethics in Washington* v. *Fed. Election Comm'n*, 711 F.3d 180, 188 (D.C. Cir. 2013)). The IRS acknowledged the statutory deadline for disclosure in its November 14, 2018

letter to Plaintiffs and noted in that letter that Plaintiffs could sue to enforce their rights under FOIA as of December 5, 2018.

Defendants acknowledge in their submissions to the Court that they did not finish collecting potentially-responsive material until almost nine months after Plaintiffs submitted their requests. The Treasury Department has not produced anything in response to Plaintiffs' requests, and the IRS estimates that it has completed the review of approximately 1% of all potentially-responsive material presently identified in its files. Notwithstanding these admissions, Defendants now propose a further production schedule that would extend more than five years from Plaintiffs' request for documents dating from the ten-month period that immediately preceded their submission in October 2018.

2. Defendants Have Not Asserted – Let Alone Demonstrated – Exceptional Circumstances to Justify Their Extreme Delay in Responding to Plaintiffs' Requests.

"When, as here, an agency does not respond to a FOIA request in accordance with the time period specified by the statute, a requester may seek judicial review 'to enjoin the agency from withholding agency records and to order the production of agency records improperly withheld.'" *Nat'l Day Laborer Organizing Network*, 236 F. Supp. 3d at 819 (quoting 5 U.S.C. § 552(a)(4)(B)). "If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records," 5 U.S.C. § 552(a)(6)(C)(i), but "the term 'exceptional circumstances' does not include a delay that results from a predictable agency workload," 5 U.S.C. § 552(a)(6)(C)(ii).[1]

[1] The statute does permit a narrow exception to this principle where the agency reports an unusual volume of pending requests and "demonstrates reasonable progress in reducing its backlog of pending requests," but that exception does not apply here because Defendants do not attribute their delay to specific circumstances presently under active review or remediation. *See Bloomberg L.P.*

Courts reviewing the "exceptional circumstances" standard in this district have noted that "allowing a mere showing of normal backlog of requests to constitute 'exceptional circumstances' would render the concept and its underlying Congressional intent meaningless." *Bloomberg*, 500 F. Supp. 2d at 375 (denying Government request for 20-month stay and ordering 75-day production schedule where FDA failed to respond to requests for correspondence spanning two-year period and "repeated missed deadlines, unexplained timeline adjustments, and limited agency communication" suggested "either an uncooperative stance or a lack of due diligence") ("[FDA] does not detail an existing request that has overwhelmed its resources and staff. In the absence of such information, coupled with what appears to be a manageable inflow of FOIA requests, the Court is not persuaded that 'exceptional circumstances' are sufficiently evident here."). *See also Nat'l Day Laborer Organizing Network*, 236 F. Supp. 3d at 819 ("[A]lthough defendants spend some time explaining their current docket of FOIA requests, as well as the potential volume of documents responsive to [the plaintiff's request], defendants do not address at all whether they currently face a volume of requests on a level unanticipated by Congress. This is insufficient, as the FOIA makes clear that "the term 'exceptional[] circumstances' does not include a delay that results from a predictable agency workload of requests . . . unless the agency demonstrates reasonable progress in reducing its backlog of pending requests.").

In order to establish that "exceptional circumstances" warrant a departure from the default timeline for production in this case, Defendants must affirmatively demonstrate both that their failure to respond is the result of an atypical volume of outstanding requests at the Treasury

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v. *U.S. Food and Drug Admin.*, 500 F. Supp. 2d 371, 375 (S.D.N.Y. 2007) ("If an agency's delay is the result of an expected workload of requests, the agency must demonstrate 'reasonable progress in reducing its backlog of pending requests.' The statutory contours of what defines 'reasonable progress' have not been explicitly elaborated upon in this Circuit, but courts generally have considered a range of factors, including requests for additional funding, modernizing practices and equipment, and initiatives tied directly to backlog reduction.") (citations omitted).

Department and IRS and that they are actively working to address the root causes of their delay in a manner that merits judicial deference. *See id.* (citing *Open America* v. *Watergate Special Prosecution Force*, 547 F.2d 605, 616 (D.C. Cir. 1976)). Defendants have not carried their burden to show that these factors are met; indeed, apart from a cursory and unsupported assertion in their Answer that "exceptional circumstances exist," Docket No. 20, at 7, neither Defendant has claimed that it is burdened by an atypical volume of pending requests that it is working actively to address, despite multiple opportunities through the parties' meet-and-confer discussions and Court-ordered joint status reports. *See* Docket No. 18, 21; Suvari Decl. Ex. A.

Nor have Defendants demonstrated that they are "exercising due diligence" in their response efforts to date. 5 U.S.C. § 552(a)(6)(C)(i). The Treasury Department has not even commenced production of responsive records nine full months after Plaintiffs submitted their requests. And the IRS states that it has collected a significant volume of material for review but has produced only 1,100 pages in nine months, with no production since June 27 despite the assertion that it had completed the bulk of its collection of potentially responsive electronic material by that point. Without any evidence of a diligent effort to date, Defendants now urge the Court to defer action solely on the basis of their present statement that the remaining material collected for review cannot be reviewed at a rate faster than 50 documents per month (in Treasury's case) and 1,000 pages per month (at the IRS). General pronouncements of limited capacity are precisely the sort of excuse that courts in this Circuit and others have rejected as insufficient to satisfy FOIA's narrowly-tailored standard for "exceptional," and justified, delay. *See, e.g.*, *Brennan Ctr.* v. *U.S. Dep't of State*, 300 F. Supp. 3d at 549 (granting plaintiff motion to expedite action following six month delay in agency production of non-exempt materials) ("Defendant's claim that Plaintiff's request is 'broad and complex,' and 'burdensome' in light of the State Department's backlog of FOIA requests is not supported by the record."); *Am. Civil Liberties*

Union v. *Dep't of Defense*, 339 F. Supp. 2d 501, 504-05 (S.D.N.Y. 2004) (ordering production or identification of all responsive documents and identification of withheld material within 30 days where defendant failed to produce or identify responsive documents during eleven months and argued that "more timely production is not feasible as many documents . . . require line-by-line examination to ensure protection and proper exemption status" and "defendant agencies have insufficient resources to process more quickly the volume of requested documents") ("[T]he glacial pace at which defendant agencies have been responding to plaintiffs' requests shows an indifference to the commands of FOIA, and fails to afford [the] accountability of government that the act requires. . . . Nearly one year has passed since the documents were first requested. To permit further delays in disclosure or providing justification for not disclosing would subvert the intent of FOIA."); *Judicial Watch, Inc.* v. *U.S. Dep't of Homeland Security*, 895 F.3d 770, 789 (D.C. Cir. 2018) (reversing dismissal of claim for injunctive relief from policy or practice of agency delay in processing requests prior to judicial intervention) ("The statute places the burden on the agency, not the FOIA requester, to justify delays in processing. . . . It is emphatically not permissible under FOIA for a court simply to assume that an agency's circumstances are 'exceptional.' . . . [T]he statute does not condone agency personnel sitting behind accumulating mounds of FOIA requests and requiring each requester to 'take a number' and wait many months or years for the agency to comply.") (Pillard, concurring).

Defendants have not asserted — let alone demonstrated — the "exceptional circumstances" and due diligence that permit continued production delay under 5 U.S.C. § 552(a)(6)(C)(i). The Treasury Department has failed to begin production altogether and should be compelled to immediately review and produce the limited volume of material that it now identifies as potentially responsive.

3. The IRS Has Unlawfully Withheld Responsive Material.

The IRS has redacted or withheld 543 of the 1,092 pages it has produced to date but has not established why that material may properly be withheld from production. The IRS asserts that the material consists "primarily of drafts and discussions representing the deliberations inherent in the consultative process which could reveal the manner in which the [IRS] evaluated possible alternatives in the drafting of Revenue Procedure 2018-38," Rule 56.1 Stmt. ¶ 10, but it offers no identifying information about the individual documents withheld to support this representation.

FOIA's disclosure obligation is "subject to several exemptions," but "consistent with the Act's goal of broad disclosure, these exemptions have consistently been given a narrow compass." *N.Y. Times Co.* v. *U.S. Dep't of Justice*, 756 F.3d 100, 111 (2d Cir. 2014). "All doubts are resolved in favor of disclosure. And the burden is on the agency to justify the withholding of any requested documents. The agency's decision that the information is exempt from disclosure receives no deference; accordingly, the district court decides *de novo* whether the agency has sustained its burden." *Bloomberg* v. *Board of Governors*, 601 F.3d at 147 (citations omitted). *See also Senate of Puerto Rico* v. *U.S. Dep't of Justice*, 823 F.2d 574, 584-85 (D.C. Cir. 1987) ("Congress intended to confine exemption (b)(5) 'as narrowly as [is] consistent with efficient Government operation.' . . . The agency invoking a FOIA exemption bears the burden of establishing its right to withhold evidence from the public."). To assert successfully the deliberative process privilege in Exemption 5, the IRS must establish two prerequisites: "[1] [that] the document [withheld] is 'predecisional' — . . . it was generated *before* the adoption of an agency policy—and [2] [that] the document is 'deliberative' — . . . it reflects the give-and-take of the consultative process." *Id.* (quoting *Coastal States Gas Corp.* v. *Dep't of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980)) (emphasis in original). Moreover, it "must establish 'what deliberative process is involved, and the role played by the documents in issue in the course of that process.'" *Id.* at 585-86 (quoting *Coastal States*, 617 F.2d

at 868). "To meet its burden of proof, [an] agency can submit affidavits or declarations giving reasonably detailed explanations why any withheld documents fall within an exemption." *N.Y. Times Co.* v. *U.S. Dep't of Justice*, 756 F.3d at 112 (citation omitted). Generally, providing only "each document's issue date, its author and intended recipient, and the briefest of references to its subject matter . . . will not do." *Senate of Puerto Rico*, 823 F.2d at 585.

The IRS acknowledges in its submissions to this Court that no *Vaughn* index has been provided for the material it has redacted and/or withheld, but it asserts — without reference to any supporting authority — that no index is yet required to withhold otherwise responsive agency records.[2] "The purpose of a *Vaughn* index is to afford a FOIA plaintiff an opportunity to decide which of the listed documents it wants and to determine whether it believes it has a basis to defeat the Government's claim of a FOIA exemption." *N.Y. Times Co.* v. *U.S. Dep't of Justice*, 762 F.3d 233, 236 (2d Cir. 2014). *See also ACLU* v. *Dep't of Defense*, 339 F. Supp. 2d at 504 (ordering identification of all documents withheld from production by author, addressee, date, and subject matter prior to briefing of motions for summary judgment regarding claimed exemption) (identifying withheld documents by some form of log "enable[s] a specific claim of exemption to be asserted and justified"). The IRS cannot establish the applicability of the exemptions that it

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[2] *See generally Seife* v. *U.S. Dep't of State*, 298 F. Supp. 3d 592, 606 (S.D.N.Y. 2018) (In [*Vaughn* v. *Rosen*, 484 F.2d 820 (D.C. Cir. 1973)], the Court of Appeals for the D.C. Circuit held that in order to assure that allegations of exempt status are adequately justified, courts will simply no longer accept conclusory and generalized allegation of exemptions but will require a relatively detailed analysis in manageable segments. . . . Requiring such submissions serves three goals: (1) it forces the government to analyze carefully any material withheld, (2) it enables the trial court to fulfill its duty of ruling on the applicability of the exemption, (3) and it enables the adversary system to operate by giving the requester as much information as possible, on the basis of which he can present his case to the trial court.") (citing *Vaughn* and *Halpern* v. *Fed. Bureau of Investigation*, 181 F.3d 279, 291 (2d Cir. 1999)) (quotations omitted). *See also Brennan Ctr.* v. *U.S. Dep't of State*, 300 F. Supp. 3d at 550 ("Defendant's argument that production of a Vaughn index is premature prior to summary judgment is not persuasive. While some courts have held that the production of a Vaughn index is not required until after dispositive motions are filed, these cases state no rule and other courts have not followed this procedure. Indeed, it is well-established that against the backdrop of the anti-delay policy of FOIA, district courts balance the same equities pertinent to the timing of a response to a FOIA document request in their determinations of the appropriate timing of a response to a Vaughn index request. . . .") (collecting cases) (citations and quotation marks omitted).

claims without identifying sufficient facts to show that the material withheld in fact qualifies for such an exemption. The IRS has made no such showing and should be compelled to justify its withholdings or produce any material for which it is unable to demonstrate a statutory exemption from disclosure. *See Halpern*, 181 F.3d at 293 (rejecting agency explanations for redaction that were "insufficient, in and of themselves," to sustain the government's burden of proof as "vague and conclusory affidavits that . . . read much like bureaucratic double-talk") ("[B]lind deference is precisely what Congress rejected when it amended FOIA in 1974.").

CONCLUSION

For the foregoing reasons, Plaintiffs' motion for summary judgment should be granted.

Dated: July 29, 2019
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