

FOIA Administrative Appeals Transferred to Appeals

Announcement 2001-58

SUMMARY: Responsibility for an administrative appeal under the Freedom of Information Act from a denial of a request for information, for a fee waiver, for determination of a favorable fee category, or for expedited processing by a disclosure officer of the Internal Revenue Service (*i.e.*, a FOIA administrative appeal) has been transferred to the Chief, Appeals (Appeals). Previously, the Assistant Chief Counsel (Disclosure & Privacy Law) was responsible for the FOIA administrative appeal function. The Service transferred responsibility as a result of the reorganization and restructuring of the Internal Revenue Service. Under this new transfer of authority, the requester and Appeals will now attempt to resolve any disputed request under its jurisdiction for information, fee waiver, fee category, or expedited processing pursuant to the Freedom of Information Act. This procedure is effective for requests received on or after January 15, 2001. Because Appeals will expand its jurisdiction by this transfer of authority, we welcome comments on the process. Comments should be submitted to:

Internal Revenue Service
Bailey's Crossroads Appeals Office,
Attn: FOIA Coordinator
One Skyline Place – Suite 803
5205 Leesburg Pike
Bailey's Crossroads, VA 22041

BACKGROUND: Previously, FOIA administrative appeals were considered by the Office of Assistant Chief Counsel (Disclosure & Privacy Law). A recommendation of the Treasury Inspector General for Tax Administration emphasized that the Service should find ways to timely respond to FOIA administrative appeals. IRS management agreed with the recommendation; the IRS' Modernization Plan calls for the transfer of FOIA administrative appeal responsibility from the Office of Chief Counsel to Appeals.

OVERVIEW: Appeals has been delegated the authority to respond to FOIA

administrative appeals by the Commissioner. *See* Delegation Order 165 (Rev. 8) dated October 2, 2000. The mission of Appeals is to resolve tax controversies, without litigation, on a basis which is fair and impartial to both the Government and the requester. A FOIA administrative appeal is an optional process, initiated by the requester, where Appeals will provide a requester with a fair and impartial independent determination based upon the facts and the law.

ORGANIZATIONAL PLACEMENT OF FOIA ADMINISTRATIVE APPEALS: The authority to determine FOIA administrative appeals are placed in Appeals under the Director, Office of Small Business/Self-Employment and Tax Exempt/Governmental Entities. The Chief, Appeals will provide line authority over Appeals' operations and, thus, promote uniformity and consistency in determinations made under this new appeal authority.

Procedure for Requesting a FOIA Administrative Appeal

SUMMARY: A FOIA administrative appeal is an independent "fresh look" of an initial denial of a person's request for access to records, fee waiver, fee category, or expedited processing under the Freedom of Information Act. The initial FOIA request may be filed with the Internal Revenue Service at the national headquarters, an area office, or a service or compliance campus. However, a FOIA administrative appeal *must* be filed with the Chief, Appeals at the following address:

Internal Revenue Service
Richmond Appeals Office –
FOIA Appeal
2727 Enterprise Parkway Suite 100
Richmond, VA 23229

SCOPE AND MANNER OF THE FOIA ADMINISTRATIVE APPEAL: Generally, effective January 15, 2001, Appeals has jurisdiction over all FOIA administrative appeals. Some FOIA administrative appeals received by the Internal Revenue Service prior to the effective date will remain with the Assistant Chief Counsel (Disclosure & Privacy Law) until com-

pleted. Appeals will respond to certain FOIA administrative appeals received prior to the effective date; those requesters will be notified by Appeals that jurisdiction for a response has been transferred.

A FOIA administrative appeal is made by filing a letter of appeal to the initial adverse determination letter sent to the requester by a disclosure officer of the Internal Revenue Service. The format for an appeal is prescribed in the Statement of Procedural Rules, 26 CFR § 601.702 (c)(8). A FOIA administrative appeal shall at a minimum specify the date of the request, the office to which the request was submitted, the date of the adverse determination letter, and, where possible, enclose a copy of the initial request and the adverse determination letter being appealed.

Disputes of factual matters should include a statement in writing of the requester's view of the facts. Factual matters concern, for example, facts establishing:

- existence of a record;
- fee category of the requester;
- support for a fee waiver determination; or
- support for a statutory expedited processing.

If there is a disagreement as to the matter of law or other authority, the requester should state the reason or reasons in writing for the requester's position. The reasoning may be based on what the requester believes is logical and fair. Consideration of the appeal is enhanced and facilitated by including references to supporting authorities, such as the applicable sections of the Freedom of Information Act, Treasury regulations, court cases and policies of the IRS.

The Freedom of Information Act created a right of access to records, not a right to personal services. Appeals will not respond to questions that ask the Service to justify tax policy or law, or similar discussions, nor will Appeals answer questions about a person's tax liability in the form of a FOIA administrative appeal. Many Internal Revenue Service publications are available to the public that answer tax

questions and explain Service policies. These documents will help persons making FOIA administrative appeals understand matters concerning their personal obligation and liability to pay federal taxes. In addition, the Service has many Taxpayer Service personnel that will help persons making FOIA administrative appeals understand the specific documents available and how to locate these documents. Finally, the Internal Revenue Manual is available for public inspection in the Internal Revenue Services Freedom of Information Reading Room.

ISSUES NOT WITHIN APPEALS' JURISDICTION: Under the Department of Treasury regulations, the following circumstances do not give rise to a FOIA administrative appeal and are not within the jurisdiction of Appeals:

- the lack of a timely response from an initial request;
- a reply to the FOIA request which states that the Freedom of Information Act does not require the IRS to provide explanations or answers in response to questions concerning tax policies or tax law; or
- a request for matters that the Internal Revenue Service has published in the Federal Register or is required to be made available for public inspection in its Freedom of Information Reading Room, 1111 Constitution Avenue, N.W., Washington, D.C. The public should be aware that much of this material is available for public inspection on the Service's Electronic Freedom of Information Reading Room (www.irs.gov/efoia).

If the Internal Revenue Service has not timely responded to the requester, the law permits the requester to file a lawsuit in the United States District Court in the judicial district in which the requester lives or works, or where the records subject to the request are located, or in the District of Columbia.

EFFECTIVE DATE: The effective date for Appeals jurisdiction is January 15, 2001.

FOR FURTHER INFORMATION CONTACT: Theodore J. Cichaski, Appeals Freedom of Information Act Coordinator at 703-756-6697 Ext. 18 (not a toll-free number).