

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

LARRY COCHRAN,

Plaintiff,

v.

INTERNAL REVENUE SERVICE,

Defendant.

Civil Action No. 08-2181 (RMC)

MEMORANDUM OPINION

This matter is before the Court on the Internal Revenue Service's motion to dismiss. For the reasons discussed below, the Court will dismiss this action without prejudice.

Plaintiff alleges that he submitted a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the Privacy Act ("PA"), 5 U.S.C. § 552a, to the Internal Revenue Service ("IRS") for the following information:

- a) Individual Master File Transcript: Complete for the years 1989, 1993, 1995, 1997, 1999, 2005, 2006, 2007, & 2008 along with the 6209 Decoding Book;
- b) Audit Information Management Systems (AIMS) IRS § 42.008.
- c) Individual Microfilm Retention Register, Tx:R-Treasury/IRS § 22.032
- d) Form 5546 - the excise activity codes assigned individually to me. Send me a true, certified and complete copy.
- e) Form 668W - Notice of Levy Service and Treasury Department authorization. Send me a true, certified and complete copy.
- f) Form 2039 - Summons (including the performed header and footer) along with the Chief Counsel Directives (CCD) manual. Send me a true, certified and complete copy.
- g) All 1099OID(s) "Original Issue Document(s) and 1099INT(s) "interest Incomes.["]
- h) A.D.P. Decoding Book.

Compl., Attach. 1 (Oct. 8, 2008 FOIA/PA Request) at 1. Plaintiff states that he "has not received [sic] any reply" from the IRS. *Id.* ¶ 6. The IRS represents that it has no record of

having received Plaintiff's FOIA/PA request. Def.'s Mot. to Dismiss [Dkt. # 9], Gingras Decl. ¶ 4.

On February 9, 2009, the IRS filed a motion to dismiss the complaint. On February 10, 2009, the Court issued an Order advising Plaintiff of his obligation to file an opposition or other response to the motion. The Order further advised Plaintiff that, if he failed to respond by March 26, 2009, the Court would treat the motion as conceded. On April 6, 2009, the Clerk of Court received Plaintiff's response, and the undersigned granted leave to file his response on the following day.

Plaintiff "believes that the best course of action would be to have this Court dismiss the Complaint," as he "plans to re-submit his . . . request for documents and information following all the appropriate procedures and policies of the [IRS]." Pl.'s Response [Dkt. # 11] at 1-2. He adds that he "would be at a complete disadvantage" if this action were dismissed with prejudice. *Id.* To this end, "pursuant to Rule 41(a)(2) of the Civil Rules of Procedure, [he] requests that this Court enter a[n] Order Dismissing the Plaintiff's Complaint in this cause of action without prejudice." *Id.* at 2.

Pursuant to Plaintiff's request, the Court will dismiss this action without prejudice under Federal Rule of Civil Procedure 41(a)(2) and will deny Defendant's motion to dismiss [Dkt. # 9] as moot. A memorializing order accompanies this Memorandum Opinion.

Date: July 27, 2009

_____/s/
ROSEMARY M. COLLYER
United States District Judge