

1 UNITED STATES COURT OF APPEALS
2 FOR THE SECOND CIRCUIT

3 **SUMMARY ORDER**

4 RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED
5 AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND
6 FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT
7 CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION
8 MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)."
9 UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE
10 WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT HTTP://WWW.CA2.USCOURTS.GOV), THE
11 PARTY CITING THE SUMMARY ORDER MUST FILE AND SERVE A COPY OF THAT SUMMARY ORDER TOGETHER
12 WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED. IF NO COPY IS SERVED BY REASON OF THE
13 AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT
14 DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

15 At a stated term of the United States Court of Appeals for the
16 Second Circuit, held at the Daniel Patrick Moynihan United States
17 Courthouse, 500 Pearl Street, in the City of New York, on the 27th
18 day of May, two thousand nine.

19 PRESENT:

20 HON. AMALYA L. KEARSE,
21 HON. ROBERT D. SACK,
22 HON. PETER W. HALL,

23 Circuit Judges.

24 -----
25 JOSEPH RADCLIFFE,

26
27 Plaintiff-Appellant,

28 - v. -

No. 08-1513-cv

29
30 INTERNAL REVENUE SERVICE and TIMOTHY F.
31 GEITHNER, SECRETARY OF THE TREASURY,*

32 Defendants-Appellees.
33 -----

34 Appearing for Appellant:

* Pursuant to Federal Rule of Appellate Procedure 43(c)(2),
Secretary of the Timothy F. Geithner is automatically substituted
for former Secretary of the Treasury Henry M. Paulson as a
defendant in this case.

1 James J. Bonicos (Frank Agostino, *of counsel*) Calo
2 Agostino, P.C. Hackensack, NJ.

3 Appearing for Appellee:

4 John D. Clopper, Assistant United States Attorney
5 (Michael J. Garcia, United States Attorney for the
6 Southern District of New York, David S. Jones,
7 Assistant United States Attorney, *of counsel*), New
8 York, NY.

9 Appeal from a judgment of the United States District Court
10 for the Southern District of New York (William C. Conner, Judge).

11 UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND
12 DECREED that the judgment of the district court be, and it hereby
13 is, AFFIRMED.

14 Plaintiff-Appellant Joseph Radcliffe appeals from the
15 district court's decision to grant the government's motion for
16 summary judgment dismissing his lawsuit pursuant to the Freedom
17 of Information Act ("FOIA"), 5 U.S.C. § 552. See Radcliffe v.
18 I.R.S., 536 F. Supp. 2d 423 (S.D.N.Y. 2008). We assume the
19 parties' familiarity with the underlying facts, the procedural
20 history of the case, and the issues on appeal.

21 We have no doubt that the documents retrieved pursuant to
22 the government's search were exempt from production as "records
23 or information compiled for law enforcement purposes" the
24 production of which "could reasonably be expected to interfere
25 with enforcement proceedings," 5 U.S.C. § 552(b)(7)(A); see also
26 26 U.S.C. § 6103(e)(7). Radcliffe has essentially conceded as
27 much, asserting that this FOIA suit stems from the Internal
28 Revenue Service's ongoing investigation of whether and to what
29 extent Radcliffe has used undeclared offshore credit card
30 accounts to shelter his income and avoid his federal tax
31 obligations. By letter dated July 25, 2007, Radcliffe, through
32 counsel, stated that his "FOIA suit became necessary due to the
33 IRS' failure to provide [information relating to the tax audit]
34 willingly." Letter from Frank Agostino to Gary A. Nichols,
35 Internal Revenue Service (July 25, 2007).

36 We have some concern about the thoroughness of the
37 government's search and its description thereof in the
38 declarations dated June 7, 2007, and August 8, 2007, of Deborah
39 Lambert-Dean, an attorney in the Internal Revenue Service's
40 Office of Chief Counsel, Procedure and Administration, that
41 described the search for responsive documents. The declarations

1 fail to describe the search in detail or fully explain the
2 reasons that such a search could be said to have been reasonably
3 calculated to uncover all relevant documents within the scope of
4 the FOIA request. In concluding that the search was adequate,
5 however, the district court found that the declarations explained

6 why the documents plaintiff requested would
7 be found in Buffalo. An agent at the Buffalo
8 office was conducting an investigation of
9 plaintiff and had compiled the documents that
10 plaintiff now seeks. A Disclosure Specialist
11 accessed the IRS information system, E-DIMS,
12 in response to plaintiff's request. The
13 documents were reviewed by Senior Disclosure
14 Specialist King with Agent Bhagwandeem, who
15 was conducting the investigation, and
16 Lambert-Dean. They all concluded the
17 documents were responsive to plaintiffs
18 request.

19 Radcliffe, 536 F. Supp. 2d at 434. On this basis, the district
20 court concluded that the declarations submitted in the case were
21 "sufficient to show that by searching databases and contacting
22 several offices, the IRS made a good faith effort to search for
23 the requested documents, using search methods that were
24 'reasonably calculated to uncover all relevant documents' under
25 the circumstances." Id. For these reasons, we too conclude that
26 the search and the declarations were adequate, if barely so.

27 For the foregoing reasons the judgment of the district court
28 is hereby AFFIRMED.

29 FOR THE COURT:
30 Catherine O'Hagan Wolfe, Clerk of the Court

31 By: _____
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