Disclosure of 1023 and 990 Forms for Nonprofits

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Tax-exempt organizations (including private foundations, which are subject to special additional disclosures) are subject to certain public disclosure rules. These rules require that the organization make its exemption application and its Form 990s/Form 990-PFs for the prior three years available for public inspection. If an organization fails to comply with these requirements, it may be subject to penalties.

# What documents are subject to disclosure?

An organization must make its Form 1023 (application for recognition of exemption) and its determination letter available for inspection by a member of the public. Any other documents related to the organization’s application or tax-exemption (such as follow up questions or other correspondence from the IRS) are also subject to public inspection. An organization that filed an application for tax exemption before July 15, 1987 (unless the organization retained a copy of that application) is not subject to these disclosure requirements, nor is an organization that has not yet received an IRS determination letter.

An organization must also make its Form 990 or Form 990-PF filed for the past three years available for public inspection and any amendments to the tax return. However, public charities may omit Schedule B (which contains the names and addresses of donors who contributed over $5,000 to the organization in the current year). Private foundations and certain political organizations must include names of donors in Schedule B.

# How should nonprofit organizations respond to disclosure requests?

A request may come in two forms – by in-person request or by written request. The IRS requires that the documents subject to public inspection are available at the organization’s office during its regular business hours. This means, if an organization receives an in-person request, the documents must be produced immediately or within a reasonable time on the same day (there is an exception for “unusual circumstances” such as requests received shortly before the close of business hours). The requestor must be permitted to take notes and use available copying equipment. An employee of the organization may observe the inspection.

If an organization doesn’t have a permanent office or has limited office hours, the organization can offer to mail the documents to the requestor or may make the documents available at a different, reasonable location. The organization must make the documents available either in-person or by mail in a reasonable amount of time (normally two weeks). The organization may also retain a local agent who can respond to in-person requests.

Written inspection requests can be made by email, fax, or in other written form (phone calls do not constitute requests). If an organization requires pre-payment of fees before responding to a written request (such as copying or postage fees), the organization must respond to the request within seven days requesting the pre-payment. Then, within 30 days following payment (or, if prepayment is not required, within 30 days of the written request), the documents must be provided. Any fees must be reasonable, and cannot exceed the fees charged under the Freedom of Information Act.

# Other Considerations

Under IRS rules, as long as an organization makes the documents “widely available,” it does not need to provide copies in response to individual written requests. A nonprofit organization may therefore find it easier to publish the documents on its public website (although it should be noted that publication on Guidestar or its successor, Candid, is not sufficient for this requirement). In-person requests must still be satisfied, so an organization should keep copies of the relevant documents available at its office.

There are circumstances in which an organization can ignore requests, including requests made as part of a harassment campaign, or multiple requests made by the same person in a short period of time. The IRS standard for whether an organization is subject to harassment is based on a facts-and-circumstances test, and it is a high standard. Consequently, an organization should only ignore requests on this basis if there was a timely-filed application for a determination of harassment, and the organization reasonably believes such requests are part of the harassment campaign.

Organizations should keep good records of public inspection requests and its response, in order to document its compliance with the rules, and support any claims of harassment.