



July 23, 2015

VIA CERTIFIED MAIL

The Honorable J. Russell George
Treasury Inspector General for Tax Administration
U.S. Department of the Treasury
1401 H Street, N.W., Suite 469
Washington, D.C. 20005

Ms. Robin C. Ashton, Counsel
Office of Professional Responsibility
U.S. Department of Justice
950 Pennsylvania Avenue N.W., Suite 3266
Washington, D.C. 20530

Re: Request for Investigation of Illegal Access and Disclosure of Confidential Taxpayer Return and Return Information.

Dear Inspector General George & Ms. Ashton:

I write on behalf of Cause of Action Institute (“Cause of Action”), a nonprofit oversight group committed to ensuring an accountable, open, and fair regulatory process, to request an investigation of the Internal Revenue Service’s (“IRS”) unlawful disclosure of more than 1.1 million pages of confidential tax return and return information, including approximately 113,000 tax returns, to the Federal Bureau of Investigation (“FBI”) and the Department of Justice (“DOJ”) in October 2010. To our knowledge, this represents the largest and most significant breach and abuse of taxpayer confidentiality by the Federal Government in U.S. history, a breach and abuse far larger in scope than the IRS breach and abuse by former President Richard Nixon that was grounds for an Article of Impeachment.

As you know, Congress strictly limited the Government’s ability to disclose or review confidential taxpayer information in 26 U.S.C. § 6103. Violations have serious consequences. In 26 U.S.C. § 7213 and § 7213A, Congress specifically prohibited federal employees and others from unlawfully disclosing or reviewing tax returns or return information, and specified that the penalties for doing so included fines, imprisonment, and termination from employment.

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On September 29, 2010, DOJ's Criminal Division, Public Integrity Section, contacted IRS to set up a meeting¹ to discuss criminal prosecution of "certain" 501(c) organizations.² At that meeting, held October 8, 2010, IRS (through Lois Lerner and Judy Kindell) apparently explained that prosecution was unfounded.³ Nevertheless, DOJ demanded, obtained, and apparently reviewed 21 IRS discs containing over 1.1 million pages of information and approximately 113,000 tax returns.⁴

DOJ, however, lacked legal authority to request this information, and IRS lacked legal authority to disclose it. DOJ lawfully could obtain return or return information "solely for [] use in, any proceeding before a Federal grand jury or preparation for any proceeding . . . before a Federal grand jury or any Federal or State court."⁵ However, DOJ's request covered so many taxpayers and was so far removed from any grand jury or court proceeding, that it clearly violated § 6103, raising concerns that DOJ requested confidential information for targeting purposes.⁶

The concern here is not just that IRS and DOJ failed to be transparent. Instead, it appears there was willful disclosure and inspection of confidential tax information, and an inexplicable failure to notify Congress, contrary to law. Therefore, given the importance of public trust in IRS and DOJ, and for the reasons more particularly described in Exhibit 4, Cause of Action urges you to promptly investigate this matter and take all appropriate action, including criminal referrals, if warranted. We welcome the opportunity to discuss the issues raised in this letter. Please do not hesitate to contact me by phone at (202) 828-6068 or by email at erica.marshall@causeofaction.org if you have any questions. Thank you for your consideration.

Sincerely,



ERICA L. MARSHALL
CAUSE OF ACTION INSTITUTE

cc:

Hon. Jason Chaffetz, Chairman, U.S. House Committee on Oversight and Government Reform
Hon. Elijah Cummings, Ranking Member, U.S. House Committee on Oversight and Government Reform

¹ See Email from [Redacted], Dep't of Justice, to Sarah Hall Ingram, IRS, JUDICIAL WATCH, Freedom of Information Act ("FOIA") Production (Exhibit 1), at 2 (Sept. 29, 2010), *available at* <http://www.judicialwatch.org/wp-content/uploads/2014/12/JW-v-DOJ-01239-public-integrity-IRS-response.pdf>.

² See IRS Memorandum Recapping Oct. 8, 2010 Meeting (hereinafter, "IRS Recap Memo"), JUDICIAL WATCH, Freedom of Information Act ("FOIA") Production (Exhibit 2), at JW-FOIA-000032, *available at* <http://www.judicialwatch.org/wp-content/uploads/2015/06/IRS-Consultation-14-cv-1956-32.pdf> (emphasis added).

³ *Id.*

⁴ Email from David Hamilton, IRS, to Sherry Whitaker and Robert Blackwell, IRS (Oct. 5, 2010), JUDICIAL WATCH, FOIA Production (Exhibit 3), at JW-FOIA-000070, *available at* <http://www.judicialwatch.org/wp-content/uploads/2015/06/IRS-Consultation-14-cv-1956-70.pdf>.

⁵ 26 U.S.C. § 6103(h)(2).

⁶ See Letter from Darrell Issa, Chairman, H. Comm. on Oversight and Gov't Ref., & Jim Jordan, Chairman, H. Subcomm. on Econ. Growth, Job Creation, & Regulatory Affairs, to Jack Koskinen, Comm', Internal Revenue Serv., at 4-5 (June 9, 2014) (discussing that a news article prompted Justice Department Public Integrity Section Chief Jack Smith to initiate investigation into "misuse of nonprofits for indirectly funding campaigns"). Interestingly, it appears that DOJ may have unlawfully disclosed to that Committee. Section 6103 did not authorize DOJ to disclose, or the Committee to review, the confidential tax return and return information at issue in this matter.