CAUSE of ACTION INSTITUTE
Advocates for Government Accountability
A 501(c)(3) Nonprofit Corporation

October 19, 2016

VIA ELECTRONIC MAIL

Ms. Deborah M. Waller
Office of the Inspector General
Office of General Counsel
U.S. Department of Justice
950 Pennsylvania Ave., N.W., Rm. 4726
Washington, D.C. 20530
E-mail: oigfoia@usdoj.gov

Re: Freedom of Information Act Request

Dear Ms. Waller:

I write on behalf of Cause of Action Institute ("CoA Institute"), a nonprofit strategic oversight group committed to ensuring that government decision-making is open, honest, and fair.[1] In carrying out its mission, CoA Institute uses various investigative and legal tools to educate the public about the importance of government transparency and accountability.

On June 29, 2016, CoA Institute called upon the Department of Justice ("DOJ") Inspector General ("OIG") to examine whether employees of the Federal Bureau of Investigation ("FBI") and the DOJ Public Integrity Section had violated taxpayer confidentiality laws by inspecting more than a million pages of data disclosed by the Internal Revenue Service ("IRS").[2] By letter dated October 12, 2016, DOJ-OIG responded that, while "it appears that some protected taxpayer information was included on" CDs provided by the IRS, "this matter does not warrant further investigation[.]"[3] DOJ-OIG also indicated that it had "informed Congress" about this transmission of protected taxpayer information once it was discovered.[4]

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, CoA Institute requests access to all records concerning DOJ-OIG's communications with Congress about the foregoing disclosure of taxpayer information, including any correspondence with members of Congress, their personal staffs, or the staff of any Congressional committee.[5]

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[1] *See* CAUSE OF ACTION INSTITUTE, *About*, www.causeofaction.org/about/ (last visited Oct. 19, 2016).
[2] Letter from Cause of Action Inst. to Hon Michael E. Horowitz, Inspector Gen., Dep't of Justice, & Hon. J. Russell George, Inspector Gen., Treasury Inspector Gen. for Tax Admin. (June 29, 2016) (attached as Exhibit 1).
[3] Letter from Daniel C. Beckhard, Assistant Inspector Gen., Dep't of Justice, to Cause of Action Inst. (Oct. 12, 2016) (attached as Exhibit 2).
[4] *Id.*
[5] For purposes of this request, the term "present" should be construed as the date on which the agency begins its search for responsive records. *See Pub. Citizen v. Dep't of State*, 276 F.3d 634 (D.C. Cir. 2002). The term "record" means the entirety of the record any portion of which contains responsive information. *See Am. Immigration Lawyers Ass'n v. Exec. Office for Immigration Review*, No. 15-5201, 2016 WL 4056405, at *7–9 (D.C. Cir. July 29,

Request for a Public Interest Fee Waiver

CoA Institute requests a waiver of any and all applicable fees. The FOIA and applicable regulations provide that an agency shall furnish requested records without or at reduced charge if "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester."[6]

In this case, the requested records unquestionably shed light on the "operations or activities of the government," namely the processes by which DOJ-OIG communicated its findings to Congress about the unauthorized disclosure of taxpayer information by the IRS to DOJ Public Integrity and the FBI. The requested records could provide insight into the potential politicization of the DOJ-OIG inquiry into this matter. These records have not been made available to the public. Their disclosure and dissemination would contribute to public understanding about DOJ-OIG, DOJ, and FBI operations.

CoA Institute has the intent and ability to make the results of this request available to a reasonably broad public audience through various media. Its staff has significant experience and expertise in government oversight, investigative reporting, and public interest litigation. These professionals will analyze the information responsive to this request, use their editorial skills to turn raw materials into a distinct work, and share the resulting analysis with the public, whether through the regularly published CoA Institute online newsletter, memoranda, reports, or press releases.[7] In addition, as CoA Institute is a non-profit organization as defined under Section 501(c)(3) of the Internal Revenue Code, it has no commercial interest in making this request.

Request To Be Classified as a Representative of the News Media

For fee status purposes, CoA Institute also qualifies as a "representative of the news media" under the FOIA.[8] As the D.C. Circuit recently held, the "representative of the news media" test is properly focused on the requestor, not the specific FOIA request at issue.[9] CoA Institute satisfies this test because it gathers information of potential interest to a segment of the public, uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience.[10] Although it is not required by the statute, CoA Institute gathers the news it

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2016) (admonishing agency for withholding information as "non-responsive" because "nothing in the statute suggests that the agency may parse a responsive record to redact specific information within it even if none of the statutory exemptions shields the information from disclosure").

[6] 5 U.S.C. § 552(a)(4)(A)(iii); 28 C.F.R. § 16.11(k)(1); *see also Cause of Action v. Fed. Trade Comm'n*, 799 F.3d 1108, 1115–19 (D.C. Cir. 2015) (discussing proper application of public-interest fee waiver test).

[7] *See also Cause of Action*, 799 F.3d at 1125–26 (holding that public interest advocacy organizations may partner with others to disseminate their work).

[8] 5 U.S.C. § 552(a)(4)(A)(ii)(II); 28 C.F.R. § 16.11(b)(6).

[9] *See Cause of Action*, 799 F.3d at 1121.

[10] CoA Institute notes that DOJ's definition of "representative of the news media" (28 C.F.R. § 16.11(b)(6)) is in conflict with the statutory definition and controlling case law. The agency has improperly retained the outdated "organized and operated" standard that Congress abrogated when it provided a statutory definition in the OPEN Government Act of 2007. *See Cause of Action*, 799 F.3d at 1125 ("Congress . . . omitted the 'organized and operated' language when it enacted the statutory definition in 2007. . . . [Therefore,] there is no basis for adding an

regularly publishes from a variety of sources, including FOIA requests, whistleblowers/insiders, and scholarly works. It does not merely make raw information available to the public, but rather distributes distinct work products, including articles, blog posts, investigative reports, newsletters, and congressional testimony and statements for the record.[11] These distinct works are distributed to the public through various media, including the CoA Institute website, Twitter, and Facebook. CoA Institute also provides news updates to subscribers via e-mail.

The statutory definition of a "representative of the news media" contemplates that organizations such as CoA Institute, which electronically disseminate information and publications via "alternative media[,] shall be considered to be news-media entities."[12] In light of the foregoing, numerous federal agencies—including the DOJ—have appropriately recognized the Institute's news media status in connection with its FOIA requests.[13]

Record Preservation Requirement

CoA Institute requests that the disclosure officers responsible for the processing of this request issue an immediate hold on all records responsive, or potentially responsive, to this request, so as to prevent their disposal until such time as a final determination has been issued on

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'organized and operated' requirement to the statutory definition."). Under either definition, however, CoA Institute qualifies as a representative of the news media.

[11] *See, e.g.*, *Cause of Action Testifies Before Congress on Questionable White House Detail Program*, CAUSE OF ACTION (May 19, 2015), *available at* http://goo.gl/Byditl; CAUSE OF ACTION, 2015 GRADING THE GOVERNMENT REPORT CARD (Mar. 16, 2015), *available at* http://goo.gl/MqObwV; *Cause of Action Launches Online Resource: ExecutiveBranchEarmarks.com*, CAUSE OF ACTION (Sept. 8, 2014), *available at* http://goo.gl/935qAi; CAUSE OF ACTION, GRADING THE GOVERNMENT: HOW THE WHITE HOUSE TARGETS DOCUMENT REQUESTERS (Mar. 18, 2014), *available at* http://goo.gl/BiaEaH; CAUSE OF ACTION, GREENTECH AUTOMOTIVE: A VENTURE CAPITALIZED BY CRONYISM (Sept. 23, 2013), *available at* http://goo.gl/N0xSvs; CAUSE OF ACTION, POLITICAL PROFITEERING: HOW FOREST CITY ENTERPRISES MAKES PRIVATE PROFITS AT THE EXPENSE OF AMERICAN TAXPAYERS PART I (Aug. 2, 2013), *available at* http://goo.gl/GpP1wR.

[12] 5 U.S.C. § 552(a)(4)(A)(ii)(II).

[13] *See, e.g.*, FOIA Request 145-FOI-13785, Dep't of Justice (Jun. 16, 2015); *see also* FOIA Request CFPB-2016-222-F, Consumer Fin. Prot. Bureau (Apr. 20, 2016); FOIA Request CFPB-2016-207-F, Consumer Fin. Prot. Bureau (Apr. 14, 2016); FOIA Request 796939, Dep't of Labor (Mar.. 7, 2016); FOIA Request 2015-HQFO-00691, Dep't of Homeland Sec. (Sept. 22, 2015); FOIA Request F-2015-12930, Dept. of State (Sept. 2, 2015); FOIA Request 14-401-F, Dep't of Educ. (Aug. 13, 2015); FOIA Request HQ-2015-01689-F, Dep't of Energy (Aug. 7, 2015); FOIA Request 2015-OSEC-04996-F, Dep't of Agric. (Aug. 6, 2015); FOIA Request OS-2015-00419, Dep't of Interior (Aug. 3, 2015); FOIA Request 780831, Dep't of Labor (Jul 23, 2015); FOIA Request 15-05002, Sec. & Exch. Comm'n (July 23, 2015); FOIA Request 15-00326-F, Dep't of Educ. (Apr. 08, 2015); FOIA Request 2015-26, Fed. Energy Regulatory Comm'n (Feb. 13, 2015); FOIA Request HQ-2015-00248, Dep't of Energy (Nat'l Headquarters) (Dec. 15, 2014); FOIA Request F-2015-106, Fed. Commc'n Comm'n (Dec. 12, 2014); FOIA Request HQ-2015-00245-F, Dep't of Energy (Dec. 4, 2014); FOIA Request F-2014-21360, Dep't of State, (Dec. 3, 2014); FOIA Request LR-2015-0115, Nat'l Labor Relations Bd. (Dec. 1, 2014); FOIA Request 201500009F, Exp.-Imp. Bank (Nov. 21, 2014); FOIA Request 2015-OSEC-00771-F, Dep't of Agric. (OCIO) (Nov. 21, 2014); FOIA Request OS-2015-00068, Dep't of Interior (Office of Sec'y) (Nov. 20, 2014); FOIA Request CFPB-2015-049-F, Consumer Fin. Prot. Bureau (Nov. 19, 2014); FOIA Request GO-14-307, Dep't of Energy (Nat'l Renewable Energy Lab.) (Aug. 28, 2014); FOIA Request HQ-2014-01580-F, Dep't of Energy (Nat'l Headquarters) (Aug. 14, 2014); FOIA Request LR-20140441, Nat'l Labor Relations Bd. (June 4, 2014); FOIA Request 14-01095, Sec. & Exch. Comm'n (May 7, 2014); FOIA Request 2014-4QFO-00236, Dep't of Homeland Sec. (Jan. 8, 2014); FOIA Request DOC-OS-2014-000304, Dep't of Commerce (Dec. 30, 2013); FOIA Request 14F-036, Health Res. & Serv. Admin. (Dec. 6, 2013); FOIA Request 2013-073, Dep't of Homeland Sec. (Apr. 5, 2013).

the request and any administrative remedies for appeal have been exhausted. It is unlawful for an agency to destroy or dispose of any record subject to a FOIA request.[14]

Record Production and Contact Information

In an effort to facilitate document review, please provide the responsive documents in electronic form in lieu of a paper production. If a certain portion of responsive records can be produced more readily, CoA Institute requests that those records be produced first and the remaining records be produced on a rolling basis as circumstances permit.

If you have any questions about this request, please contact me by telephone at (202) 499-4232 or by e-mail at ryan.mulvey@causeofaction.org. Thank you for your attention to this matter.

RYAN P. MULVEY
COUNSEL

[14] *See, e.g.*, 36 C.F.R. § 1230.3(b) ("Unlawful or accidental destruction (also called unauthorized destruction) means . . . disposal of a record subject to a FOIA request, litigation hold, or any other hold requirement to retain the records."); *Chambers v. Dep't of the Interior*, 568 F.3d 998, 1004–05 (D.C. Cir. 2009) ("[A]n agency is not shielded from liability if it intentionally transfers or destroys a document after it has been requested under the FOIA or the Privacy Act."); *Judicial Watch, Inc. v. Dep't of Commerce*, 34 F. Supp. 2d 28, 41–44 (D.D.C. 1998).

EXHIBIT
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CAUSE of ACTION INSTITUTE
Advocates for Government Accountability
A 501(c)(3) Nonprofit Corporation
1875 Eye Street, Ste. 800 · Washington, DC 20006

June 29, 2016

VIA CERTIFIED MAIL

The Honorable Michael E. Horowitz
U.S. Department of Justice
Office of the Inspector General
950 Pennsylvania Avenue, N.W., Ste. 4706
Washington, D.C. 20530-0001

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

Re: Request for Investigations of the Unauthorized Disclosure and Inspection of Confidential Returns and Return Information

Dear Inspectors General Horowitz and George:

I write on behalf of Cause of Action Institute ("CoA Institute"), a nonprofit strategic oversight group committed to ensuring that government decision-making is open, honest, and fair. Since March 2012, CoA Institute has conducted an investigation into the process by which tax returns and return information are disclosed to and inspected by the White House and others in the Federal government, particularly when those entities have a political interest in the information or seek to access it in an unauthorized manner.

As part of its investigation, on October 9, 2012, CoA Institute submitted a Freedom of Information Act ("FOIA") request to the Internal Revenue Service ("IRS") seeking, in relevant part, "[a]ll requests for disclosure by any agency pursuant to [26 U.S.C. § 6103](i)(2)" from January 1, 2009 through October 12, 2012.[1] As explained below, Section 6103(i)(2) is the mechanism by which the Department of Justice ("DOJ"), including the Federal Bureau of Investigation ("FBI"), seeks disclosure of tax return information for non-tax administration purposes without an *ex parte* order from a Federal district court or magistrate judge.[2]

[1] Letter from Cause of Action Inst. to Ava Littlejohn, Internal Revenue Serv. (Oct. 9, 2012) (attached as Exhibit 1).
[2] *Compare* 26 U.S.C. § 6103(i)(1) *with id.* § 6103(i)(2). The IRS may, in certain circumstances, proactively disclose return information for non-tax administration purposes when necessary to apprise agency heads of violations of Federal criminal law, possible or actual terrorist threats or activities, or under emergency circumstances. *See id.* § 6103(i)(3).

After waiting 1,248 days for a response to its request, CoA Institute finally received records evidencing that neither the DOJ Public Integrity Section nor the FBI ever submitted requests under Section 6103(i)(2) for disclosure of tax return information between 2009 to 2012. This is alarming because the IRS did, in fact, disclose more than 1.1 million pages of return information to the FBI in October 2010, and the Public Integrity Section appears to have inspected the same information.[3]

On July 23, 2015, CoA Institute alerted the Treasury Inspector General for Tax Administration ("TIGTA") about the possible unauthorized disclosure and inspection of these 1.1 million pages and requested an investigation.[4] That request went unanswered. The apparent failure to investigate this matter is unfortunate in light of the information recently obtained by CoA Institute. The IRS confirmed in its March 9, 2016 letter to CoA Institute that the Public Integrity Section did not file any Section 6103(i)(2) requests between 2009 to 2012.[5] And documents produced by the IRS to CoA Institute on October 29, 2015 indicate that the FBI similarly failed to file any such requests.[6] There is, therefore, reason to suspect that the disclosure and inspection of the 1.1 million pages was unlawful. CoA Institute requests that TIGTA and the DOJ Office of Inspector General ("DOJ-OIG") immediately investigate these matters and take all appropriate action against the IRS, the FBI, and the DOJ Public Integrity Section.

Background

On September 29, 2010, the DOJ Public Integrity Section contacted the IRS Tax Exempt & Government Entities Division, Exempt Organizations ("EO") Section, to arrange a meeting to discuss potential election law violations by tax-exempt organizations engaged in political activity.[7] At a meeting held on October 8, 2010, Lois Lerner, then-Director of EO, explored potential prosecutorial efforts with Richard Pilger, Director of the Public Integrity Section Election Crimes Branch, as well as other representatives of the DOJ and the FBI.[8] Specifically, the Public Integrity Section was interested in examining "whether a three-way partnership among DOJ, the [Federal Elections Commission], and the IRS [would be] possible to prevent prohibited activity by [non-profit] organizations."[9] The agency was concerned that "certain 501(c) organizations [were] actually

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Federal law enforcement agencies may also request certain return information when responding to or investigating "any terrorist incident, threat, or activity." *Id.* § 6103(i)(7).

[3] *See, e.g.*, Letter from Letter from Hon. Darrell Issa & Jim Jordon, U.S. H. Comm. on Oversight & Gov't Reform, to Hon. Eric H. Holder, Jr., U.S. Att'y Gen., Dep't of Justice at 4–5 (June 10, 2014) (attached as Exhibit 2) (discussing "dialogue about 501(c) organizations" between the FBI and the DOJ Public Integrity Section "while [DOJ] possessed confidential taxpayer information").

[4] Letter from Cause of Action Inst. to Hon. J. Russell George, Treasury Inspector Gen. for Tax Admin., & Robin C. Ashton, Dep't of Justice, Office of Prof'l Responsibility (July 23, 2015) (attached as Exhibit 3).

[5] Letter from Stephanie A. Sasarak, Dep't of Justice, to Cause of Action Inst. (Mar. 9, 2016) (attached as Exhibit 4).

[6] *See* EDIMS & AFOIA Charts, Oct. 29, 2015 Interim Production, *Cause of Action v. Internal Revenue Serv.*, No. 13-920 (D.D.C. filed June 19, 2013) (attached as Exhibit 5). These charts reflect Section 6103(i)(2) requests received by the IRS between January 1, 2009 and October 12, 2012. The vast majority of requests were submitted by U.S. Attorneys across the country. With limited exception, the remainder originated from DOJ Headquarters in Washington, D.C. No requests from the FBI appear on these charts.

[7] *See* E-mail from Dep't of Justice, Crim. Div., Pub. Integrity Sec., Election Crimes Branch, to Internal Revenue Serv., Tax Exempt & Gov't Entities Division (Sept. 29, 2010) (attached as Exhibit 6) (obtained from a Judicial Watch FOIA production, *available at* http://bit.ly/28SgtmO); *see also* IRS Summary of Oct. 8, 2010 Meeting (attached as Exhibit 7) (obtained from a Judicial Watch FOIA production, *available at* http://bit.ly/28Pnwve).

[8] IRS Summ., *supra* note 7.

[9] *Id.*

political committees 'posing' as if they [were] not subject to FEC law, and therefore . . . subject to criminal liability."[10]

Ms. Lerner and Mr. Pilger continued their coordination following this meeting.[11] The IRS agreed to transfer twenty-one (21) disks containing "raw" data on tax-exempt groups to the FBI, and with the assistance of the DOJ Public Integrity Section, this transfer was completed on October 22, 2010.[12] A June 4, 2014 letter from Peter Kadzik, Assistant Attorney General for Legislative Affairs, to the U.S. House of Representatives Committee on Oversight and Government Reform revealed that the disks contained 1.1 million pages of return information.[13] Three days later, the Committee responded to the Kadzik letter by informing the IRS that, at the least, "this revelation likely means that the IRS . . . violated federal tax law by transmitting this information to the Justice Department in October 2010."[14]

The IRS Disclosure and DOJ Inspection of 501(c) Return Information Was Likely Unauthorized and Unlawful

Section 6103 of the Internal Revenue Code provides a strict rule of confidentiality for tax returns and return information. Unless a statutory exception applies, government agencies and their employees may not disclose such information.[15] Violations have serious consequences. Congress, moreover, has proscribed not only the unauthorized disclosure of returns and return information but also the unauthorized inspection of returns and return information.[16] Violation of these laws can result in criminal penalties, including fines and imprisonment, as well as termination from employment.[17]

In this case, both the FBI and the DOJ Public Integrity Section failed to file requests for disclosure under Section 6103, as required by statute, and the IRS lacked authorization to disclose the 1.1 million pages of return information in question.[18] Only two provisions of Section 6103 could have permitted disclosure and inspection of this return information.

First, under Section 6103(h)(2), the DOJ might have sought the tax information in question in "preparation for any proceeding," involving "tax administration . . . before a Federal grand jury or any Federal or State court."[19] The DOJ, however, sought to investigate election law offenses, rather

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[10] *Id.*
[11] *See, e.g.*, U.S. H. COMM. ON OVERSIGHT & GOV'T REFORM, THE INTERNAL REVENUE SERVICE'S TARGETING OF CONSERVATIVE TAX-EXEMPT APPLICATIONS at 176 & 176 n.813 (Dec. 23, 2014), *available at* http://1.usa.gov/1tyX94r.
[12] *See id.* at 176–78; *see also* E-mail from David K. Hamilton, Internal Revenue Serv., to Sherry Whitaker & Robert Blackwell, Internal Revenue Serv. (Oct. 5, 2010) ("There are 113,000 [501(c)(4)] returns from January 1, 2007 to now. Assuming they want all pages including redacted ones, that's 1.25 million pages.") (attached as Exhibit 8).
[13] OGR REPORT, *supra* note 11, at 179, 179 n. 822–24; Letter from Hon. Darrell Issa & Jim Jordon, U.S. H. Comm. on Oversight & Gov't Reform, to Hon. John Koskinen, Comm'r, Internal Revenue Serv. at 6 (June 9, 2014) (attached as Exhibit 9).
[14] Issa & Jordan Letter, *supra* note 13 at 6. The submission by the DOJ of the contents of the twenty-one (21) disks to the House Oversight Committee may itself have been an unauthorized disclosure under Section 6103. *See* 26 U.S.C. § 6103(f) (requiring a House resolution for disclosure to any committee other than the Committee on Ways and Means).
[15] 26 U.S.C. § 6103(a); *see also id.* § 6103(b)(1)(2) (defining "return" and "return information").
[16] *Id.* §§ 7213(a)(1), 7213A(a)–(b).
[17] *Id.*
[18] CAUSE OF ACTION INST., MEMORANDUM REGARDING GOVERNMENT VIOLATIONS OF 26 U.S.C. §§ 6103, 7213, AND 7213A PROHIBITING THE UNAUTHORIZED DISCLOSURE AND REVIEW OF TAX RETURNS AND RETURN INFORMATION (attached as Exhibit 10).
[19] 26 U.S.C. § 6103(h)(2).

than investigate or prosecute violations of the Tax Code.[20] This much is demonstrated by IRS and DOJ records,[21] as well as testimony provided by Mr. Pilger in an interview with the U.S. House of Representatives Committee on Oversight and Government Reform.[22] The disclosure of these 1.1 million pages of "raw" data about tax-exempt organizations appears closer to a "fishing expedition," than the sort of preparatory investigation for tax administration contemplated by the Tax Code.[23]

Alternatively, the DOJ Public Integrity Section and the FBI could have made specific requests under Section 6103(i)(2) for disclosure of return information. Section 6103(i)(2) permits the IRS to disclose "return information (other than taxpayer return information)" for use in investigations that may result in a "judicial or administrative proceeding . . . enforce[ing] . . . Federal criminal statute[s] (not involving tax administration)."[24] However, as discussed above, the IRS has admitted to CoA Institute that neither the Public Integrity Section nor the FBI ever filed a disclosure request under Section 6103(i)(2) during the relevant time period.[25]

The absence of any Section 6103(i)(2) requests to the IRS from the DOJ Public Integrity Section or the FBI is also reflected in the 2010 IRS Report to the Joint Committee on Taxation ("JCT"), which indicates that all such requests originated from various U.S. Attorneys.[26] When confronted with this fact, the JCT responded that it was not responsible for compiling the report and, further, the IRS was "not required to report on information shared . . . for tax administration purposes."[27] Yet, DOJ requests under Section 6103(h)(2) for tax administration purposes are, in fact, subject to recordkeeping and reporting requirements.[28] And the bulk of publicly-available

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[20] IRS Summ., *supra* note 7. The DOJ Public Integrity Section may not even have authorization to conduct investigations related to tax administration. *See* DEP'T OF JUSTICE, REPORT TO CONGRESS ON THE ACTIVITIES AND OPERATIONS OF THE PUBLIC INTEGRITY SECTION FOR 2014 at 1, 4–6 ("The work of the Public Integrity Section focuses on *public corruption*, that is *crimes involving abuses of the public trust by government officials*[,]" including election offenses and conflicts of interest.) (emphasis added), *available at* http://1.usa.gov/28P2SrT.

[21] *See, e.g.*, Exs. 6–8.

[22] *See* U.S. H.R. Comm. on Oversight & Gov't Reform, Memorandum from Democratic Staff to Democratic Members of the Subcomm. on Econ. Growth, Job Creation, and Regulatory Affairs Regarding Hearing on "Examining the Justice Department's Response to the IRS Targeting Scandal" at 25–27 (July 16, 2014), *available at* http://1.usa.gov/291K2Pu.

[23] "Tax administration" is understood to mean "(i) the administration, management, conduct, direction, and supervision of the execution and application of the internal revenue laws or related statutes . . . and (ii) the development and formulation of Federal tax policy," as well as the "assessment, collection, enforcement, litigation, publication, and statistical gather functions under such laws, [and] statutes." 26 U.S.C. § 6103(b)(4).

[24] *See id.* § 6103(i)(1)(A)(i); *id.* § 6103(i)(2)(A). To the extent the IRS disclosed returns, as opposed to just return information, it might not have mattered if the DOJ complied with the statute. *See, e.g.*, Hamilton E-mail, *supra* note 12 ("There are 113,000 [501(c)(4)] returns from January 1, 2007 to now. Assuming they want all pages including redacted ones, that's 1.25 million pages."). Section 6103(i)(2) does permit the disclosure of returns, which requires an *ex parte* order from a Federal district court judge or magistrate judge. *See* 26 U.S.C. § 6103(i)(1)(A).

[25] Sasarak Letter, *supra* note 5; EDIMS & AFOIA Charts, *supra* note 6.

[26] INTERNAL REVENUE SERV., DISCLOSURE REPORT FOR PUBLIC INSPECTION PURSUANT TO INTERNAL REVENUE CODE SECTION 6103(P)(3)(C) FOR CALENDAR YEAR 2010 at 3 (May 2011) (attached as Exhibit 11). While some may suggest that the IRS disclosed the records in question under 26 U.S.C. § 6103(i)(3)(A), this is unlikely for two reasons. First, the JCT report itself only indicates nineteen (19) disclosures to the FBI during the relevant time period. *See id.* This is too small a volume to properly reflect the October 22, 2010 IRS disclosure, which might have included 113,000 unique returns. *See* Hamilton E-mail, *supra* note 12. Second, all publicly-available evidence suggests that the DOJ Public Integrity Section and the FBI sought out the IRS. *See* DOJ E-mail, *supra* note 7 ("[W]e would like to invite Ms. Ingram to meet with us concerning 501(c)(4) issues[.]"). The IRS did not initiate disclosure "to apprise" the Public Integrity Section or the FBI of "return information . . . which may constitute evidence of a violation of criminal law" under their jurisdiction. 26 U.S.C. § 6103(i)(3)(A)(i).

[27] E-mail from Thomas A. Barthold, Chief of Staff, Joint Comm. on Taxation, to REDACTED (June 27, 2016) (attached as Exhibit 12).

[28] 26 U.S.C. § 6103(p)(3)(A)–(C).

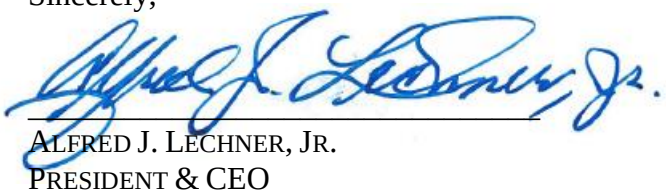
evidence suggests that the 1.1 million pages of records in question were not, in fact, sought by the DOJ or the FBI for the purposes of "tax administration."[29]

Conclusion

The willful unauthorized disclosure of return information, and the similarly unauthorized collection and inspection of that information, not only violates the law but represents a breach of public trust. To our knowledge, the disclosure and inspection of the 1.1 million pages of tax-exempt organization records at issue here may represent the largest and most significant breach of taxpayer confidentiality laws by the Federal government in the history of the United States. It appears to be a breach more expansive even than those abuses carried out by former President Richard Nixon more than forty years ago. Given the importance of public trust in IRS and DOJ, CoA Institute urges TIGTA and DOJ-OIG to investigate this matter and take all appropriate action.

We welcome the opportunity to discuss the issues raised in this letter. If you have questions, please contact Ryan P. Mulvey, Counsel, by phone at (202) 499-4232 or by e-mail at ryan.mulvey@causeofaction.org. Thank you for your time and consideration.

Sincerely,



ALFRED J. LECHNER, JR.
PRESIDENT & CEO

cc:

The Honorable Orrin Hatch, Chairman
The Honorable Ron Wyden, Ranking Member
U.S. Senate Committee on Finance

The Honorable Chuck Grassley, Chairman
The Honorable Patrick Leahy, Ranking Member
U.S. Senate Committee on the Judiciary

The Honorable Kevin Brady, Chairman
The Honorable Sander Levin, Ranking Member
U.S. House of Representatives Committee on Ways and Means

The Honorable Jason Chaffetz, Chairman
The Honorable Elijah Cummings, Ranking Member
U.S. House of Representatives Committee on Oversight and Government Reform

The Honorable Channing D. Phillips
U.S. Attorney for the District of Columbia

[29] *See, e.g.*, Exs. 6–8.

EXHIBIT
2

U.S. Department of Justice

Office of the Inspector General

October 12, 2016

Mr. Alfred J. Lechner, Jr.
President and Chief Executive Officer
Cause of Action Institute
1875 Eye Street
Suite 800
Washington, D.C. 20006

Dear Mr. Lechner:

I am writing in response to your letter to Inspector General Michael Horowitz dated June 29, 2016, regarding the alleged improper handling of confidential taxpayer information by the Department of Justice (Department) and the Internal Revenue Service (IRS).

Based upon our initial inquiries, it appears that some protected taxpayer information was included on compact discs (CDs) that the IRS provided to the Department in response to a Department request. It further appears that when the Department learned of this, it returned the CDs to the IRS and informed Congress about it. Given the absence of available information suggesting that Department employees over whom our Office has jurisdiction might have engaged in conduct that violates laws, regulations, or policy, we have determined that this matter does not warrant further investigation by the Department's Office of the Inspector General.

Thank you for bringing this matter to our attention. We understand that the Treasury Inspector General for Tax Administration will be responding separately to your letter.

Sincerely,

Daniel C. Beckhard
Assistant Inspector General
Oversight and Review Division

cc: Hon. Jason Chaffetz, Chairman
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U.S. House of Representatives Committee on Oversight and Government Reform

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Hon. Sander Levin, Ranking Member
U.S. House of Representatives Committee on Ways and Means

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U.S. Attorney for the District of Columbia

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Treasury Inspector General for Tax Administration