



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

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

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

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.