

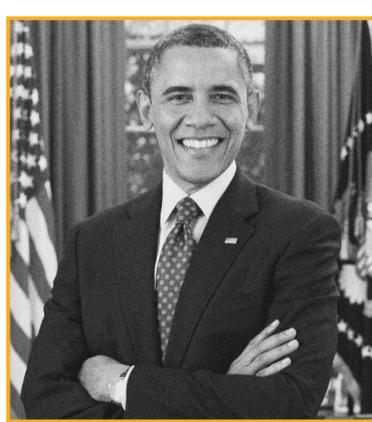
REPORT: PRESIDENTIAL ACCESS TO TAXPAYER INFORMATION

Following the misuse and unauthorized release of confidential taxpayer information during President Obama's first term, including the largest breach of taxpayer confidentiality laws by the federal government in United States history, Cause of Action Institute ("CoA Institute") investigated the legal and institutional checks designed to protect against such improper disclosure and the means by which the Obama Administration may have evaded those checks.

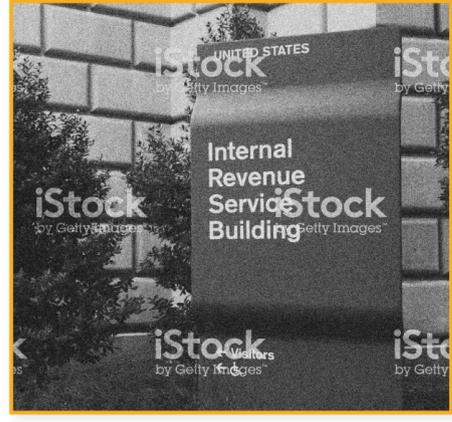
President Obama has circumvented the congressionally created and authorized procedures for accessing confidential taxpayer information

That investigation revealed that President Obama has circumvented the congressionally created and authorized procedures for accessing confidential taxpayer information—procedures that were designed to be exclusive—by relying on individual consent forms that were never intended for use by the President. The practice has allowed the President to avoid the reporting requirements and limitations placed on presidential access to taxpayer information by the Tax Reform Act of 1976. In particular, the use of individual consents enables the administration to skirt statutory recordkeeping and reporting requirements to Congress, the limitations on the kind of information available for disclosure, and the extent to which such information can be shared within government agencies and offices.

In addition, the investigation uncovered that the Office of the White House Counsel under President Obama has employed on a continuous basis at least one attorney detailed from the Department of Justice Tax Division. At least two of those attorney-detailees had knowledge of confidential taxpayer information gained while serving as counsel to the Internal Revenue Service concerning litigation with nonprofit groups opposed to President Obama's policies. This Office of the White House Counsel practice is unique to the current administration and appears intended to select Tax Division attorney-detailees who had access to taxpayer information otherwise restricted from disclosure to the President and White House officials.



Equally troubling, neither the Department of Justice Tax Division nor the Office of the White House Counsel has implemented context-specific training, guidelines, or ethical screens to prevent the inadvertent or deliberate disclosure of confidential taxpayer information by attorney-detailees. Inherent conflicts of interest in the detailing program make it imperative that Tax Division attorneys who work on detail to the Office of the White House Counsel, especially those who have served as counsel to the Internal Revenue Service in matters involving the political opponents of President Obama, receive enhanced training and supervision to ensure the safeguarding of confidential taxpayer information. There does not appear to be any program, specialized training, or targeted guidelines in place.

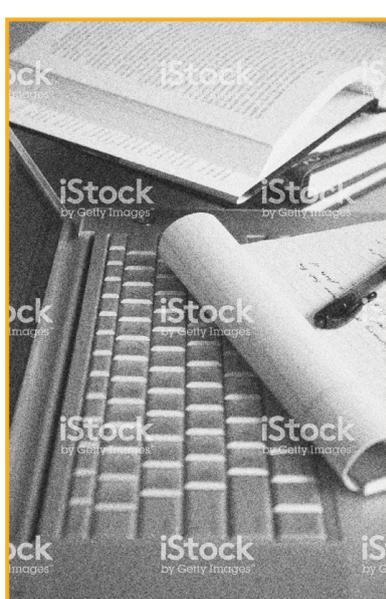


CoA Institute recommends that Congress amend the Internal Revenue Code to ensure that the exclusive mechanisms created by the Tax Reform Act of 1976 for presidential access to confidential taxpayer information are enforced. Congress should foreclose presidential access to taxpayer information under individual consents, as well as require the Executive Office of the President to develop and report safeguard protocols on the handling of such information. Alternatively, Congress should declare that the use of individual consents by the White House be subject to the Paperwork Reduction Act, which would require the forms used for such consents to be approved by the Office of Management and Budget, as

well as an opportunity for public notice and comment on the use of such forms to collect information. Finally, the Department of Justice Designated Agency Ethics Official, Professional Responsibility Advisory Office, and its Office of Professional Responsibility should be tasked with providing necessary advice, supervision, training, and, when necessary, investigation of the Department of Justice detailing program, while the Department of Justice Inspector General should be empowered to investigate attorney misconduct and to report to the public and Congress with the same scope as other Inspectors General throughout the federal government.

KEY FINDINGS

- During President Obama's first term, the IRS unlawfully disclosed confidential taxpayer information of his political opponents. One of those unauthorized disclosures was litigated and the IRS paid \$50,000 to settle the lawsuit. In another incident, the IRS unlawfully disclosed more than a million pages of return information of tax exempt organizations to the Department of Justice, likely the largest breach of tax confidentiality laws in U.S. History. Other unlawful disclosures by the IRS under the Obama Administration have never been properly investigated.
- Congress has authorized limited disclosure of confidential taxpayer returns and return information to the President pursuant to specific safeguards and reporting requirements under 26 U.S.C. § 6103(g). No President, however, has sought access to confidential taxpayer information through these congressionally-designed mechanisms for disclosure.
- Presidents have conducted tax checks of potential appointees exclusively under Section 6103(c) of the Internal Revenue Code. By conducting tax checks in this manner, Presidents avoid the reporting requirements and limitations placed on presidential access to confidential taxpayer information in the Tax Reform Act of 1976. In particular, because the kind of taxpayer information disclosed under a Section 6103(c) consent is not limited and such disclosures need not be reported, Presidents can, and do, circumvent congressional oversight and statutory limitations on the sharing of confidential taxpayer information within and among agencies.
- During President Obama's tenure, at least ten DOJ lawyers, selected specifically from the DOJ Tax Division, have been detailed to the Office of the White House Counsel.
- At least two Tax Division attorneys were detailed to the Office of the White House Counsel after accessing confidential taxpayer information in lawsuits that arose from allegations that the IRS had unlawfully targeted groups opposed to President Obama's policies. Congress investigated the work of one of those lawyers and concluded that his sequential work for the IRS, the DOJ, and the White House created, at the least, the appearance of impropriety.
- Both the DOJ Tax Division and the Office of the White House Counsel have failed to implement safeguards, guidelines, or ethical screens to prevent the inadvertent or deliberate disclosure of confidential taxpayer information by attorney-detailees.
- Notwithstanding the experience of the Obama Administration in supervising and managing DOJ attorney-details to the Office of the White House Counsel, there appears to be no program, training, guidelines, ethical screens, or other safeguards to address the serious potential conflicts of interest inherent to the detailing program.
- The political allure of using individual consents to secure confidential taxpayer information and employing attorney-detailees with knowledge of such information means that the problems identified in this Report will not be self-correcting. Congress and agencies must act to safeguard taxpayer confidentiality.



In almost every administration since the IRS's inception, the information and power of the tax agency have been mobilized for explicitly political purposes.

David Burnham, A Law Unto Itself: The IRS and the Abuse of Power (1990)