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House of Representatives

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LAWRENCE J. BRADY
STAFF DIRECTOR

August 20, 2013

Ms. Holly Paz
Director, Rulings and Agreements
Exempt Organizations
Internal Revenue Service
1111 Constitution Avenue, NW, Room 3000
Washington, D.C. 20224

Dear Ms. Paz:

The Committee on Oversight and Government Reform continues to investigate the Internal Revenue Service's inappropriate treatment of certain applicants applying for tax-exempt status. Since your transcribed interview with Committee staff on May 21, 2013, the Committee has uncovered additional information that appears to contradict your testimony in several areas relevant to the Committee's investigation. As a top deputy to former IRS Director of Exempt Organizations Lois Lerner, your input is critically important to the Committee's investigation. Accordingly, we write to provide you an opportunity to explain the inconsistencies in your statements and to amend your testimony, if necessary.

I - Discrepancies in account of Washington's awareness of the January 2012 BOLO change

During your transcribed interview with Committee staff, you maintained that Washington IRS officials were not aware of the change to the be-on-the-lookout (BOLO) language in January 2012. Instead, you testified that you did not become aware of a January 25, 2012, change to the BOLO until April 2012.¹ You also testified that the change made to the BOLO at this time was the result of discussions between Cincinnati employees, and it was not elevated to Washington, D.C. for approval.²

However, Cindy Thomas testified that she informed you of the BOLO change shortly after it was made in January 2012 and asked you to let her know if you had any concerns. Ms. Thomas told Committee staff:

Q Did you discuss [the January 2012 BOLO change] with anybody in EO Technical or Rulings and Agreements?

¹ Transcribed Interview of Holly Paz, Internal Revenue Serv., in Wash., D.C. at 164 (May 21, 2013). [hereinafter "Paz"]

² *Id.* at 166-167.

A I actually sent an email. . . . [A]fter this language is changed I sent an email to Holly Paz and told her this is the language that was included and asked her, if she had any concerns regarding the language, to get back with me.

Q And what was her response?

A I didn't get a response until I think it was around May 17th of 2012. There was a memo that was issued by Holly Paz directing EO Determinations that any changes to the BOLO had to be submitted through her to get approval by the director of Rulings and Agreements before any additional changes could be made.

Q You had sent [Ms. Paz] an email obtaining approval for this BOLO change?

A We made the change to the BOLO, but right after the change was made I sent her an email with this language and said this is the language, we changed this language, this is the language, please let me know if you have any concerns regarding this.

Q And you didn't get a response?

A Right.³

We are aware that you were on maternity leave in late January 2012 when the BOLO language was changed; however, you returned from leave on February 6, 2012.⁴ Therefore, the proximity of your return to work to the change in the BOLO language raises questions about your awareness of the change and the reason you did not disclose this information to the Committee.

Please clarify for the Committee when you were first informed about the January 2012 changes to the BOLO. Note any previous statements you would like to revise and whether or not you dispute Ms. Thomas' testimony that she sent you an e-mail shortly after the January 2012 changes to the BOLO to ask if you had concerns.

II - Inconsistent testimony about when senior Washington IRS officials were informed about improper screening

Testimony and documents obtained by the Committee show that you may have failed to inform the Committee that senior IRS officials, including yourself, were aware of the improper

³ Transcribed interview of Lucinda Thomas, Internal Revenue Serv., in Wash., D.C., at 164-66 (June 28, 2013).

⁴ Paz at 9.

screening criteria. Specifically, your account of what prompted you to ask Cincinnati about the criteria used to identify the Tea Party cases was called into question by other witnesses. In your testimony, you stated that you asked Cincinnati about the criteria in June 2011 on your own initiative because you were frustrated with the progress of the cases and that you were worried the criteria might be resulting in over-inclusion. You told Committee staff:

Q So what prompted you to request the criteria used to identify Tea Party cases in June of 2011?

A We were preparing to brief the EO director, Lois Lerner, on these cases by – beginning in May 2011. I was a little frustrated with our progress because we had, you know, not been able to develop a template because we were finding that the cases, you know, had a good deal of variety. So we hadn't been able to derive a tool that [EO] Determinations could use. And the cases in the Washington office, you know, I wanted them to be moving more quickly than they were. So we were planning to brief Lois Lerner, the EO director, to talk about the specific cases we had in the D.C. office and come up with a plan going forward because we did have these cases in Determinations. And in preparing for that briefing, given the last time I had seen a list of cases was in the fall of 2010 and there seemed to be a variety of organizations on the list and what I was hearing from Carter Hull was, there was a great deal of variety in these applications, that led me to ask Cindy, you know, how are you going to find these cases?⁵

A When I asked the question – and in explaining to [Cindy Thomas] why I was asking and what I wanted to know, I believe I made a comment in an email that, looking at the different cases that were on this list of cases, it appeared that perhaps that it was being over-inclusive, which would not be unusual. A lot of times when we get a new issue and we're just trying to sort of get our arms around what's going on, we'll sort of cast a wide net until we figure out, you know, what's going on and hone in on the issue that is really the concern. But initially we're trying to educate ourselves as to what's going on.⁶

However, Elizabeth Kastenberg, the reviewer of the Tea Party “test” cases in EO Technical, told Committee staff that she discovered in March 2011 that it appeared a Tea Party case was screened “based on its name or political affiliation and not based on the activity or other criteria.”⁷ She testified that she elevated the issue to the EO Technical Manager, Mike Seto, and he indicated he would elevate it to you. Ms. Kastenberg told Committee staff:

⁵ Paz at 72-73.

⁶ *Id.* at 77.

⁷ Transcribed Interview of Elizabeth Kastenberg, Internal Revenue Serv., in Wash., D.C. at 65 (July 31, 2013).

Q When did you first become aware that individuals in the Determinations Unit were using these criteria to identify cases?

A In March 2011, when I reviewed the (c)(3) and (c)(4) application case files.

Q You knew at the time you were assigned to review the case files how they were being screened in Cincinnati?

A During my review of the case files on the non-disclosable side of the file, there was a document or case history, I don't recall what it was, which indicated that EO Determinations was screening cases based on this criteria and by name.⁸

Q Did you elevate the issue to anyone?

A Yes. Mr. Hull and I notified Mr. Shoemaker and Mr. Seto.

Q When was this?

A I don't recall specifically, but probably right after I asked Mr. Hull about it.

Q So in the March 2011 timeframe?

A Yes.

Q Now, when you raised this issue with Mr. Shoemaker and Mr. Seto, what was their response?

A I don't recall specifically, but I believe Mr. Seto indicated that he would elevate it to Ms. Paz, who was Director of Rulings and Agreements.⁹

Q Did you, subsequent to the March 2011 timeframe, did you learn that Mr. Seto had brought your concerns to Ms. Paz?

A Afterwards, yes.

⁸ *Id.* at 62.

⁹ *Id.* at 67-68.

Q Do you recall when you became an aware [*sic*] that Mr. Seto brought your concerns to Ms. Paz?

A I don't know specifically when, but I was involved in a meeting with Mr. Seto and Ms. Paz, and I believe some folks from EO Determinations in requesting additional information on how they were conducting the screening.

Q Do you recall when that meeting with Mr. Seto and Ms. Paz and folks from EO Determinations occurred?

A I believe it was sometime in June 2011.

Q So that would have been before the briefing with Lois Lerner in July of 2011?

A Yes.

Q And do you recall what Ms. Paz said at the meeting?

A Generally that, I think she reiterated what we had found in the file, the screening criteria, and asked Ms. Thomas to confirm whether this was the criteria that was being used by the EO Determinations agents.

Q And do you recall specifically what that criteria was?

A No, I do not.

Q But you recall it being inappropriate?

A Yes.¹⁰

Your characterization of the discovery of the inappropriate screening criteria is at odds with the testimony of Ms. Kastenberg about the accidental discovery of the criteria. Although it appears that you were aware of how the criteria were discovered, it is troubling that you made no mention that Ms. Kastenberg discovered a case that was screened based on its name or political affiliation during your transcribed interview.

Furthermore, documents produced to the Committee show that Cindy Thomas made you aware of a BOLO spreadsheet on March 16, 2011, that included the language “[o]rganizations involved with the Tea Party movement.”¹¹ In fact, Ms. Thomas forwarded you the BOLO

¹⁰ *Id.* at 118-120.

¹¹ Email from Cindy Thomas to Holly Paz, March 16, 2011. [IRSR8593-8599]

spreadsheet at that time and explained its contents specifically using the “tea party cases” as an example.¹² Yet, you told Committee staff that you were not aware of the existence of a BOLO list until June or July of 2011. You testified:

Q And when did you first become aware that Tea Party groups were on the BOLO list?

A That, I believe, was in June 2011 – well, in June 2011 I, you know, had inquired as to what the criteria were, and my recollection – before that I didn’t even – I wasn’t aware that there was such a thing as a BOLO, because it was really a tool for the frontline people in determinations to be using, and I believe when we had the meeting on July 5, 2011, with Lois Lerner and Cindy Thomas, the determinations manager was on the phone, I believe she explained to us at that time, you know, that there was this thing called the BOLO, that that’s how – where this was identified.¹³

These documents and Ms. Kastenberg’s testimony are particularly of interest in light of your testimony that you and Lois Lerner had an “informal” meeting about the Tea Party cases in May 2011.¹⁴ If you did know about the BOLO at that time, or if you knew about the possibility of inappropriate criteria being used to identify Tea Party cases, it stands to reason that you should have alerted Ms. Lerner at that time.

Please clarify for the Committee the circumstances under which you were first informed about the use of inappropriate search criteria and explain the apparent discrepancies between your testimony and other noted evidence gathered in the course of this investigation.

III – Your testimony that political advocacy cases were novel issue for the IRS

You asserted that the Tea Party cases were a new or novel issue for the IRS. You testified: “[P]olitical campaign intervention in 501(c)(4)s was not something we had previously dealt with very much.”¹⁵ This, however, appears to be contradicted by a July 2011 email. Indeed, on July 19, 2011, you wrote to an employee in the IRS Chief Counsel’s office and a senior technical advisor to the Tax Exempt & Government Entities Division Commissioner, appearing to grudgingly opine that “we suspect [the IRS] will have to approve the majority of the c4 applications,” seemingly in part, because of “the fact that this is not a new issue” for the agency.¹⁶

Please reconcile your testimony that this was somehow a novel issue for the IRS when documents, including your own e-mail, show that you recognized that this was not a new issue and that the majority of delayed cases probably merited approval.

¹² *Id.*

¹³ Paz at 112.

¹⁴ *Id.* at 126.

¹⁵ *Id.* at 38.

¹⁶ Email from Holly Paz to Janine Cook and Nancy Marks, July 19, 2011. [IRSR14372-14373]

IV - Assertion that Cincinnati IRS employees saw "Tea Party" as a generic term for all political advocacy cases

You testified that "all" EO Determinations employees understood the term Tea Party to be a generic term to identify applications with potential campaign intervention regardless of political leaning. Indeed, you testified:

- Q What were these employees' explanations for using the term "Tea Party"?
- A That it was really just an efficient way to refer to this issue; that they all understood that the real issue was campaign intervention.
- Q It was a shortcut or abbreviation?
- A Yes. Just sort of a shorthand reference. You know, I think they may have referenced, you know, it's like calling soda "Coke" or, you know, tissue "Kleenex." They knew what they meant, and the issue was campaign intervention.
- Q Is it your understanding that despite use of the this term "Tea Party," they were still reviewing the cases for political advocacy in general, regardless of political leaning?
- A That's my understanding.¹⁷

However, two Determinations employees directly refuted your characterization. These employees, who were assigned to coordinate the Tea Party cases, told the Committee they only reviewed cases affiliated with the Tea Party. Indeed, Elizabeth Hofacre, the Tea Party coordinator from April 2010 to October 2010, testified:

- Q Do you recall during this time period ever getting any cases of organizations that may have supported liberal or progressive causes?
- A Actually, I do.
- Q And were those cases treated differently by you?
- A I didn't – I just sent those back to the specialists or the general inventory.
- Q So you never processed any cases that, in your view, were from an organization that supported progressive or liberal causes?
- A That is correct.
- Q Why is that?

¹⁷ Paz at 146.

A I was tasked with Tea Parties and overwhelmed with those.¹⁸

In addition, Ron Bell, who assumed Ms. Hofacre's position in October 2010, told Committee staff:

Q So at this point between October 2010 and July 2011, were all the Tea Party cases going to you?

A Correct.

Q And to your knowledge, during this same time period, was it only Tea Party cases that were being assigned to you or were there other advocacy cases that were part of this group?

A Does that include 9/12 and Patriot?

Q Yes.

A Yes.

Q So it was just those type of cases, not other type of advocacy cases that maybe had a different – a different political – a liberal or progressive case?

A Correct.¹⁹

It is unclear why – in May 2013 – you would assert that “all” Cincinnati EO Determinations employees thought Tea Party was a generic term that could include progressive groups. In fact, TIGTA's notes from their interview with Ms. Hofacre, in which you were present, state “[t]he criteria . . . for identifying cases was Tea Party, 9/12, Patriot, etc.”²⁰

In light of your presence in TIGTA interviews where Cincinnati employees explained their understanding of the criteria for the Tea Party portfolio, please explain to the Committee why you asserted that all Cincinnati EO Determinations employees understood Tea Party to be a generic reference to any application with potential campaign intervention. Please also explain whether or not, in light of the testimony referenced, you still believe that all EO Determinations employees simply viewed Tea Party as a generic reference.

¹⁸ Transcribed Interview of Elizabeth Hofacre, Internal Revenue Serv., in Wash., D.C. at 94-95 (May 31, 2013).

¹⁹ Transcribed Interview of Ron Bell, Internal Revenue Serv., in Wash., D.C. at 32-33 (June 13, 2013).

²⁰ TIGTA Memo of Contact, Information on involvement in the advocacy emerging issue for timeline, August 6, 2012 (participants: Liz Hofacre, Holly Paz, TIGTA Audit Manager, TIGTA Senior Auditor).

V - Conclusion

The inconsistencies and contradictions contained in your testimony are of great concern to the Committee. Therefore, to assist the Committee in its ongoing investigation, we ask that you please provide an explanation or amend your testimony as requested and necessary by September 3, 2013.

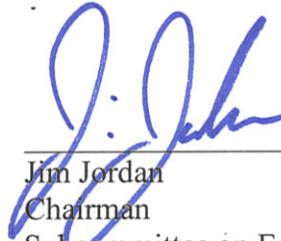
The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X.

If you have any questions about this request, please contact Kristin Nelson or David Brewer of the Committee Staff at 202-225-5074. Thank you for your attention to this matter.

Sincerely,



Darrell Issa
Chairman



Jim Jordan
Chairman
Subcommittee on Economic Growth,
Job Creation and Regulatory Affairs

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

The Honorable Matthew A. Cartwright, Ranking Minority Member, Subcommittee on
Economic Growth, Job Creation and Regulatory Affairs