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# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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STAFF DIRECTOR

June 9, 2014

The Honorable John Koskinen  
Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

Dear Mr. Koskinen:

The Committee on Oversight and Government Reform continues to examine the Internal Revenue Service's targeting of conservative tax-exempt applicants. The Committee learned recently that the IRS transmitted 21 disks containing over 1.1 million pages of information about tax-exempt groups to the Federal Bureau of Investigation in October 2010 in advance of Lois Lerner's meeting with the Justice Department about potentially using campaign-finance laws to criminally prosecute certain nonprofit groups engaged in political speech.<sup>1</sup> We were extremely troubled by this new information, and by the fact that the IRS has withheld it from the Committee for over a year. We were astonished to learn days ago from the Justice Department that these 21 disks contained confidential taxpayer information protected by federal law. We ask that you immediately produce all material explaining how these disks were prepared and transmitted to the FBI.

Information obtained as a result of the Committee's subpoena to Attorney General Eric Holder shows that the IRS transmitted tax return data about 501(c)(4) organizations to the Justice Department for the FBI's examination before the 2010 midterm election. On October 5, 2010, former Exempt Organizations Director Lois Lerner wrote to Richard Pilger, the Director of the Justice Department's Election Crimes Branch, that the IRS was working "on getting you the disks we spoke about" and asking whether the Department had a formatting preference.<sup>2</sup> Mr. Pilger forwarded the e-mail to an FBI agent, writing: "This is incoming data re 501c4 issues. Does FBI have a format preference?"<sup>3</sup> Mr. Pilger later responded to Ms. Lerner, writing:

<sup>1</sup> See E-mail from Lois Lerner, Internal Revenue Serv., to Richard Pilger, U.S. Dep't of Justice (Oct. 5, 2010) [HOCR IRS 19]; Letter from Peter Kadzik, U.S. Dep't of Justice, to Darrell E. Issa, H. Comm. on Oversight & Gov't Reform (May 29, 2014).

<sup>2</sup> E-mail from Lois Lerner, Internal Revenue Serv., to Richard Pilger, U.S. Dep't of Justice (Oct. 5, 2010). [HOCR IRS 19]

<sup>3</sup> E-mail from Richard Pilger, U.S. Dep't of Justice, to unnamed FBI agent, Fed. Bureau of Investigation (Oct. 5, 2010). [HOCR IRS 20]

“Thanks Lois – FBI says Raw format is best because they can put it into their systems like excel.”<sup>4</sup>

**Figure 1: E-mail exchange between Lois Lerner and Richard Pilger, Oct. 5-6, 2010**

**From:** Pilger, Richard  
**Sent:** Wednesday, October 06, 2010 2:05 PM  
**To:** Lerner Lois G  
**Cc:** Whitaker Sherry L; Simmons, Nancy; [REDACTED] (FBI)  
**Subject:** RE: DATA FORMAT ISSUE – TIME SENSITIVE

Thanks Lois – FBI says Raw format is best because they can put it into their systems like excel.

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**From:** Lerner Lois G [REDACTED]  
**Sent:** Tuesday, October 05, 2010 5:52 PM  
**To:** Pilger, Richard  
**Cc:** Lerner Lois G; Whitaker Sherry L  
**Subject:** DATA FORMAT ISSUE – TIME SENSITIVE

In checking with my folks on getting you the disks we spoke about, I was asked the following:

Before we can get started do you know if they would like the images in Alchemy or Raw format? The difference is, Alchemy you need to search on one of the 5 index fields where Raw format, you load into your on software and you can do what ever you want to with it.

If you're like me, you don't know the answer. But, if you can check and get back to me Wednesday, we can get started and have these in about 2 weeks. If we don't have the information by tomorrow, it will take longer as there are other priorities in line. Please cc Sherry Whitaker on your response as she is likely to see your response before I do. Thanks

**Figure 2: E-mail from Richard Pilger to Unnamed FBI Agent, Oct. 5, 2010**

**From:** Pilger, Richard  
**Sent:** Tuesday, October 05, 2010 8:01 PM  
**To:** [REDACTED] (FBI)  
**Subject:** FW: DATA FORMAT ISSUE – TIME SENSITIVE

This is incoming data re 501c4 issues. Does FBI have a format preference?  
Richard C. Pilger  
Director, Election Crimes Branch &  
Senior Trial Attorney  
Public Integrity Section  
Criminal Division  
United States Department of Justice  
Washington, D.C. 20530  
202 [REDACTED]  
202 [REDACTED] (f)

<sup>4</sup> E-mail from Richard Pilger, U.S. Dep't of Justice, to Lois Lerner, Internal Revenue Serv. (Oct. 6, 2010). [HOCR IRS 22]

Although the Justice Department withheld these documents until weeks after the Committee's transcribed interview of Mr. Pilger, the Committee was able to question Mr. Pilger's boss, Public Integrity Section Chief Jack Smith, about the disks of IRS 501(c)(4) data. Mr. Smith testified:

Q. Sir, I understand at some point the IRS provided disks to the Department; is that right?

A. I've recently learned that, yes.

Q. Do you know what these disks were for?

A. So, to be clear, I was not aware at the time – at the time that these disks were provided, that disks were provided. I did not know about that. In reviewing the documents that you have, I've come to learn that that happened.

Q. Do you know what was on the disks?

A. At the time or now?

Q. Now.

A. I've been told that it was public information from 990 forms.

Q. From applicants for tax exempt status?

A. Yes.<sup>5</sup>

This information turned out to be inaccurate. The Department, however, refused to allow Mr. Smith to testify about how he learned of the 21 disks or why information relating to the disks was kept from the Committee for so long. During the interview, the following exchange occurred:

Q. Mr. Smith, when you became aware of the disks in the last month, did you speak to Mr. Pilger about the disks?

DOJ Lawyer. I'm going to direct him not to answer questions about any preparation.

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<sup>5</sup> Transcribed interview of Jack Smith, U.S. Dep't of Justice, in Wash., D.C., at 46-47 (May 29, 2014).

Chm. Jordan. This is in 2010, this is 5 days after there is a [DOJ] meeting to talk about campaign finance investigation into 501(c)(3), (c)(4) and groups. Five days later we have this email from the very person that you were going to interact with at this time, talking about five disks of information about the very groups, we think the very groups who were targeted. Any question about that seems entirely within the scope of what this interview is about.

\*\*\*

Chm. Jordan. We've interviewed Mr. Pilger within the last month. You said you've learned about it in the last month. Did you know about him before he came and testified?

DOJ Lawyer. Again, I'm going to direct Mr. Smith not to answer that question. He's here to talk about his –

Chm. Jordan. Let me ask you this: If you did know about it, why would it not have been appropriate for us to have this and frankly the disk when Mr. Pilger sat right where you sat?

\*\*\*

DOJ Lawyer. Sir, respectfully, same direction.<sup>6</sup>

Like the Justice Department, the IRS also has withheld information from the Committee about its transmittal of nonprofit tax-return information to the FBI in October 2010.

Other documents show how the IRS's public relations apparatus contributed to the Justice Department's interest in certain nonprofit organizations. In late September 2010, the *New York Times* prepared an article about 501(c)(4) organizations engaged in political speech.<sup>7</sup> The IRS made senior officials – including Lois Lerner and Sarah Hall Ingram – available to speak with the *New York Times* reporter to assist her in drafting the article.<sup>8</sup> After the article was published, Ms. Ingram wrote to her colleagues: "I do think it came out pretty well. The 'secret donor' theme will continue – see Obama salvo and today's Diane Reehm [*sic*]. . . ."<sup>9</sup> The same day, Justice Department Public Integrity Section Chief Jack Smith read the *New York Times* article

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<sup>6</sup> *Id.* at 51-53.

<sup>7</sup> See Michael Luo & Stephanie Strom, *Donor Names Remain Secret as Rules Shift*, N.Y. TIMES, Sept. 20, 2010.

<sup>8</sup> See E-mail from Michelle Eldridge, Internal Revenue Serv., to Doug Shulman et al., Internal Revenue Serv. (Sept. 20, 2010). [IRSR 250053]

<sup>9</sup> E-mail from Sarah Hall Ingram, Internal Revenue Serv., to Terry Lemons et al., Internal Revenue Serv. (Sept. 21, 2010). [IRSR 508974]

and requested a meeting with the IRS about the “misuse of nonprofits for indirectly funding campaigns.”<sup>10</sup>

**Figure 3: E-mail from Sarah Hall Ingram to Terry Lemons et al., Sept. 21, 2010**

**From:** Ingram Sarah H  
**Sent:** Tuesday, September 21, 2010 7:52 AM  
**To:** Lemons Terry L; Pyrek Steve J; Lerner Lois G; Kindell Judith E; Grant Joseph H; Eldridge Michelle L  
**Subject:** RE: NY Times: As Rules Shift, Donor Names Stay Secret

Thanks, as always, for the excellent support from Media. I do think it came out pretty well. The “secret donor” theme will continue – see Obama salvo and today’s Diane Reehm (sp). At least SS started the idea that we don’t have the law to do something, although Marcus had a flavor that we just don’t care because we are a tax agency. He should know better even if he is unhappy with the environment and the tax laws.

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**From:** Lemons Terry L  
**Sent:** Tuesday, September 21, 2010 8:28 AM  
**To:** Pyrek Steve J; Lerner Lois G; Kindell Judith E; Ingram Sarah H; Grant Joseph H; Eldridge Michelle L  
**Subject:** RE: NY Times: As Rules Shift, Donor Names Stay Secret

Not that bad overall. Glad you guys talked to her – think it helped.

**Figure 4: E-mail from Jack Smith to Raymond Hulser, Sept. 21, 2010**

**From:** Smith, Jack  
**Sent:** Tuesday, September 21, 2010 9:52 PM  
**To:** Hulser, Raymond; Shur, Justin; Pflger, Richard  
**Subject:** 501 non profits

Check out article on front page of ny times regarding misuse of nonprofits for indirectly funding campaigns. This seems egregious to me - could we ever charge a 371 conspiracy to violate laws of the USA for misuse of such non profits to get around existing campaign finance laws + limits? I know 501s are legal but if they are knowingly using them beyond what they are allowed to use them for (and we could prove that factually)?

IRS Comssioner sarah ingram oversees these groups. Let's discuss tomorrow but maybe we should try to set up a meeting this week.

This revelation that the IRS sent 1.1 million pages of nonprofit tax-return data – including confidential taxpayer information – to the FBI confirms suspicions that the IRS worked with the Justice Department to facilitate the potential investigation of nonprofit groups engaged in lawful political speech. The IRS’s transmittal of this information to the FBI shows that the IRS took affirmative steps to provide sensitive evidentiary material to law-enforcement officials about the political speech of nonprofits. At the very least, this information suggests that the IRS considered the political speech activities of nonprofits to be worthy of investigation by federal law-enforcement officials. The IRS apparently considered political speech by nonprofit groups to be so troublesome that it illegally assisted federal law-enforcement officials in

<sup>10</sup> See E-mail from Jack Smith, U.S. Dep’t of Justice, to Raymond Hulser et al., U.S. Dep’t of Justice (Sept. 21, 2010). [OGR IRS 1]

assembling a massive database of the lawful political speech of thousands of American citizens, weeks before the 2010 midterm elections, using confidential taxpayer information.

The Justice Department produced the 21 disks to the Committee on June 2, 2014, and notified the Committee at that time that the IRS has not completed a review of material on the disks and “takes no position on the disclosure of these records to the Committee.”<sup>11</sup> The Justice Department stated, however, that it “believe[d] that the content of the disks is the same information provided by the IRS to a non-profit organization, Guidestar.org, which makes the information available to the public through a free account.”<sup>12</sup> Subsequently, on June 4, 2014, the Justice Department notified the Committee that the 21 disks do, in fact, contain nonpublic confidential taxpayer information protected by federal tax law.<sup>13</sup> The Justice Department could not tell the Committee which documents or how many documents of the 1.1 million pages contained confidential taxpayer information.<sup>14</sup> Nonetheless, this revelation likely means that the IRS – including possibly Lois Lerner – violated federal tax law by transmitting this information to the Justice Department in October 2010.

Despite two Committee subpoenas, the IRS has not produced material relating to these 21 disks and all associated information. On June 4, 2013 – a year ago – the Committee requested material needed for its investigation, including all documents and communications sent or received by Lois Lerner.<sup>15</sup> Because the IRS failed to produce this and other relevant material in a timely matter, the Committee issued a subpoena to Treasury Secretary Jacob Lew, as the custodian of IRS documents, on August 2, 2013.<sup>16</sup> After you were confirmed as the permanent IRS Commissioner, the Committee reissued the same subpoena to you on February 14, 2014, because the IRS *still* had not complied with the Committee’s request and subpoena.<sup>17</sup> The subpoena created a legal requirement on you, as the Commissioner of the IRS, to identify and produce all subpoenaed material in an expeditious manner. Your choice to withhold this highly relevant material obstructs the Committee’s ongoing oversight obligations – especially when this information implicates violations of federal law.

Material relating to the 21 disks is clearly responsive to the Committee’s subpoenas and should have been produced a year ago. We therefore ask that you immediately provide the following information:

1. A full and complete explanation as to why information about the 21 disks was withheld from the Committee for a year;

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<sup>11</sup> Letter from Peter Kadzik, U.S. Dep’t of Justice, to Darrell E. Issa, H. Comm. on Oversight & Gov’t Reform (June 2, 2014).

<sup>12</sup> Letter from Peter Kadzik, U.S. Dep’t of Justice, to Darrell E. Issa, H. Comm. on Oversight & Gov’t Reform (May 29, 2014).

<sup>13</sup> Letter from Peter Kadzik, U.S. Dep’t of Justice, to Darrell E. Issa, H. Comm. on Oversight & Gov’t Reform (June 4, 2014).

<sup>14</sup> Phone conversation between U.S. Dep’t of Justice Leg. Affairs Staff & Comm. Staff (June 4, 2014).

<sup>15</sup> See Letter from Darrell Issa & Jim Jordan, H. Comm. on Oversight & Gov’t Reform, to Daniel Werfel, Internal Revenue Serv. (June 4, 2013).

<sup>16</sup> H. Comm. on Oversight & Gov’t Reform, Subpoena to Jacob J. Lew (Aug. 2, 2013).

<sup>17</sup> H. Comm. on Oversight & Gov’t Reform, Subpoena to John Koskinen (Feb. 14, 2014).

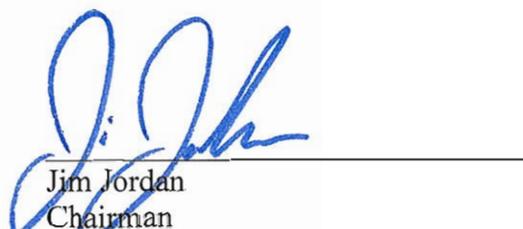
2. All documents and communications referring or relating to the creation, preparation, and transmittal of the 21 disks in or around October 2010 from the IRS to the Justice Department and the FBI; and
3. All documents and communications between or among the Internal Revenue Service and any other federal Department or agency referring or relating to the production of the 21 disks and related information to Congress.

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. An attachment to this letter provides additional information about responding to the Committee's request. If you have any questions about this request, please contact David Brewer or Tyler Grimm of the Committee Staff at (202) 225-5074. Thank you for your prompt attention to this matter.



Darrell Issa  
Chairman

Sincerely,



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

Enclosure

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

The Honorable J. Russell George, Treasury Inspector General for Tax Administration

ONE HUNDRED THIRTEENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

Majority (202) 225-5074  
Minority (202) 225-5051

### Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
  - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
  - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
  - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
  - (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document;

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH,  
PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE,  
SENTPAGE, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM,

CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been

located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

### **Schedule Definitions**

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term “employee” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.