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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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June 10, 2014

The Honorable Eric H. Holder, Jr.
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Attorney General:

The Committee on Oversight and Government Reform continues to examine the Internal Revenue Service's targeting of conservative tax-exempt applicants. We were shocked to learn through documents obtained pursuant to the Committee's subpoena of you that the IRS transmitted 21 disks containing over 1.1 million pages of nonprofit tax-return information – including confidential taxpayer information protected by federal law – to the Federal Bureau of Investigation in October 2010. The IRS transmitted this material in advance of the Public Integrity Section's meeting with Lois Lerner to discuss potential criminality of nonprofit groups engaged in political speech. The startling revelation that the Justice Department received evidentiary material in 2010 for the potential prosecution of nonprofits is further indication that a special prosecutor is needed for a truly independent criminal investigation of the IRS targeting.

On October 5, 2010, former Exempt Organizations Director Lois Lerner e-mailed Richard Pilger, the Director of the Justice Department's Election Crimes Branch, that the IRS was "getting you the disks we spoke about" and asking whether the Department had a formatting preference.¹ Mr. Pilger forwarded the e-mail to an FBI agent, writing: "This is incoming data re 501c4 issues. Does FBI have a format preference?"² Mr. Pilger later responded to Ms. Lerner, writing: "Thanks Lois – FBI says Raw format is best because they can put it into their systems

¹ E-mail from Lois Lerner, Internal Revenue Serv., to Richard Pilger, U.S. Dep't of Justice (Oct. 5, 2010). [HOCR IRS 19]

² 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]

like excel.”³ The FBI received the disks, which included confidential taxpayer information, on or around October 6, 2010.⁴

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.

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

³ E-mail from Richard Pilger, U.S. Dep't of Justice, to Lois Lerner, Internal Revenue Serv. (Oct. 6, 2010). [HOCR IRS 22]

⁴ Letter from Peter Kadzik, U.S. Dep't of Justice, to Darrell E. Issa, H. Comm. on Oversight & Gov't Reform (May 29, 2014); Letter from Peter Kadzik, U.S. Dep't of Justice, to Darrell E. Issa, H. Comm. on Oversight & Gov't Reform (June 4, 2014).

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)

On October 8, 2010, the Department’s Public Integrity Section hosted a meeting with Ms. Lerner, other IRS officials, and an FBI agent to discuss possible criminal enforcement relating to nonprofit groups engaged in political speech following *Citizens United v. Federal Election Commission*.⁵ The Department’s agenda for the meeting was to engage with Ms. Lerner about being “more vigilant to the opportunities from more crime in the . . . 501(c)(4) area.”⁶ In particular, the Department was interested in the “practicalities” of criminal enforcement relating to nonprofit political speech, such as whether the IRS could review donor lists of 501(c)(4) organizations for potential violations of campaign-finance law.⁷

The Committee has learned that the meeting with Ms. Lerner occurred as a result of national media attention surrounding nonprofit political speech. Jack Smith, the chief of the Public Integrity Section, requested the meeting after reading a *New York Times* article in late September 2010 about 501(c)(4) organizations engaged in political speech.⁸ The IRS, interestingly, assisted in drafting the *Times* article, with Ms. Lerner even speaking to the reporter on background.⁹ After the article was published, one senior IRS official 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*]. At least [the article’s author] started the idea that we don’t have the law to do something”¹⁰

⁵ Transcribed interview of Richard Pilger, U.S. Dep’t of Justice, in Wash., D.C., at 8 (May 6, 2014); Transcribed interview of Jack Smith, U.S. Dep’t of Justice, in Wash., D.C., at 74 (May 29, 2014).

⁶ Transcribed interview of Richard Pilger, U.S. Dep’t of Justice, in Wash., D.C., at 101 (May 6, 2014)

⁷ *Id.* at 159-60.

⁸ 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]

⁹ See E-mail from Michelle Eldridge, Internal Revenue Serv., to Doug Shulman et al., Internal Revenue Serv. (Sept. 20, 2010). [IRSR 250053]

¹⁰ E-mail from Sarah Hall Ingram, Internal Revenue Serv., to Terry Lemons et al., Internal Revenue Serv. (Sept. 21, 2010). [IRSR 508974]

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.

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.

In fact, the article's suggestion that the IRS lacked the ability to "do something" relating to nonprofit political speech contributed to Department's engagement. Mr. Smith testified that the IRS's apparent lack of "appropriate enforcement" influenced his decision to engage with the IRS about 501(c) organizations.¹¹ After reading the *Times* article, Mr. Smith convened a meeting with his staff to discuss a "possible 501/campaign finance investigation."¹² Following the meeting with Ms. Lerner, the Public Integrity Section engaged in a "dialogue" with the FBI about 501(c) organizations. Mr. Smith testified:

Q Mr. Smith, in the time period of October 8th, 2010, up until May 10th, 2013, did you have any dialogue with the FBI about 501(c)s?

A Yes.

Q And what did you discuss with [the FBI]?

A Well, I – so I don't want to get into specific cases or even talks that we had about considering specific investigations even if those investigations were never opened. . . . So I can tell you that we had a dialogue with the FBI. Never opened any investigations, Public Integrity did not. But we

¹¹ Transcribed interview of Jack Smith, U.S. Dep't of Justice, in Wash., D.C., at 39 (May 29, 2014)

¹² Meeting among Jack Smith, Justin Shur, Nancy Simmons, Richard Pilger, & Raymond Hulser, U.S. Dep't of Justice, "Possible 501/Campaign Finance Investigation" (Sept. 30, 2010). [OGR IRS 16]

did have a dialogue with them over time following this [October 8, 2010, meeting with Ms. Lerner].

Q So, just to be clear, your conversations with [the FBI] in the timeframe October 8th, 2010 to May 10th, 2013, were about potential investigations of 501(c)s?

A Well, I mean, it would be more – I want to be clear – it would be more about looking at the issue, looking at whether it made sense to open investigations. If we did, you know, how would you go about doing this? Is there predication, a basis to open an investigation? Things like that. I can't say as I sit here now specifically, you know, the back-and-forth of that discussion. I can just tell you that – because I know one of your concerns is that organizations were targeted. And I can tell you that we, Public Integrity, did not open any investigations as a result of those discussions and that we certainly, as you know, have not brought any cases as a result of that.¹³

We now know that this “dialogue” with the FBI occurred while the Justice Department possessed confidential taxpayer information about nonprofits.

Additional information obtained during the Committee's transcribed interview of Mr. Pilger suggests that the Justice Department's receipt of confidential taxpayer information in October 2010 may have violated federal law. Although the Department withheld information about the 21 disks and the fact that the disks contained confidential taxpayer information until well after the Committee's interview of Mr. Pilger, Mr. Pilger did explain that the Justice Department may only receive confidential taxpayer information through a court order. He testified:

Q And, sir, the Department has tools available to it to obtain information about donors from the IRS. Is that right?

A If I understand your question right, you're asking about the Department's ability to obtain the names of donors to 501(c)(4)s?

Q Yes, sir.

¹³ Transcribed interview of Jack Smith, U.S. Dep't of Justice, in Wash., D.C., at 100-02 (May 29, 2014).

- A So through a court order that we refer to as an (i) order that is an order by a Federal District Court, the Executive Branch can, under certain circumstances, by meeting certain criteria reviewed by a Federal judge, obtain information otherwise protected by tax law and [§] 6103 from any disclosure to the Department of Justice. As a general matter, can we go to the IRS and simply get information about donors to 501(c)(4)s? No. Absolutely not.¹⁴

We are aghast to learn that the Justice Department worked with the IRS to assemble a massive database of nonprofit groups, and that this database included confidential taxpayer information that the Department is not authorized to possess. The creation of such an illicit and comprehensive registry by federal law-enforcement officials is concerning in and of itself. Yet, the creation of a registry at the same time that the Department considered possible investigatory steps against nonprofit groups engaged in political speech is alarming. This evidence is a clear indication that the Justice Department took affirmative steps to examine nonprofit groups engaged in otherwise lawful political speech.

We are also concerned by the manner in which this information was transmitted from the IRS to the Justice Department. Section 6103 of the federal tax code protects confidential taxpayer information from unauthorized disclosure.¹⁵ Thus, the IRS's transmittal of confidential information to the FBI in October 2010 apparently violated federal law. In addition, the Department's disclosure that information on the disks was protected by section 6103 occurred subsequent to a letter from Principal Deputy Assistant Attorney General Peter Kadzik in which he expressed the Department's "understanding" that the 21 disks contained publicly available information.¹⁶ For these reasons, we ask that you produce the following information immediately:

1. All documents and communications between or among employees of the Department of Justice and employees of the Internal Revenue Service referring or relating to the 21 disks of nonprofit information transmitted from the Internal Revenue Service to the Justice Department on or around October 6, 2010;
2. All documents and communications between or among employees of the Department of Justice and employees of the Internal Revenue Service referring or relating to the production of the 21 disks of nonprofit information to the Committee on June 2, 2014; and
3. All documents and communications between or among employees of the Department of Justice and employees of the Internal Revenue Service referring or relating to the

¹⁴ Transcribed interview of Richard Pilger, U.S. Dep't of Justice, in Wash., D.C., at 147 (May 6, 2014)

¹⁵ See I.R.C. § 6103.

¹⁶ Letter from Peter Kadzik, U.S. Dep't of Justice, to Darrell E. Issa, H. Comm. on Oversight & Gov't Reform (May 29, 2014).

discovery of confidential taxpayer information protection by I.R.C. § 6103 on the 21 disks of nonprofit information produced to the Committee on June 2, 2014.

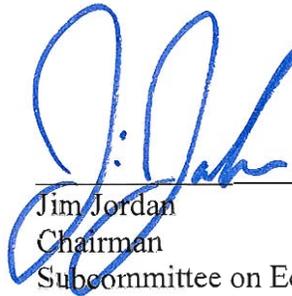
Additionally, the revelation that the Justice Department worked with the IRS to compile a massive database of nonprofit information, including confidential taxpayer information, further undermines the integrity of the Department's investigation of the IRS targeting. The Committee has already obtained information that the Civil Rights Division attorney leading the investigation has an apparent conflict of interest.¹⁷ Now we know that the other two Justice Department components involved in the investigation – the Public Integrity Section and the FBI – also have serious conflicts of interest stemming from their interaction with Lois Lerner in October 2010. For these reasons, we reiterate the overwhelmingly bipartisan position of the House of Representatives that the appointment of a special counsel is warranted to investigate potential criminal wrongdoing. We trust that you will recognize the serious deficiencies in the Department's investigation and accept the House's demand that you appoint a special counsel to investigate the IRS's targeting of tax-exempt applicants.

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.

Sincerely,



Darrell Issa
Chairman



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

¹⁷ See Letter from Darrell Issa, H. Comm. on Oversight & Gov't Reform, to Eric H. Holder, Jr., to U.S. Dep't of Justice (Jan. 8, 2014).

ONE HUNDRED THIRTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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WASHINGTON, DC 20515-6143

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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,
SENTTIME, 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.