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ONE HUNDRED THIRTEENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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July 2, 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 investigate the Internal Revenue Service's inappropriate treatment of conservative tax-exempt applicants. Recent public statements from William W. Taylor III, the attorney representing former IRS official Lois Lerner, have raised new questions about Ms. Lerner's Federal Records Act compliance practices and the circumstances surrounding the loss of e-mails and destruction of her hard drive. Accordingly, I ask that you assist the Committee in reconciling apparent discrepancies between your claims that Ms. Lerner fully maintained her official records and statements by her attorney that she did not and that it was not her responsibility. These discrepancies further raise concerns that Ms. Lerner and the IRS are not being truthful about her lost e-mails and violations of federal law.

On June 23, 2014, you testified under oath during a hearing before the Committee about the IRS's destruction of e-mails sent or received by Ms. Lerner from January 2009 to April 2011.<sup>1</sup> During this hearing, you were asked several times about whether Ms. Lerner complied with federal law and IRS requirements by printing all official records in her e-mail account. You testified that Ms. Lerner followed Federal Records Act requirements by printing and retaining hard-copy records of her e-mail messages and that you do not know whether anything lost was an official record. For example, you testified during an exchange with Congressman Doug Collins:

- Q. Now, let me ask you this. In Ms. Lerner's emails that you found out that we may not be able to obtain – you've talked about this before. Some things are supposed to be kept. Some things are not supposed to be kept. If you knew that there were some emails you might not could have found,

<sup>1</sup> See "IRS Obstruction: Lois Lerner's Missing Emails": Hearing before the H. Comm. on Oversight & Gov't Reform, 113th Cong. (2014).

there probably or possibly could have been emails in there that should have been kept under the Records Act. Correct?

A. **If there were emails to be kept under the Records Act, they would have been printed out. The responsibility is, if you have an email that's a record, you print it out in hard copy. It's an archaic system, but that's the system.**

Q. But you can't say – especially if there was a possibility of something not right, you can't have – you cannot sit here and say that Ms. Lerner would have kept or printed off emails she would not have wanted to be kept. Correct? If you can, then there's a whole line of questions a whole lot of people are going to start coming back for.

A. **My understanding is every employee is supposed to print records . . . that are official records on hard copy and keep them. She had hard copy records. I don't know whether anything that was lost was an official record or not.**<sup>2</sup>

During a subsequent exchange with Congressman Mark Meadows, you clarified that “Lois Lerner printed hard copy emails.”<sup>3</sup>

However, following your sworn testimony, Ms. Lerner's attorney, William Taylor, told *Politico* that Ms. Lerner did not print and maintain official records from her e-mail. According to the *Politico* article:

**Taylor said Lerner did not print out official records she may have sent over email because she didn't know she had to.**

The Federal Records Act requires agencies to back up all “business” correspondence — anything dealing with policy or operations, for instance. **And while the IRS says it's up to employees to print off hard copies of official emails and file them, Taylor said Lerner did not because she “did not think it was required.”**<sup>4</sup>

Mr. Taylor even attempted to shift blame for the lost records by denying that it was Ms. Lerner's responsibility to print and retain her e-mail records, instead stating: “If somebody is supposed to keep archived copies, that's the IT department's or her staff's responsibility.”<sup>5</sup> Later, during a televised interview on CNN's *State of the Union* program, Mr. Taylor responded to a question about whether Ms. Lerner printed and maintained correspondence about IRS business: “You

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<sup>2</sup> *Id.* (question and answer with Rep. Doug Collins) (emphases added).

<sup>3</sup> *Id.* (question and answer with Rep. Mark Meadows).

<sup>4</sup> Rachael Bade, *Darrell Issa, Lois Lerner lawyer escalate IRS conflict*, POLITICO, June 30, 2014 (emphases added).

<sup>5</sup> *Id.*

know, what is a federal record is a subjective question. No, I'm sure not everything, but she printed out a lot of things."<sup>6</sup>

On one hand, you testified to the Committee that Ms. Lerner kept a printed archive of federal records from her e-mail, thus leaving you unsure if she ever fell out of compliance with the Federal Records Act. On the other hand, Ms. Lerner's attorney stated that she did not think she was required to maintain a printed archive and blamed Ms. Lerner's subordinates for any loss of records.

In addition, e-mails from Ms. Lerner's account, which appear to be federal records from October 2010, were apparently not archived and turned over to the Committee pursuant to a subpoena. On June 9, 2014, Chairman Jordan and I wrote to you about these e-mails from Ms. Lerner that the Committee obtained via subpoena from the Justice Department.<sup>7</sup> The e-mails concern a 1.1 million page database of nonprofit information that Ms. Lerner arranged to be sent to the Federal Bureau of Investigation to aid potential criminal prosecutions of nonprofits engaged in political speech.<sup>8</sup>

In light of statements by Ms. Lerner's attorney, including the statement that she did not believe she was "required" to maintain a printed archive of federal record e-mails, as well as the record of correspondence between Ms. Lerner and the Justice Department that the IRS apparently did not maintain, the Committee would like to offer you the opportunity to amend your testimony that you have no idea "whether anything that was lost was an official record or not" and acknowledge that Ms. Lerner did not follow policies necessary for Federal Records Act compliance that have obstructed the congressional investigation into the IRS's targeting. Please begin your response with a clear statement of whether you fully stand by the accuracy of your testimony about Ms. Lerner's compliance or whether you wish to revise your statements. In addition, please provide the following information:

1. According to Ms. Lerner's attorney, it was the responsibility of other IRS employees – including Ms. Lerner's "staff" – to print out and file Ms. Lerner's e-mails.<sup>9</sup> Please identify all IRS employees responsible for Ms. Lerner's compliance with federal records laws.
2. For all e-mails sent or received by Ms. Lerner that had been printed and maintained as hard copies during her tenure, please identify the name of the IRS employee who printed the e-mail record and the date on which the e-mail record was printed.

Please provide this information as soon as possible, but no later than 5:00 p.m. on July 8, 2014.

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<sup>6</sup> *State of the Union* (CNN television broadcast June 29, 2014) (interview with William W. Taylor, III) (emphasis added).

<sup>7</sup> Letter from Darrell Issa & Jim Jordan, H. Comm. on Oversight & Gov't Reform, to John Koskinen, Internal Revenue Serv. (June 9, 2014).

<sup>8</sup> *Id.*

<sup>9</sup> Rachael Bade, *Darrell Issa, Lois Lerner lawyer escalate IRS conflict*, POLITICO, June 30, 2014.

The Honorable John Koskinen

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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 David Brewer or Drew Colliatie of the Committee Staff at (202) 225-5074. Thank you for your prompt attention to this important matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Darrell Issa", with a large, sweeping flourish above the name.

Darrell Issa  
Chairman

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