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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
FACSIMILE (202) 225-3974
MINORITY (202) 225-5051

<http://oversight.house.gov>

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July 12, 2013

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

On Wednesday, you announced that the Committee will be holding a hearing on July 18, 2013, focusing on “the development and execution of the process by which Tea Party applications were delayed and scrutinized” by the Internal Revenue Service (IRS).¹ The Committee’s investigation is based on a report issued on May 14, 2013, by Russell George, the Treasury Inspector General for Tax Administration, who testified before the Committee on May 22, 2013.² Since that hearing, the Committee has obtained new documents that raise serious questions about the Inspector General’s report, his testimony before Congress, and his subsequent assertions in letters to Members of Congress. For these reasons, I request that Mr. George be recalled to testify at Thursday’s hearing. This letter sets forth information about the new documents obtained by the Committee and the serious questions they raise.

Failure to Disclose Information from Head of Investigations

New documents obtained by the Committee indicate that Mr. George did not disclose to the Committee—either in his report or during his testimony—that he met personally with his top investigator and tasked him to conduct a review of 5,500 emails of IRS employees, and that this official concluded after this review that there was “no indication that pulling these selected applications was politically motivated”—a fact this official reported was “very important.”³

¹ House Committee on Oversight and Government Reform, *Oversight Committee Announces Next IRS Targeting Hearing* (July 10, 2013) (online at <http://oversight.house.gov/release/oversight-committee-announces-next-irs-targeting-hearing/>).

² Treasury Inspector General for Tax Administration, *Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review* (May 14, 2013) (2013-10-053) (online at www.treasury.gov/tigta/auditreports/2013reports/201310053fr.pdf).

³ Email from Deputy Inspector General for Investigations to Assistant Inspector General for Audit *et al.* (May 3, 2013).

New documents also indicate that all references to work conducted by this official and his team of investigators were scrubbed from an earlier draft of the Inspector General's report.

During his testimony before the Committee, Mr. George made clear on multiple occasions that his report was the result of an "audit" rather than an "investigation."⁴ The Office of the Inspector General includes separate offices for these two purposes that are headed by a Deputy Inspector General for Audit and a Deputy Inspector General for Investigations, respectively.⁵ This was significant, according to Mr. George, because although his auditors conducted interviews of IRS employees, these interviews were "not under oath."⁶

The Committee has now obtained an email sent from the Deputy Inspector General for Investigations on May 3, 2013, explaining that Mr. George met with him personally and tasked the Office of Investigations with reviewing the emails of multiple IRS employees to determine whether there was any evidence that IRS officials directed staff to "target" Tea Party organizations. This email sets forth the results of this review:

As a result of our meeting with Russell a couple of weeks ago, we agreed to pull e-mails from identified staff members of the EO organization in Cincinnati to find out 1). If an e-mail existed that directed the staff to "target" Tea Party and other political organizations and 2). If there was a conspiracy or effort to hide e-mails about the alleged directive.

Audit provided us with a list of employees in question, key word search terms and a timeframe for the e-mails. We pulled the available IRS e-mails, which resulted in 5,500 responsive e-mails.

Review of these e-mails revealed that there was a lot of discussion between the employees on how to process the Tea Party and other political organization applications. There was a Be On the Lookout (BOLO) list specifically naming these groups; however, **the e-mails indicated the organizations needed to be pulled because the IRS employees were not sure how to process them, not because they wanted to stall or hinder the application. There was no indication that pulling these selected applications was politically motivated. The e-mail traffic indicated there were unclear processing directions and the group wanted to make sure they had guidance**

⁴ House Committee on Oversight and Government Reform, *Hearing on The IRS: Targeting Americans for Their Political Beliefs* (May 22, 2013) ("It is important to note that the IRS conducted an audit that—rather, that we, TIGTA, conducted an audit of the IRS and not an investigation.").

⁵ Treasury Inspector General for Tax Administration, *Organizational Chart* (online at www.treasury.gov/tigta/orgchart_big.pdf?FY2013) (accessed July 11, 2013).

⁶ House Committee on Oversight and Government Reform, *Hearing on The IRS: Targeting Americans for Their Political Beliefs* (May 22, 2013) ("Keep in mind, this is an audit. The people we have been interacting with were not under oath.").

on processing the applications so they pulled them. This is a very important nuance.⁷

The Deputy Inspector General for Investigations sent this email less than three weeks before the Committee's hearing on May 22, 2013, to multiple officials in the Inspector General's office, including the Acting Principal Deputy Inspector General, the Acting Deputy Inspector General for Audit, the Deputy Assistant Inspector General for Investigations, the Assistant Inspector General for Management Services and Exempt Organizations, and Mr. George's Chief Counsel.⁸

New documents obtained by the Committee also indicate that all references to the work conducted by the Office of Investigations were removed from an earlier draft of Mr. George's report. For example, a draft prepared on April 12, 2013, stated that "we requested assistance from our Office of Investigations in the matter."⁹ That reference and others were removed from the final version of the report.

It is unclear why Mr. George failed to disclose this significant information to Congress, particularly since the investigative work requested by Mr. George was completed before he issued his final report and testified before our Committee; since Mr. George's top investigator believed these findings were significant; and since these facts directly contradict numerous public accusations by congressional Republicans that the White House and other Administration officials targeted Tea Party organizations for partisan political reasons.¹⁰

New Documents Referring to "Progressive" Groups

New documents obtained by the Committee indicate that Mr. George did not disclose to the Committee, or was completely unaware of, documents directing IRS employees how to review and process applications for tax exempt status from "Progressive" groups alongside "Tea Party" and "9/12 Project" groups.

⁷ Email from Deputy Inspector General for Investigations to Assistant Inspector General for Audit *et al.* (May 3, 2013) (emphasis added).

⁸ *Id.*

⁹ Treasury Inspector General for Tax Administration, *Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review* (Draft—Apr. 12, 2013).

¹⁰ See, e.g., Issa on IRS Scandal: "Deliberate Ideological Attacks, CBS This Morning (online at www.cbsnews.com/video/watch/?id=50146771n) ("This was the targeting of the president's political enemies effectively and lies about it during the election year, so that it wasn't discovered until afterwards."); *Chairman Hal Rogers Talks IRS Targeting and Spending*, Fox News (June 3, 2013) (online at <http://youtu.be/AzXaJF09A1c>) ("Of course, the enemies list out of the White House that IRS was engaged in shutting down or trying to shut down the conservative political viewpoint across the country—an enemies list that rivals that of another president some time ago.").

On July 3, 2013, Mr. George wrote a letter to Committee Member Gerald Connolly asserting that there was “no indication” that the IRS used the term “Progressives” to flag applicants for tax exempt status for review. He wrote:

While we have multiple sources of information corroborating the use of “Tea Party” and other related criteria we described in our report, including employee interviews, e-mails, and other documents, we found no indication in any of these materials that “Progressives” was a term used to refer cases for scrutiny for political campaign intervention.¹¹

Similarly, in a letter to Rep. Sander Levin, Ranking Member of the House Committee on Ways and Means, Mr. George wrote:

From our audit work, we did not find evidence that the criteria you identified, labeled “Progressives,” were used by the IRS to select potential political cases during the 2010 to 2012 timeframe we audited.¹²

The Committee has now obtained new documents from a meeting held on July 28, 2010—within the timeframe of Mr. George’s review—that appear to directly contradict his statements. According to the documents obtained by the Committee, this “Screening Workshop” was led by the IRS Screening Group Manager in Cincinnati who, during his interview with Committee staff, referred to himself as a “conservative Republican.” Participants included a wide array of IRS employees from across the country, including “members of the screening group, embedded screeners from Cincinnati, west coast screeners, selected secondary screeners, TE/GE EO Quality Assurance Staff and Area 1 & 2 Managers.”¹³

One of the documents obtained by the Committee is the PowerPoint presentation for this meeting describing how to handle applications for tax exempt status from groups that may be engaged in political activities. The first page of this PowerPoint in the section on “Current Activities” has a picture of both an elephant and a donkey. The second and third pages in this section include references to “Tea Party,” “Patriots,” and “9/12 Project.” The fourth page in this section includes a reference to “Progressive.” The PowerPoint then explains that “Most will file as IRC 501(c)(4)” and lists as a specific concern that they “May be more than 50% political, possible PAC (Political Action Committee).”¹⁴

¹¹ Letter from J. Russell George, Treasury Inspector General for Tax Administration, to Rep. Gerald E. Connolly (July 3, 2013).

¹² Letter from J. Russell George, Treasury Inspector General for Tax Administration, to Rep. Sander M. Levin, Ranking Member, House Committee on Oversight and Government Reform (June 26, 2013).

¹³ Internal Revenue Service, *Screening Workshop Notes* (July 28, 2010).

¹⁴ Internal Revenue Service, *PowerPoint: Screening Workshop* (July 28, 2010).

The minutes from this meeting also explain that applications from “Progressive” groups should be sent to Group 7822, the same group in the IRS office in Cincinnati that was designated to handle Tea Party applicants. The minutes state:

Current/Political Activities: [Name redacted]

- Discussion focused on the political activities of Tea Parties and the like-regardless of the type of application.
- If in doubt Err on the Side of Caution and transfer to 7822.
- Indicated the following names and/or titles were of interest and should be flagged for review:
 - 9/12 Project,
 - [Redacted for 6103]
 - Progressive
 - [Redacted for 6103]
 - [Redacted for 6103]
 - Pink-Slip Program.¹⁵

Mr. George’s office suggested recently that the office may not have been aware of these documents when they prepared the report, provided testimony before Congress, and sent letters to Members of Congress. The documents appear to directly contradict statements the Inspector General provided in testimony before the Committee and assertions he made in letters to Representatives Levin and Connolly.

Failure to Disclose Information on “Occupy” Groups in BOLO

New documents obtained by the Committee indicate that Mr. George did not disclose to the Committee that the IRS office in Cincinnati added a new entry to its “Be On The Lookout” (BOLO) document—on January 25, 2012—directing staff to forward applications from groups associated with the Occupy Wall Street movement to Group 7822, the same group in the Cincinnati office that was designated to handle Tea Party applicants.

On June 24, 2013, Ranking Member Levin sent a letter asking Mr. George why he failed to disclose that several previous BOLOs included entries for “Progressive” groups. On June 26, 2013, Mr. George sent a letter responding to Mr. Levin, stating that all of these references were included in the “Historical” sections of the BOLOs and “did not include instructions on how to refer cases that met the criteria.” He wrote:

TIGTA’s audit report focused on criteria being used by the Internal Revenue Service (IRS) during the period of May 2010 through May 2012 regarding allegations that certain groups applying for tax-exempt status were being targeted. We reviewed all cases that the IRS identified as potential political cases and did not limit our audit to allegations related to the Tea Party. TIGTA concluded that inappropriate criteria were

¹⁵ Internal Revenue Service, *Screening Workshop Notes* (July 28, 2010) (emphasis in original).

used to identify potential political cases for extra scrutiny—specifically, the criteria listed in our audit report. From our audit work, we did not find evidence that the criteria you identified, labeled “Progressives,” were used by the IRS to select potential political cases during the 2010 to 2012 timeframe we audited. The “Progressives” criteria appeared on a section of the “Be On the Look Out” (BOLO) spreadsheet labeled “Historical,” and, unlike other BOLO entries, did not include instructions on how to refer cases that met the criteria.¹⁶

The Committee has now obtained a BOLO dated February 8, 2012, that includes an entry for “‘Occupy’ Organizations” that was opened on January 25, 2012. This BOLO describes the criteria for these groups as follows:

Involve organizations occupying public space protesting in various cities, call people to assemble (people’s assemblies) claiming social injustices due to “big money” influence, claim the democratic process is controlled by wall street/banks/multinational corporations, could be linked globally. Claim to represent 99% of the public that are interested in separating money from politics and improving the infrastructure to fix everything from healthcare to the economy.¹⁷

This entry is not listed in the “Historical” section of the BOLO, but rather in the “Watch List” section, and it explicitly directs IRS staff to “Forward cases to Group 7822,” which also had been designated to handle Tea Party applicants.¹⁸

Another new document obtained by the Committee is an email sent from the Director of Rulings and Agreements in Washington, D.C. to Lois Lerner and several other IRS officials on May 17, 2012, proposing to replace multiple entries on the BOLO—including the Occupy entry, the general advocacy organization entry, and one other entry—with the following single entry for all applicants engaging in political activities:

501(c)(4), 501(c)(5), and 501(c)(6) organizations with indicators of significant amounts of political campaign intervention or excess private benefit to organizations or individuals. Note: typical advocacy type issues (e.g., lobbying) that are currently listed on the Case Assignment Guide (CAG) do not meet these criteria.¹⁹

It is unclear why Mr. George did not disclose that IRS employees added a new BOLO entry for Occupy groups in 2012, but instead asserted that all references to “Progressive” groups

¹⁶ Letter from J. Russell George, Treasury Inspector General for Tax Administration, to Rep. Sander M. Levin, Ranking Member, House Committee on Oversight and Government Reform (June 26, 2013).

¹⁷ Internal Revenue Service, *Be On The Lookout* (Feb. 8, 2012).

¹⁸ *Id.*

¹⁹ Email from Director of Rulings and Agreement to Lois Lerner, Director of Exempt Organizations Division, Internal Revenue Service, *et al.* (May 17, 2012).

were strictly “Historical.” It is also unclear why Mr. George did not mention that this 2012 BOLO directed IRS staff to take specific action to forward Occupy applications to the same IRS group in Cincinnati that handled Tea Party applicants.

Personal Intervention to Conceal References to Additional Categories of Groups

Although new documents obtained by the Committee indicate that other categories of organizations are specifically named in the BOLOs, I understand that Mr. George recently intervened personally to prevent additional relevant information from being disclosed to the Committee.

In response to the Committee’s request for documents on March 27, 2013, the IRS has been producing a significant number of responsive documents.²⁰ As part of this process, the IRS has been redacting personally-identifiable taxpayer information that is protected from public disclosure under 26 U.S.C. § 6103. In a bipartisan briefing before Mr. George issued his report in May, his staff explained that they generally rely on the Section 6103 determinations of the career IRS employees who perform this function on a daily basis.

It is my understanding that the IRS was prepared to produce documents to the Committee this week that include references to additional categories of groups that IRS career staff determined would comply with Section 6103. It is also my understanding that Mr. George personally intervened in that production, objecting to the disclosure of that information. The Inspector General’s office has criminal enforcement authority for violations of Section 6103.

If this is accurate, it appears that Mr. George may be attempting to overrule the legal determinations of career IRS staff in order to prevent the disclosure of relevant information that could raise further questions about the reliability of his report and testimony.

Conclusion

The Inspector General’s mission is to provide “quality professional audit, investigative, and inspections and evaluations services that promote integrity, economy, and efficiency in the administration of the Nation’s tax system.” This includes “open, honest, and respectful communication” between the Inspector General “and its external stakeholders.”²¹

This investigation, however, has been characterized by one-sided and partial information leading to unsubstantiated accusations with no basis in fact. You did not consult with me before asking Mr. George to undertake his review, and Mr. George did not provide me with copies of

²⁰ Letter from Chairman Darrell E. Issa, House Committee on Oversight and Government Reform, *et al.*, to Lois G. Lerner, Director, Exempt Organizations Division, Internal Revenue Service (May 14, 2013).

²¹ Treasury Inspector General for Tax Administration, *About TIGTA* (online at www.treasury.gov/tigta/about.shtml) (accessed July 11, 2013).

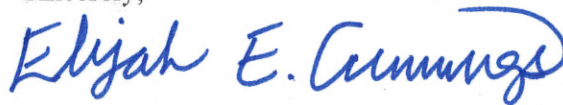
The Honorable Darrell E. Issa
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his subsequent correspondence with you. In addition, Democratic staff were not invited to meetings your staff had with Mr. George's staff to discuss the scope of his work.

Given the new documents obtained by the Committee—and the serious questions they raise about the Inspector General's report, his testimony before Congress, and his subsequent assertions in letters to Members of Congress—I believe it is necessary to call him back before the Committee to explain why he failed to disclose this critical information. Without this explanation, the entire premise of next Thursday's hearing will be called into question.

I would appreciate a response to my request on Monday, July 15, 2013. Thank you for your consideration of this request.

Sincerely,

A handwritten signature in blue ink that reads "Elijah E. Cummings". The signature is written in a cursive, flowing style with a large loop at the end of the last name.

Elijah E. Cummings
Ranking Member