

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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<http://oversight.house.gov>

June 5, 2015

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

Dear Mr. Commissioner:

On June 3, 2015, Mary Howard, Director of the Privacy, Governmental Liaison and Disclosure section at the IRS, testified to the Committee that a “special project team” was responsible for responding to congressional subpoenas and requests for information, Freedom of Information Act (FOIA) requests, and other investigative requests relating to Lois Lerner and other 501(c)(4) matters (collectively, “the Lerner requests”). Ms. Howard testified that the Lerner requests did not go through the agency’s normal process for responding to requests. She stated that the Lerner requests “did not land on my desk,” and that the Commissioner and the Chief Counsel were primarily responsible for responding to those requests.

In addition, Ms. Howard stated “we have never shared information with the White House” and “I can simply speak for the disclosure office and the FOIA process. We do not interact with the White House.” This statement is contrary to the Administration’s stated policy¹ and the practice of the four other agencies represented on the panel alongside Ms. Howard, as confirmed by their FOIA Officers.

Ms. Howard’s testimony revealed that the IRS engages in multiple deviations from standard FOIA processing practices. Further, if Ms. Howard’s testimony is accurate, the IRS’s process for handling requests related to Lois Lerner and other 501(c)(4) matters may have involved considerations beyond those that are exempt in the Freedom of Information Act. As you know, FOIA only allows executive branch agencies to withhold information pursuant to nine specific exemptions which protect interests such as personal privacy, national security, and law enforcement.

Ms. Howard’s testimony could explain the interminable delays related to the IRS’s responses to the Lerner requests. In fact, the Committee has been waiting to receive all of Ms. Lerner’s emails for more than two years. It has been almost a year since the IRS last produced documents to the Committee, and it is just now coming to light that the IRS Privacy, Governmental Liaison and Disclosure team was stripped of its ordinary responsibility to respond

¹ Gregory Craig, Counsel to the President, Memorandum, “Reminder Regarding Document Requests,” Apr. 15, 2009.

to the Lerner requests. That information might never have come to light at all without Ms. Howard's testimony, which had to be compelled through the issuance of a subpoena.

So that we may better understand the IRS's process for responding to the Lerner requests from Congress, please respond to the following as soon as possible, but no later than 5:00 p.m. on June 16, 2015:

1. Describe the process IRS followed when responding to the Congressional Lerner requests. In what ways was this process different from the procedures for other requests?
2. Identify those responsible for the decision to create the "special project team" that Ms. Howard described in her testimony.
3. Identify other instances where special project teams have been created to respond to FOIA requests at the IRS since 2010.
4. When was this special project team created and when was it disbanded?
5. Describe the purpose and responsibilities of the special project team.
6. Identify those who participated in the special project team. Please note which of the team members or participants held overall responsibility for its activities.
7. Describe why the IRS departed from its standard procedure for processing the Lerner-related requests.
8. Was the Privacy, Governmental Liaison and Disclosure section involved in responding to the Lerner requests? If so, how? If not, why not?
9. Please provide a detailed explanation of the standard review and approval process for the release of documents in response to FOIA requests.
10. Under what, if any, circumstances does the IRS engage in intra-agency consultation or referral in the process of responding to FOIA requests?
11. Has the IRS sent documents responsive to congressional or FOIA requests to the White House for review? If so, please identify which requests were reviewed by the White House.
12. With respect to the Lerner requests from the Committee, who reviews and authorizes the release of responsive documents? Identify the IRS employees who are involved in the review and authorization process. Also identify any individual outside of the IRS who reviews and authorizes the release of documents to the Committee.

The Honorable John Koskinen

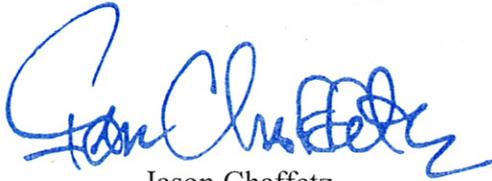
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The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X.

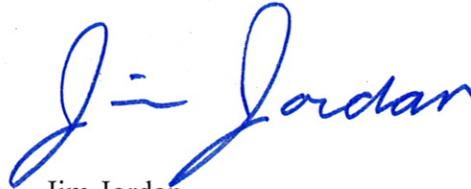
Please deliver your response to the Majority staff in room 2157 of the Rayburn House Office Building and the Minority staff in room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive your response in electronic format.

Please contact Tyler Grimm of the Committee staff at (202) 225-5074 with any questions regarding this letter. Thank you for your attention to this matter.



Jason Chaffetz
Chairman

Sincerely,



Jim Jordan
Chairman
Subcommittee on Health Care,
Benefits, and Administrative Rules

Enclosure

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.

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.