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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

KEITH B. ASHDOWN, STAFF DIRECTOR
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February 10, 2015

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

Dear Mr. Koskinen:

The Committee on Homeland Security and Governmental Affairs is conducting oversight of the Internal Revenue Service. I understand that the Treasury Inspector General for Tax Administration (TIGTA) has recovered as many as 80,000 missing e-mails sent or received by former IRS official Lois Lerner. Of these, TIGTA estimates that there could be about 16,000 unique e-mails recovered. In light of this information, I write to request your assistance in better understanding the document retention and production process undertaken by the IRS.

In June 2014, the IRS notified Congress that it had lost e-mails sent or received by Ms. Lerner between January 2009 and April 2011.¹ In testimony to Congress, you stated that the IRS delayed informing Congress about the missing e-mails for several months because the IRS went to “great lengths” and made “extraordinary efforts” to find the e-mails.² However, the IRS reportedly told the Treasury Department about the missing e-mails, and the White House was also aware of the missing e-mails.³

According to media reports in November 2014, TIGTA estimated that it had recovered almost 30,000 missing e-mails from disaster recovery tapes.⁴ Last week, TIGTA informed my staff that it now has a definitive number of recovered e-mails: approximately 80,000 e-mails. TIGTA stated that it anticipates eighty percent, or roughly 64,000 e-mails, to be duplicative, leaving about 16,000 unique e-mails that it has recovered. While TIGTA still must compare these 16,000 e-mails to the e-mails already produced by the IRS, it is possible that a large number of these e-mails have not yet been produced to Congress.⁵

¹ Letter from Leonard Oursler, Internal Revenue Serv., to Sens. Ron Wyden & Orrin Hatch, S. Comm. on Finance (June 13, 2014).

² “Recent Developments in the Committee’s Investigation into the Internal Revenue Service’s Use of Inappropriate Criteria to Process Applications of Tax-Exempt Organizations”: Hearing before the H. Comm. on Ways & Means, 113th Cong. (2014) (statement of John Koskinen, IRS Commissioner).

³ *Id.*

⁴ E.g. Susan Ferrechio, *30,000 missing emails from IRS’ Lerner recovered*, WASH. EXAMINER, Nov. 22, 2014.

⁵ According to a report released by the House Committee on Oversight and Government Reform in December 2014, the IRS had gathered and produced “less than 100” e-mails sent or received by Ms. Lerner from January 2009 to April 2011. See H. COMM. ON OVERSIGHT & GOV’T REFORM, THE INTERNAL REVENUE SERVICE’S TARGETING OF CONSERVATIVE TAX-EXEMPT APPLICANTS: REPORT OF FINDINGS FOR THE 113TH CONGRESS 72 (Dec. 23, 2014).

Accordingly, I respectfully request your assistance in better understanding the IRS's document retention and production process. I ask that you please provide the following information as soon as possible but no later than February 24, 2015:

1. Please explain how the IRS retained, identified, and produced documents in response to congressional oversight of the IRS's targeting of conservative groups for the period May 10, 2013, to the present.
2. Please explain how the IRS retained, identified, and produced e-mails sent or received by former IRS official Lois Lerner in response to congressional subpoenas issued on August 2, 2013, and February 14, 2014.
3. Please explain the IRS's efforts, which you described as "extraordinary,"⁶ to recover the missing e-mails sent or received by former IRS official Lois Lerner for the period January 2009 to April 2011.
4. According to TIGTA, the 80,000 e-mails were recovered from IRS disaster recovery tapes. Please explain the IRS's efforts to recover the data from these tapes before the tapes were requested by TIGTA.
5. Did TIGTA provide you or any IRS staff with information about its ongoing efforts to recover the missing e-mails sent or received by Lois Lerner? Please explain, and provide details about who provided this information to the IRS, to whom within the IRS it was provided, and the frequency with which TIGTA provided the information.
6. Has the IRS communicated with Lois Lerner or her attorneys about recovering e-mails sent or received by Ms. Lerner between January 2009 and April 2011? Please explain and provide details about these communications.
7. Has the IRS communicated with the Justice Department or the Federal Bureau of Investigation about recovering e-mails sent or received by Lois Lerner between January 2009 and April 2011? Please explain and provide details about these communications.
8. According to a news report from November 2014, TIGTA has identified "some 2,500 documents that 'potentially' show taxpayer information held by the Internal Revenue Service being shared with President Obama's White House."⁷ Has the IRS produced to Congress all documents and communications between or among employees of the IRS and employees of the Executive Office of the President for the period February 1, 2010, to the present? Please explain.

⁶ "Recent Developments in the Committee's Investigation into the Internal Revenue Service's Use of Inappropriate Criteria to Process Applications of Tax-Exempt Organizations": Hearing before the H. Comm. on Ways & Means, 113th Cong. (2014) (statement of John Koskinen, IRS Commissioner).

⁷ Paul Bedard, *Revealed: 2,500 new documents in IRS/W.H. harassment cases*, WASH. TIMES, Nov. 25, 2014.

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9. Other than withholding information or documents from some congressional committees under 26 U.S.C. § 6103, has the IRS withheld any information or documents from Congress on any basis, including a claim of privilege? If yes, please provide a list of the items withheld, the basis for withholding, and the privilege(s) asserted.

The Committee on Homeland Security and Governmental Affairs is the chief investigative committee of the United States Senate and is authorized by Rule XXV of the Standing Rules of the Senate to investigate “the efficiency, economy, and effectiveness of all agencies and departments of the Government.”⁸ Additionally, S. Res. 253 (113th Congress) authorizes the Committee to examine “the efficiency and economy of all branches of the Government including the possible existence of fraud, misfeasance, malfeasance, collusion, mismanagement, incompetence, corruption, or unethical practices”⁹ For purposes of this request, please refer to the definitions and instructions in the enclosure.

If you have any questions about this request, please contact David Brewer of the Committee staff at (202) 224-4751. Thank you for your prompt attention to this important request.

Sincerely,



Ron Johnson
Chairman

cc: The Honorable Thomas R. Carper
Ranking Minority Member

Enclosure

⁸ S. Rule XXV(k); *see also* S. Res. 445, 108th Cong. (2004).

⁹ S. Res. 253 § 12, 113th Cong. (2013).

Instructions for Responding to a Committee Request
Committee on Homeland Security and Governmental Affairs
United States Senate
114th Congress

A. Responding to a Request for Documents

1. In complying with the Committee's request, 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 person denoted in the request has been or is also known by any other name or alias than herein denoted, the request should be read also to include the 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 form 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 Files (".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 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.

Instructions for Responding to a Committee Request

- e. Alternatively, if the production cannot be made in .tif format, all documents derived from word processing programs, email applications, instant message logs, spreadsheets, and wherever else practicable should be produced in text searchable Portable Document Format (“.pdf”) format. Spreadsheets should also be provided in their native form. Audio and video files should be produced in their native format, although picture files associated with email or word processing programs should be produced in .pdf format along with the document it is contained in or to which it is attached.
 - f. 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), consult with the Committee staff to determine the appropriate format in which to produce the information.
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 the request should be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
 8. When producing documents, identify the paragraph in the Committee’s schedule to which the documents respond.
 9. Do not refuse to produce documents on the basis that any other person or entity also possesses non-identical or identical copies of the same documents.
 10. 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, should be produced immediately upon subsequent location or discovery.
 11. All documents should be Bates-stamped sequentially and produced sequentially. Each page should bear a unique Bates number.
 12. Two sets of documents should be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets should be delivered to the Majority Staff in Room 340 of the Dirksen Senate Office Building and the Minority Staff in Room 346 of the Dirksen Senate Office Building.
 13. If compliance with the request cannot be made in full by the date specified in the request, compliance should be made to the extent possible by that date. Notify Committee staff as soon as possible if full compliance cannot be made by the date specified in the request, and provide an explanation for why full compliance is not possible by that date.

Instructions for Responding to a Committee Request

14. 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.
15. 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.
16. 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, produce all documents which would be responsive as if the date or other descriptive detail were correct.
17. In the event a complete response requires the production of classified information, provide as much information in unclassified form as possible in your response and send all classified information under separate cover via the Office of Senate Security.
18. Unless otherwise specified, the period covered by this request is from January 1, 2009 to the present.
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.

B. Responding to Interrogatories or a Request for Information

1. In complying with the Committee's request, answer truthfully and completely. Persons that knowingly provide false testimony could be subject to criminal prosecution for perjury or for making false statements. Persons that knowingly withhold requested information could be subject to proceedings for contempt of Congress. If you are unable to answer an interrogatory or information request fully, provide as much information as possible and explain why your answer is incomplete.
2. In the event that any entity, organization, or person denoted in the request has been or is also known by any other name or alias than herein denoted, the request should be read also to include the alternative identification.
3. Your response to the Committee's interrogatories or information requests should be made in writing and should be signed by you, your counsel, or a duly authorized designee.

Instructions for Responding to a Committee Request

4. When responding to interrogatories or information requests, respond to each paragraph in the Committee's schedule separately. Clearly identify the paragraph in the Committee's schedule to which the information responds.
5. Where knowledge, information, or facts are requested, the request encompasses knowledge, information or facts in your possession, custody, or control, or in the possession, custody, or control of your staff, agents, employees, representatives, and any other person who has possession, custody, or control of your proprietary knowledge, information, or facts.
6. Do not refuse to provide knowledge, information, or facts on the basis that any other person or entity also possesses the same knowledge, information, or facts.
7. The request is continuing in nature and applies to any newly discovered knowledge, information, or facts. Any knowledge, information, or facts not provided because it was not known by the return date, should be provided immediately upon subsequent discovery.
8. Two sets of responses should be delivered, one set to the Majority Staff and one set to the Minority Staff. When responses are provided to the Committee, copies should be delivered to the Majority Staff in Room 340 of the Dirksen Senate Office Building and the Minority Staff in Room 346 of the Dirksen Senate Office Building.
9. If compliance with the request cannot be made in full by the date specified in the request, compliance should be made to the extent possible by that date. Notify Committee staff as soon as possible if full compliance cannot be made by the date specified in the request, and provide an explanation for why full compliance is not possible by that date.
10. In the event that knowledge, information, or facts are withheld on the basis of privilege, provide a privilege log containing the following information: (a) the privilege asserted; (b) the general subject matter of the knowledge, information, or facts withheld; (c) the source of the knowledge, information, or facts withheld; (d) the paragraph in the Committee's request to which the knowledge, information, or facts are responsive; and (e) each individual to whom the knowledge, information, or facts have been disclosed.
11. If a date or other descriptive detail set forth in this request is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, provide the information that would be responsive as if the date or other descriptive detail was correct.
12. In the event a complete response requires the transmission of classified information, provide as much information in unclassified form as possible in your response and send all classified information under separate cover via the Office of Senate Security.
13. Unless otherwise specified, the period covered by this request is from January 1, 2009 to the present.

Instructions for Responding to a Committee Request

C. Definitions

1. The term “document” in the request or the instructions 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” in the request or the instructions means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face to face, in meetings, by telephone, mail, telex, facsimile, email (desktop or mobile device), computer, text message, instant message, MMS or SMS message, regular mail, telexes, discussions, releases, delivery, or otherwise.
3. The terms “and” and “or” in the request or the instructions should be construed broadly and either conjunctively or disjunctively to bring within the scope of this subpoena 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” in the request or the instructions mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, businesses or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term “identify” in the request or the instructions, 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.

Instructions for Responding to a Committee Request

6. The terms “referring” or “relating” in the request or the instructions, when used separately or collectively, with respect to any given subject, mean 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” in the request or the instructions means agent, borrowed employee, casual employee, consultant, contractor, de fact employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee or subcontractor.
8. The terms “you” and “your” in the request or the instructions refer to yourself; your firm, corporation, partnership, association, department, or other legal or government entity, including all subsidiaries, divisions, branches, or other units thereof; and all members, officers, employees, agents, contractors, and all other individuals acting or purporting to act on your behalf, including all present and former members, officers, employees, agents, contractors, and all other individuals exercising or purporting to exercise discretion, make policy, and/or decisions.

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