



COMMISSIONER

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

November 1, 2016

The Honorable Bob Goodlatte
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I appreciate the opportunity you provided to participate in the committee's hearing on September 21. I hope that, during my testimony, I addressed some of the confusion about actions taken by the IRS over the past several years as well as make clear my desire to work with Congress to address any remaining concerns.

I agreed to become IRS Commissioner three years ago to help fix the unacceptable practices that occurred before I joined the agency, and I regret that I have as of yet been unable to fully restore trust in the agency among some members of Congress. I hope that the enclosed responses to questions and issues raised at the hearing prove helpful as the committee determines whether to proceed to a formal impeachment investigation.

If you have additional questions, please contact me, or a member of your staff may contact Leonard Oursler, Director, Legislative Affairs, at (202) 317-4316.

Sincerely,

A handwritten signature in blue ink, appearing to read "John A. Koskinen".

John A. Koskinen

cc: The Honorable John Conyers Jr., Ranking Member

Enclosures (20)

Enclosure

Written communications instructing IRS employees to preserve records

After questions were raised regarding efforts to protect and preserve relevant emails and documents related to the 501(c)(4) investigation, the Committee asked that I provide copies of written communications instructing IRS employees to preserve relevant records.

Preservation directives to Information Technology (IT) employees were sent through the IT management chain. A May 22, 2013 email from the IRS Chief Technology Officer with the subject line "Information Retention Policy Revision" was sent to individuals below him in the IT management structure for appropriate further dissemination. A copy of that email is enclosed. Also enclosed are copies of other emails sent to others in the IT organization, showing that the information retention policy revision was widely disseminated.

During the course of its investigation of the erasure of 422 disaster recovery tapes, TIGTA interviewed the supervisor of the midnight shift in Martinsburg in 2013. A copy of TIGTA's memorandum of that interview is enclosed. In the memorandum of interview, the supervisor acknowledged receiving the email from the Chief Technology Officer on the information retention policy revision. The supervisor notified his employees, including those on the midnight shift, of the information retention policy instructions in two emails dated May 23, 2013. Copies of those emails are included with the enclosed memorandum of interview.

Also enclosed is a February 3, 2014 email from the Counselor to the Commissioner to the Deputy Chief Information Officer. The email requested, among other things, that the Deputy Chief Information Officer ensure that the earliest possible network disaster recovery tapes were available for review and confirm that no tapes had been recycled since the hold on recycling was instituted.

In addition to actions taken by IRS management, the IRS Office of Chief Counsel also sent litigation hold notices to IRS employees determined to be custodians of records related to 501(c)(4) determinations. Enclosed are examples of those notices.

As discussed at the hearing, the Treasury Inspector General for Tax Administration's investigation of the erasure of the disaster recovery tapes by the midnight shift in Martinsburg found no evidence that the IRS employees involved intended to destroy data on the tapes to keep information from Congress, the Department of Justice, or TIGTA. Furthermore, TIGTA's investigation uncovered no evidence that any IRS employee had been directed to destroy or hide information from Congress, DOJ, or TIGTA.

The Department of Justice (DOJ) reached a similar conclusion when it notified the Congressional committees by letter dated October 23, 2015, that it was closing its investigation without seeking any criminal charges. DOJ found that IRS officials in

Washington were unaware of the March 2014 erasure of the disaster recovery tapes until it was brought to their attention by TIGTA in June 2015 and that there was no evidence that any IRS employee intended to conceal the disaster recovery tapes from the DOJ investigation or realized that erasing them might violate the preservation demand issued by DOJ at the start of its investigation in May 2013.

Time to degauss tapes

During the hearing, I was asked how long it takes to degauss a single tape. I have been informed that it takes approximately three to five minutes per tape and that the degaussing process can accommodate six tapes at a time. Thus, a group of 422 tapes could be broken into 71 batches of six tapes. If it took five minutes to degauss each batch (using the high end of the range), it would have taken 355 minutes to degauss all 71 batches, in addition to the time needed to move from one batch to another. Consequently, the degaussing could be completed within a single eight-hour midnight work shift.

Number of IRS employees on evening or midnight shifts

I was also asked how many employees at the IRS work on evening or midnight shifts. As of September 17, 2016, a total of 5,609 employees were assigned to evening or midnight shifts.

Production of Holly Paz emails

During the hearing, I was asked whether Holly Paz's emails have been produced. As stated in my declaration to the Senate Finance Committee dated July 1, 2015, a copy of which is enclosed, the IRS produced every email it identified for the agreed-upon period to which Ms. Paz was a party, regardless of subject matter.

Ending the use of BOLO lists and processing pending applications

A statement was made during the hearing that a recent opinion of the United States Court of Appeals for the District of Columbia in *True the Vote, Inc. v. Internal Revenue Service, et al.* and *Linchpins of Liberty, et al. v. United States, et al.*, 831 F.3d 551 (Aug. 5, 2016), proves that the use of improper criteria to review applications for tax exempt status is still continuing. I respectfully disagree.

In its opinion, the circuit court noted that the IRS issued interim guidance in 2013 announcing that it was suspending the use of the BOLO lists. The circuit court made much of the fact that the IRS's interim guidance used the word "suspending," construing this to mean that it was possible that the IRS had not conclusively eliminated the use of the BOLO lists. The circuit court, however, did not consider TIGTA's March 2015 follow-up report to its May 2013 report. In that report, TIGTA noted: "The IRS eliminated the use of Be On the Look Out (BOLO) listings, which TIGTA determined had contained inappropriate criteria regarding political advocacy cases. TIGTA conducted

interviews with a random sample of employees, who confirmed that BOLOs or similar listings were no longer being used.” The circuit court did not consider the March 2015 report because it was not part of the record, having been issued after the district court’s rulings.

Enclosed is a copy of my August 18, 2016 letter to the Chairmen and Ranking Members of our oversight committees that discusses the circuit court’s opinion. The letter makes clear that the IRS stopped the use of the BOLO lists over three years ago and has committed to not using them again.

The circuit court’s opinion also noted that the applications of a few organizations engaged in litigation against the government were still pending. My August 18 letter noted that all but three of the 145 applications for section 501(c)(4) status that had been pending for more than 120 days as of May 28, 2013, had been resolved.

The applications of the remaining three organizations had not been resolved due to the ongoing litigation. As an exception to our longstanding policy of suspending administrative action on a matter pending in litigation, including administrative action on a pending application for tax exempt status, I asked our Exempt Organizations leadership to work with the Department of Justice and to resolve the applications that remain pending by making determinations as soon as practicable. While one of the three organizations obtained an injunction prohibiting us from acting on their application while their litigation is pending, we have proceeded with attempts to resolve the other two applications.

Milholland Terence V

From: Milholland Terence V
Sent: Wednesday, May 22, 2013 1:37 PM
To: Buschor Lauren; Freeman Karen L; Chaddock Daniel B; Stender David W; Shepherd Anne
Cc: Manning Stephen (DCIO); Garza Gina; Babcock Tracey J; Walters Kathleen E
Subject: Information Retention Policy Revision

Given the current environment and ongoing investigations, until further notice, do not destroy/wipe/reuse any of the existing backup tapes for email, or archiving of other information from IRS personal computers. Further, do not reuse or refresh or wipe information from any personal computer that is being reclaimed/returned/refreshed/updated from any employee or contractor of the IRS. Finally, effective immediately, the email retention policy for backups is to be indefinite rather than 6 months.

In other words, retain everything to do with email or information that may have been stored locally on a personal computer.

Terry

From: [Buschor Lauren](#)
To: [Bahlert Brian C](#); [Burton Tammy G](#); [Burtyk Dale A](#); [Casey Sophia J](#); [Frederick Amy L](#); [Freeman Karen L](#); [Gove Warren R](#); [Hazan Fred S](#); [Hernandez Mary B](#); [Hua Cecil T](#); [Joines Greg L \[Contractor\]](#); [Keeter Tracy A](#); [Lavery-Wilson Katlyn](#); [Leahy Robert](#); [McMahon Tony H \(EXEC\)](#); [Pandya Kaschit](#); [Parsons Claud D](#); [Plourde Kathy](#); [Robertson Julia E](#); [Trumbull Debbie](#); [Walters Tina M](#); [Xavier Soosal](#); [Zurmuhlen Gregory P](#)
Subject: FW: Information Retention Policy Revision
Date: Wednesday, May 22, 2013 3:35:14 PM

PLEASE TAKE IMMEDIATE ACTION.

From: Milholland Terence V
Sent: Wednesday, May 22, 2013 2:37 PM
To: Buschor Lauren; Freeman Karen L; Chaddock Daniel B; Stender David W; Shepherd Anne
Cc: Manning Stephen (DCIO); Garza Gina; Babcock Tracey J; Walters Kathleen E
Subject: Information Retention Policy Revision

Given the current environment and ongoing investigations, until further notice, do not destroy/wipe/reuse any of the existing backup tapes for email, or archiving of other information from [IRS](#) personal computers. Further, do not reuse or refresh or wipe information from any personal computer that is being reclaimed/returned/refreshed/updated from any employee or contractor of the IRS. Finally, effective immediately, the email retention policy for backups is to be indefinite rather than 6 months.

In other words, retain everything to do with email or information that may have been stored locally on a personal computer.

Terry

From: [Keeter Tracy A](#)
To: [Baker Patrick](#)
Subject: FW: Information Retention Policy Revision
Date: Wednesday, May 22, 2013 3:55:00 PM

Please send out to DMPG Managers

Tracy A. Keeter, PMP

Director, Demand Management & Project Governance Division (DMPG),
Enterprise Operations, IRS IT
OS:CTO:IT:EO:DMPGD

tracy.a.keeter@irs.gov
202-283-6187 (VMS)
202-579-2089 (CELL)
202-283-7246 (FAX)
Office # A3-401 in NCFB

"Changing Tomorrow Today", Class Theme,
Fall 2008 Executive Development Class

From: Buschor Lauren
Sent: Wednesday, May 22, 2013 3:35 PM
To: Bahlert Brian C; Burton Tammy G; Burtyk Dale A; Casey Sophia J; Frederick Amy L; Freeman Karen L; Gove Warren R; Hazan Fred; Hernandez Mary R; Hua Cecil T; Joines Greg L; Keeter Tracy A; Lavery-Wilson Katlyn; Leahy Robert; McMahon Tony H (EXEC); Pandya Kaschit; Parsons Claud D; Plourde Kathy; Robertson Julia F; Trumbull Debbie; Walters Tina M; Xavier Soosai; Zurmuhlen Gregory P
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Terry

From: [Baker Patrick](#)
To: [&IT EOPS DMPG All Managers](#)
Cc: [Dodson Penny K](#); [Bowie Phyllis](#); [Winston Robin L](#)
Subject: FW: Information Retention Policy Revision
Date: Thursday, May 23, 2013 7:36:00 AM

FYI - Information Retention Policy Revision

Patrick Baker

Executive Assistant
Demand Management & Project Governance Division (DM&PG)
ACIO Enterprise Operations
A3-414
(202)283-6793

From: Keeter Tracy A
Sent: Wednesday, May 22, 2013 3:55 PM
To: Baker Patrick
Subject: FW: Information Retention Policy Revision

Please send out to DMPG Managers

Tracy A. Keeter, PMP

Director, Demand Management & Project Governance Division (DMPG),
Enterprise Operations, IRS IT
OS:CTO:IT:EO:DMPGD

tracy.a.keeter@irs.gov
202-283-6187 (VMS)
202-579-2089 (CELL)
202-283-7246 (FAX)
Office # A3-401 in NCFB

"Changing Tomorrow Today", Class Theme,
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Subject: FW: Information Retention Policy Revision

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To: Buschor Lauren; Freeman Karen L; Chaddock Daniel B; Stender David W; Shepherd Anne
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Terry

From: [Zurmuhlen Gregory P](#)
To: [Bauer Jim P](#); [Copenhaver Laurie E](#); [Jacobson Carrie L](#); [Harrell Mike G](#); [Mason Paula A](#); [Rhoe Kim R](#); [Shatzer Cindy J](#); [Woods Robert L](#)
Cc: [Aluise Patricia A](#); [Lore Howie A](#)
Subject: FW: Information Retention Policy Revision
Date: Thursday, May 23, 2013 7:40:00 AM

FYI and action

Thank you,
Gregg
Gregory Zurmühlen
Acting Director,
Mainframe Services & Support Division (MSSD)
OS:CTO:IT:EO:MS
ACIO Enterprise Operations
B4-402
202 283-4034 O
202 283-4688 O2
202 746-7835 C

From: Buschor Lauren
Sent: Wednesday, May 22, 2013 3:35 PM
To: Bahlert Brian C; Burton Tammy G; Burtyk Dale A; Casey Sophia J; Frederick Amy L; Freeman Karen L; Gove Warren R; Hazan Fred; Hernandez Mary R; Hua Cecil T; Joines Greg L; Keeter Tracy A; Laverty-Wilson Katlyn; Leahy Robert; McMahon Tony H (EXEC); Pandya Kaschit; Parsons Claud D; Plourde Kathy; Robertson Julia F; Trumbull Debbie; Walters Tina M; Xavier Soosai; Zurmuhlen Gregory P
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Cc: Manning Stephen (DCIO); Garza Gina; Babcock Tracey J; Walters Kathleen E
Subject: Information Retention Policy Revision

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In other words, retain everything to do with email or information that may have been stored locally on a personal computer.

Terry

From: [Xavier Soosai](#)
To: [Buschor Lauren](#); [Freeman Karen L](#)
Cc: [Hutchinson Becky J](#); [Hunter Sonja T](#); [Hazan Fred S](#); [Parsons Claud D](#); [Bahlert Brian C](#)
Subject: FW: Information Retention Policy Revision (DMSS response)
Date: Thursday, May 23, 2013 4:41:55 PM

Sonja

Great job and thank you for the quick turn around on this.

Lauren / Karen / Brian

DMSS team had assessed the impact of meeting the "revised email retention requirements" and performed the tasks as outlined below by Sonja. The assessment includes only data pertaining to email backup from all email servers and shared servers and does not include any backup of any desktop/laptop data.

To make effective immediately, should we loop anyone else in this discussion prior to seeking your approval?

Xavier

From: Hunter Sonja T
Sent: Thursday, May 23, 2013 3:19 PM
To: Xavier Soosai
Cc: Hutchinson Becky J; Parsons Claud D; Taylor Dana H (Ogden)
Subject: RE: Information Retention Policy Revision

Xavier,

All steps have been completed, to **initiated the procurement process for 5200 tapes** to meet Terry's requirement on 'indefinite email retention' for backups.

- ✓ Don Palmer, will notify Counsel of new requirements for email servers/data retention, to make adjustments as it affects them - *Lisa Kardaras, Al Cestrone, Brian Downs and Darrin Brown were notified*
- ✓ Dana Taylor will notify SOI and CI of these new requirements – *Karl Hinds, SOI and Greg Dressman, CI were notified*
- ✓ SDM (server data management) staff will set retention on former and future tapes and backups of exchange servers to 'indefinite'.
- ✓ Mike Gallegly will verify with SDM if or if not it will affect email archive servers
- ✓ Sonja Hunter will give Karen McFadden a heads-up on this urgent tape purchase
- ✓ Jodi Robair will gather count of number of tapes for immediate purchase and initiate work order – *quote for 5200 tapes has been initiated to start procurement process by Karen McFadden*

Thanks,
Sonja T Hunter

acting Branch Chief, Data and Storage Management Branch
304.264.5404 Voice
304.264.7825 Fax
OS:CTO:IT:EO:DM:ST:SM

From: Hunter Sonja T
Sent: Thursday, May 23, 2013 12:50 PM
To: Xavier Soosai
Cc: Hutchinson Becky J; Parsons Claud D; Taylor Dana H (Ogden)
Subject: RE: Information Retention Policy Revision

Xavier,

We initiated and the following steps to meet Terry's requirements on 'indefinite email retention' policy for backups.

- Don Palmer, will notify Counsel of new requirements for email servers/data retention, to make adjustments as it affects them
- Dana Taylor will notify SOI and CI of these new requirements
- SDM (server data management) staff will set retention on former and future tapes and backups of exchange servers to 'indefinite'.
- Mike Gallegly will verify with SDM if or if not it will affect email archive servers
- Sonja Hunter will give Karen McFadden a heads-up on this urgent tape purchase
- Jodi Robair will gather count of number of tapes for immediate purchase and initiate work order

Update with status to follow.

Thanks,
Sonja T Hunter
acting Branch Chief, Data and Storage Management Branch
304.264.5404 Voice
304.264.7825 Fax
OS:CTO:IT:EO:DM:ST:SM

From: Xavier Soosai
Sent: Thursday, May 23, 2013 9:49 AM
To: Hunter Sonja T
Cc: Hutchinson Becky J; Parsons Claud D; Taylor Dana H (Ogden)
Subject: RE: Information Retention Policy Revision

Just to be sure, this applies only to email servers/data retention and PC/Laptop retention. Everything else should be as usual. Right ?

From: Hunter Sonja T
Sent: Thursday, May 23, 2013 8:44 AM
To: Xavier Soosai
Cc: Hutchinson Becky J; Parsons Claud D; Taylor Dana H (Ogden)
Subject: FW: Information Retention Policy Revision

Xavier,
Here are the correspondences concerning this issue

Thanks,
Sonja T Hunter
acting Branch Chief, Data and Storage Management Branch
304.264.5404 Voice
304.264.7825 Fax
OS:CTO:IT:EO:DM:ST:SM

From: Hutchinson Becky J
Sent: Thursday, May 23, 2013 9:40 AM
To: Hunter Sonja T; Katz Bradley A
Cc: Taylor Dana H (Ogden)
Subject: RE: Information Retention Policy Revision

We really do not have an extended period of time to work this, While I do not disagree with moving forward in this direction. I highly recommend that we got some additional tapes ordered now.

Becky Hutchinson
Eops Acting Chief, Division Management Office Data Management Support & Services Division
Martinsburg
304 -264-7420 (office)
304 -283- 4517 (BB)

From: Hunter Sonja T
Sent: Thursday, May 23, 2013 9:36 AM
To: Katz Bradley A
Cc: Hutchinson Becky J; Taylor Dana H (Ogden)
Subject: FW: Information Retention Policy Revision

Brad,

Given the below directive from Terry, I think this changes some of our plans. We need to reconsider how this effects Bronze, Copper and Iron storage. I think your immediate plans with Bronze and Copper may need to be increased. And if we keep some data forever - I think that implies offsite tape (LTO5, 6, later 7 and 8) for the foreseeable future.

Please get with Dana and look at what changes may need to be made with your Bronze and Copper plans? Then let's setup a meeting next week to discuss overall options.

This is urgent and needs to be addressed ASAP. Thanks in advance for your cooperation

Thanks,
Sonja T Hunter
acting Branch Chief, Data and Storage Management Branch
304.264.5404 Voice
304.264.7825 Fax
OS:CTO:IT:EO:DM:ST:SM

From: Hutchinson Becky J
Sent: Thursday, May 23, 2013 7:41 AM
To: Hunter Sonja T
Cc: Taylor Dana H (Ogden)
Subject: FW: Information Retention Policy Revision

Please take appropriate actions.....
Dana per discussions and email yesterday.

Becky Hutchinson
Eops Acting Chief, Division Management Office Data Management Support & Services Division
Martinsburg
304 -264-7420 (office)
304 -283- 4517 (BB)

From: Xavier Soosai
Sent: Wednesday, May 22, 2013 3:55 PM
To: Hutchinson Becky J; Sutherland Holly A
Subject: FW: Information Retention Policy Revision

From: Buschor Lauren
Sent: Wednesday, May 22, 2013 2:35 PM
To: Bahlert Brian C; Burton Tammy G; Burtyk Dale A; Casey Sophia J; Frederick Amy L; Freeman Karen L; Gove Warren R; Hazan Fred; Hernandez Mary R; Hua Cecil T; Joines Greg L; Keeter Tracy A; Lavery-Wilson Katlyn; Leahy Robert; McMahon Tony H (EXEC); Pandya Kaschit; Parsons Claud D; Plourde Kathy; Robertson Julia F; Trumbull Debbie; Walters Tina M; Xavier Soosai; Zurmuhlen Gregory P
Subject: FW: Information Retention Policy Revision

PLEASE TAKE IMMEDIATE ACTION.

From: Milholland Terence V
Sent: Wednesday, May 22, 2013 2:37 PM
To: Buschor Lauren; Freeman Karen L; Chaddock Daniel B; Stender David W; Shepherd Anne
Cc: Manning Stephen (DCIO); Garza Gina; Babcock Tracey J; Walters Kathleen E
Subject: Information Retention Policy Revision

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In other words, retain everything to do with email or information that may have been stored locally on a personal computer.

Terry

From: [Carter Deborah E](#)
To: [Duncan Desryn](#); [Gupta Rakesh](#); [Glenn Jenny M](#); [Weaver Christopher S](#); [Savoy John](#); [Zhen Changqing](#); [Curley John H](#); [Exum Charles E](#); [Kelly Martin J](#)
Subject: FW: Information Retention Policy Revision
Date: Wednesday, May 22, 2013 4:42:36 PM

FYI

From: Chaddock Daniel B
Sent: Wednesday, May 22, 2013 4:34 PM
To: Bell E Faith; Carter Deborah E; Levy Shondraya G; Butler Jeff; Owens Jane A; Skaff Joe M; Steele Joyce R; McDonald Kim A (EXEC); Hamilton Daniel S; Segev Amir
Subject: FW: Information Retention Policy Revision

FYI

From: Milholland Terence V
Sent: Wednesday, May 22, 2013 2:37 PM
To: Buschor Lauren; Freeman Karen L; Chaddock Daniel B; Stender David W; Shepherd Anne
Cc: Manning Stephen (DCIO); Garza Gina; Babcock Tracey J; Walters Kathleen E
Subject: Information Retention Policy Revision

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Terry

From: [Palmer Don W](#)
To: [Penaloza Janet](#)
Cc: [Joines Greg L \[Contractor\]](#); [Gove Warren R](#)
Subject: RE: Information Retention Policy Revision
Date: Thursday, May 23, 2013 9:53:19 AM

I had not received it...thanks for sharing!

I had some discussions with Darrin Brown this morning as well as the Tape Librarian staff. We are working to identify the affected tapes to protect them. They have also been advised to no longer degauss any hard drives from PC's.

Thanks,

Don W. Palmer

Acting Chief, Mainframe Operations Branch

IT - OS:CTO:EOPS:ECC:MOB

Voice: 901-546-3567

Fax: 901-546-3035

Cell: 304-839-8756

From: Penaloza Janet
Sent: Thursday, May 23, 2013 7:30 AM
To: Palmer Don W
Cc: Joines Greg L; Gove Warren R
Subject: FW: Information Retention Policy Revision

Don,

I just got this...not sure if you got this, but please direct tape librarians accordingly.

Thanks,

Janet

From: Dalton Teresia L
Sent: Thursday, May 23, 2013 8:23 AM
To: Penaloza Janet
Subject: FW: Information Retention Policy Revision

Teri Matuu-Dalton

Team Lead

EMA Server Readiness – Win7 Project

EMAIL: Teresia.L.Dalton@irs.gov Mobile: (503)307-8671

From: Frederick Amy L
Sent: Wednesday, May 22, 2013 1:09 PM
To: Frenette Paul J; Flanagan Bryan J; Webster Merle H (Spike); Logiodice Kathleen A; Axelrod Laurie;

Loretta Cooper; Mose Edward Frank; Toraldo Paul F; Massoth Joe; Moffitt James G; Dalton Teresia L
Subject: FW: Information Retention Policy Revision

Until further notice, do not reuse or refresh or wipe information from any personal computer that is being reclaimed/returned/refreshed/updated from any employee or contractor of the IRS.

From: Buschor Lauren
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Terry

MEMORANDUM OF INTERVIEW OR ACTIVITY

Type of Activity: <input checked="" type="checkbox"/> Personal Interview <input type="checkbox"/> Telephone Interview <input type="checkbox"/> Records Review <input type="checkbox"/> Other	Date and Time: February 20, 2015 10:26 AM
Activity or Interview of: Charles STANTON, JR. Supervisory Computer Assistant Internal Revenue Service (IRS) Enterprise Operations Information Technology (IT) 250 Murall Drive Kearneysville, WV 25430	Conducted by: Assistant Special Agent in Charge (ASAC) Trevor NELSON ASAC Barry GRUNDY Location of Interview/Activity: Treasury Inspector General for Tax Administration (TIGTA) 250 Murall Drive Kearneysville, WV 25430

Subject Matter/Remarks

On February 20, 2015, the reporting ASACs interviewed Charles STANTON, JR., Supervisory Computer Assistant, IRS, Enterprise Operations, IT, Kearneysville, WV, regarding the process used to locate and identify 760 hard drives that were part of the New Carrollton Federal Building (NCFB) Microsoft Exchange Server Storage Area Network, which were provided to TIGTA in July 2014. STANTON was also questioned regarding the location and status of what was initially reported to be 600 LTO backup tapes ("tapes") which had allegedly accompanied those tapes to the Enterprise Computing Center-Martinsburg (ECC-MTB) at 250 Murall Drive, Kearneysville, WV on January 29, 2014.

STANTON was placed under oath and substantially stated the following:

He started with the IRS on April 23, 2012, after separating from the United States Air Force as a Crew Chief for fighter aircraft. STANTON advised he was hired at the grade of IR (Internal Revenue) 11, which he further advised is equivalent to a GS (General Schedule) 7. He was hired as the supervisor for "Swing Shift" and "Midnight Shift" of the three-shift Media Management group. Each shift had different responsibilities; the day shift was responsible for disaster recovery tapes stored in the vault and was responsible for responding to requests to retrieve tapes for disaster recovery purposes; the swing shift was responsible for mailing the disaster recovery tapes and emptying the "tubs" used to transport tapes; while the midnight shift was responsible for destroying media. STANTON described MCC as a "destruction center," which meant it was a location that was authorized to contract with third party vendors to destroy data. He went on to categorize ECC-MTB as a "junkyard" for media that was no longer in use.

STANTON advised that there were many degaussing machines in the IRS, but degaussing media did not constitute "destruction" in IRS terms. ECC-MTB frequently received media for destruction that had been degaussed elsewhere. The last large scale destruction was in May 2012 involving 208,000 pieces of media and was undertaken by a company called "Data Killers." There was a smaller scale

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MEMORANDUM OF INTERVIEW OR ACTIVITY (continuation sheet)

destruction of data in November 2013, but it involved media that had been degaussed before May 2013. STANTON opined that anyone sending media into this process knew the media would be destroyed, and could only have intended that outcome. In May 2013, STANTON assumed a number of new responsibilities including: supervising all three Media Management shifts; providing guidance to the Detroit and Memphis tape libraries; acting as point-of-contact for IRS media destruction; ordering all LTO tapes for all three IRS tape libraries; and was tasked to respond to a GAO (Government Accountability Office) audit which revealed the Memphis Library was not conducting inventory inspections appropriately.

In September 2013, another organizational change placed him under Don PALMER, Supervisory IT Program Manager, IRS, Enterprise Operations, IT, Memphis, TN. STANTON retained some of his former responsibilities, but no longer supervised the Media Management midnight or swing shifts. He did, however, maintain sole control the "destruction e-mail box," (*IT Media Destruction), which is where requests for data destruction are supposed to be sent. Starting in September 2013, STANTON believed the Media Management midnight shift had no permanent manager until approximately November 2014.

STANTON stated he never physically degaussed any media while in his positions at ECC-MTB, though he frequently responded to requests for information about the destruction/degaussing process throughout his employment with the IRS. When asked whether he remembered the information retention policy revision e-mail sent by Terence MILHOLLAND, Chief Technology Officer/Chief Information Officer, IRS, IT, Farmers Branch, TX, on May 23, 2013, which stated, "Until further notice, do not destroy/wipe/reuse any of the existing backup tapes for e-mail, or archiving of other information from IRS personal computers. Further, do not reuse or refresh or wipe information from any personal computer that is being reclaimed/returned/refreshed/updated from any employee or contractor of the IRS."

STANTON acknowledged receiving an e-mail with that policy and had discussed it with PALMER. STANTON provided an e-mail dated May 23, 2013, at 8:53 AM (attached) which restated MILHOLLAND's message to the "Media Management-Midnight" shift and others as follows: "Until further notice, do not reuse or refresh or wipe information from any personal computer that is being reclaimed/returned/refreshed/updated from any employee or contractor of the IRS."

STANTON provided a second e-mail from May 23, 2013, at 9:44 AM that had originated with PALMER which directed that all employees were to ensure the tapes at the three IRS tape libraries were not being erased, degaussed or reused (attached). This e-mail was also provided to the "Media Management-Midnight" shift and others. STANTON advised that tape library personnel in the Martinsburg, Memphis, and Detroit Computing Centers took steps to ensure Microsoft Exchange tapes were preserved and would not be over-written, but at that point, he did not interpret MILHOLLAND's retention policy to mean that tapes sent to ECC-MTB for destruction should be excluded from degaussing. STANTON interpreted the message to mean that Microsoft Exchange Data should be preserved, regardless of the media housing the data. He did, however, believe that MILHOLLAND's message meant that hard drives should no longer be degaussed. He believed that, since none of the Media Management midnight shift asked any questions, they understood the guidelines.

STANTON stated that media was provided to ECC-MTB for destruction on the IRS Form 3210, Document Transmittal. The information listed on the form usually only included the type of media and

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almost never included what information was on the media itself. STANTON advised the Media Management midnight shift would have no way of knowing what was on any media they received for destruction unless it was listed on the Form 3210.

STANTON stated that even after the May 2013 retention policy revision e-mail from MILHOLLAND, he regularly received e-mail from all over the country indicating that people were continuing to degauss hard drives and tapes who were either unaware of MILHOLLAND's policy revision, or who had erroneously assumed it had been lifted. STANTON provided scanned copies of tape backups which had been mailed to ECC-MTB having already been degaussed with labels attached that indicated the individual, date, and the action taken, such as degaussing. Similarly, STANTON provided e-mail with a spreadsheet indicating that ECC-MTB had received hundreds of degaussed drives from across the IRS after the May 2013 policy revision (attached).

STANTON opined that in retrospect, the confusion likely extended to the ECC-MTB Media Management personnel as well. During e-mail exchanges about media destruction on February 10, 2014, STANTON re-affirmed that MILHOLLAND's May 2013 retention policy indicated hard drives should not be destroyed. This e-mail contained a read receipt that reported numerous individuals, including those on the Media Management midnight shift had read the message (attached).

Reporting ASAC's Agent's Note: One of those individuals was Michelle WILLIAMS, Computer Clerk, IRS, Enterprise Operations, IT, Kearneysville, WV, who was on the midnight shift at the time. During a subsequent interview with WILLIAMS, she stated that the midnight shift stopped degaussing hard drives in January or February 2014, due to guidance they had received. WILLIAMS could not recall the source of that guidance during the interview. STANTON's e-mail was likely that source given the information available.

STANTON advised the Media Management midnight shift likely continued to degauss tapes that were sent to ECC-MTB until June 24, 2014, when, during another e-mail exchange with PALMER and personnel located in Memphis, TN, it was determined that all media destruction, including tapes, should be discontinued. STANTON provided the e-mail to Dawn BARNETT, Lead Computer Assistant, IRS, Enterprise Operations, IT, Kearneysville, WV, who was the team leader for the Media Management midnight shift. STANTON stated that PALMER conducted a visit with the Media Management staff in late July 2014, to reinforce that media should not be destroyed. STANTON provided copies of e-mail related to the June 24, 2014, e-mail thread which resulted in the determination that tapes and hard drives should not be degaussed (attached).

When asked about a January 29, 2014, shipment of hard drives and LTO tapes to ECC-MTB, STANTON advised he recalled the shipment because it was one of only two shipments that came to ECC-MTB outside the normal process during his tenure with the IRS. The second was in May 2012 when an expected shipment was delivered in person instead of being shipped. The normal process involved e-mail coordination with the "IT Media Destruction" e-mail box, which resulted in shipping containers being sent to the requestor, based on the amount and type of media that was being sent to ECC-MTB. The media was then shipped by the requestor to ECC-MTB in the provided containers, with a Form 3210 which listed the media to be destroyed. The Form 3210 was a required item for the destruction to proceed.

STANTON advised the January 29, 2014, shipment arrived at ECC-MTB unexpectedly and did not go through the normal process, though he believed the sender, Robert LYEWSANG, IT Specialist, IRS,

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Enterprise Operations, IT, Lanham, MD, had attempted to contact individuals in the Media Management group directly. The shipment included several pallets of hard drives and LTO tapes, both used and brand new still in original packaging. An e-mail and another document was taped to the outside of one of the pallets indicated it had been shipped by LYEWSANG from the NCFB and contained server hard drives and tapes for destruction. STANTON attempted to contact LYEWSANG to secure a completed Form 3210, but learned he was out on medical leave. On March 4, 2014, STANTON successfully made contact with LYEWSANG and explained the need for the Form 3210, which LYEWSANG subsequently provided the same day. STANTON was shown a copy the Form 3210 believed to have been from LYEWSANG, which STANTON subsequently verified as being the form (attached). STANTON provided numerous e-mails detailing communications relating to receipt of the shipment and subsequent communications with LYEWSANG (attached).

STANTON believed the LTO tapes from the January 29, 2014, shipment were likely degaussed soon after March 4, 2014, when the Form 3210 was received. STANTON was unsure during the interview why the drives had not been degaussed as well, based on the fact that he believed they had been degaussing drives through at least June 2014. STANTON reiterated that he had not been in a supervisory position over the Media Management midnight shift since September 2013, and was not familiar with their current operating procedures.

When asked how the drives were brought to the attention of TIGTA on July 11, 2014, STANTON advised he was involved in searching for backup tapes relevant to the TIGTA request for tapes in early July 2014. STANTON provided a copy of an e-mail request from Dana TAYLOR, Supervisory IT Specialist, IRS, Enterprise Operations, IT, Ogden, UT, dated July 1, 2014, addressed to STANTON asking for the "600 PII (Personally Identifiable Information) tapes" from LYEWSANG's Form 3210. STANTON stated he attempted to locate the tapes, but noted they were no longer on the pallets with the hard drives, and determined they had likely been degaussed. He believed he provided this information back to TAYLOR on a subsequent telephone call on the same day. On or about July 2, 2014, STANTON contacted PALMER and related that he thought the hard drives in LYEWSANG's shipment may be from a server that might also contain information of interest to TIGTA. On Friday, July 11, 2014, STANTON contacted LYEWSANG and asked if the hard drives contained "Exchange information." LYEWSANG subsequently confirmed the hard drives had come from a Microsoft Exchange Server at the NCFB. STANTON provided a series of e-mails relating to the process associated with searching for the tapes, as well as what was on the hard drives (attached). STANTON also provided the reporting ASAC's with a copy of the e-mail from LYEWSANG which were taped to the outside of the January 29, 2014 shipment (attached).

STANTON stated that prior to this interview he and the Media Management staff had attempted to identify which tapes were with the January 29, 2014, shipment. On or about February 17, 2014, STANTON contacted LYEWSANG and asked for a description of the tapes. LYEWSANG described the tapes as "red Hewlett Packard (HP) LT02 tapes" and further advised those type of tapes were "all they used." STANTON and the Media Management staff searched through approximately 600,000 pieces of storage media present at ECC-MTB and identified 424 tapes that matched that description. STANTON also compared the tapes to the brand-new tapes, which were still sealed in their original packing, and determined they matched. STANTON contacted LYEWSANG, who stated there should be around 400. STANTON stated the tapes stood out as unique among the remainder of the media due to their color and type.

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STANTON was also questioned about why the numbers of tapes and hard drives seemed to vary between documents; for example in an e-mail dated July 11, 2014, to LYEWSANG, STANTON stated there were 850 hard drives; the Form 3210 indicated there were 300 hard drives; and yet 760 hard drives had been provided to TIGTA on July 11, 2014. Similarly, the Form 3210 indicated 600 tapes, while only 424 had been recovered by STANTON during his search. STANTON advised that the numbers on the Form 3210 were likely inaccurate estimates because LYEWSANG had completed it in March 2014 for a shipment that had been sent in January 2014.

Reporting ASAC's Note: During an interview with LYEWSANG, he also advised the numbers were likely inaccurate because he hadn't been aware of the need to provide the Form 3210, which required the itemized counts of the items to be destroyed, in January 2014. He did not count the drives or tapes when he put them on the shipping pallets.

STANTON stated the 850 count of hard drives had been relayed to him by someone in Media Management, whom he couldn't remember, that had allegedly counted the drives. STANTON advised he had gone into the area where the drives were stored after the count was reported to him and he noted that they were stacked on two different pallets. One pallet contained neatly stacked hard drives, while the other was disorganized. STANTON opined whoever had counted them had likely only counted one pallet, and estimated the contents of the second. STANTON stated that he and one of the Media Management staff had counted the drives before they were delivered to TIGTA on July 11, 2014, and believed the 760 number to be the accurate count.

During the interview, STANTON made a tangential reference to being involved with a contract to bring tapes stored with an offsite vendor, Iron Mountain, back to the IRS. STANTON indicated these tapes were predominantly related to the IRS Office of Chief Counsel, and he believed the contract was likely still active as he was not able to provide any of the shipping containers for the transition. STANTON had communications from October 2014 indicating that at that time, IRS tapes were still being stored with Iron Mountain. STANTON could not provide additional information regarding the Iron Mountain contract as he was not directly involved.

STANTON stated he was not asked to destroy the tapes or drives, nor was he asked to misrepresent or conceal any information relating to the handling and processing of the drives or tapes. Except for the unused, new tapes, which were still in the original, sealed containers, STANTON was not aware of any hard drives or tapes left over from LYEWSANG's which had not been identified or turned over to TIGTA. STANTON was not asked about LYEWSANG's January 29, 2014, shipment, or the hard drives or tapes it contained, prior to the July 1, 2014, request which had been initiated by TIGTA. STANTON opined that July 1, 2014, was probably the first time anyone outside of the Media Management's night shift had identified that the tapes had been degaussed.

At the conclusion of the interview, STANTON brought the reporting ASAC's to the Media Management destruction and storage area at ECC-MTB. The storage area contained boxes and pallets of media that had been degaussed but not destroyed, and other media that had not been degaussed. According to STANTON, degaussed media was stored in boxes marked with pink "Degaussed" stickers on them on one side of the area, while non-degaussed media was in boxes and pallets on the opposite side of the area. STANTON provided the reporting agents with 424 red HP LTO2 tapes which he stated were believed to have been the tapes sent in LYEWSANG's January 29, 2014, shipment to ECC-MTB. Some of the tapes had "Degaussed" stickers on them and some did not. These tapes were entered into the TIGTA Washington Field Division evidence system.

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The attachment(s) referenced in this memorandum of interview/activity are attached to and made a part of this memorandum.

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Stanton Jr Charles T

From: Wojcik Karen
Sent: Thursday, May 23, 2013 9:05 AM
To: Al-Emad Ebrahim A; Gyde Michael E; Grooms Dwayne V; Ball Howard D
Cc: Wojcik Karen
Subject: FW: Hard Drives
Signed By: Karen.M.Wojcik@irs.gov

Please read email below and follow it please. Thanks

Karen

From: Stanton Jr Charles T
Sent: Thursday, May 23, 2013 8:53 AM
To: &IT ACIOEOPS-ECC-DM-Media Management-Day 2; &IT ACIOEOPS-ECC-DM-Media Management-Swing; &IT ACIOEOPS-ECC-DM-Media Management-Midnight
Cc: Robair Jodi W; Palmer Don W; Wojcik Karen
Subject: Hard Drives

All,

If we get any requests to degauss and return local hard drives, please do not do them.

Until further notice, do not reuse or refresh or wipe information from any personal computer that is being reclaimed/returned/refreshed/updated from any employee or contractor of the IRS.

Thank you.

Chuck Stanton, MHR
Section Chief Media Mgt (Detail)
Supervisor, Computer Clerks
Media Management
TOD Sun - Thurs

Internal Revenue Service
250 Murall Drive
Kearneysville, West Virginia 25430
Fax: 304-264-7063
Office: 304-264-7481

JrCharles.T.Stanton@irs.gov

Stanton Jr Charles T

From: Wojcik Karen
Sent: Thursday, May 23, 2013 9:44 AM
To: Al-Emad Ebrahim A; Ball Howard D; Gyde Michael E; Grooms Dwayne V
Cc: Wojcik Karen
Subject: FW: Information Retention Policy Revision
Signed By: Karen.M.Wojcik@irs.gov

Please read email below and follow it closely. Thanks.

Karen

From: Stanton Jr Charles T
Sent: Thursday, May 23, 2013 9:38 AM
To: &IT ACIOEOPS-ECC-DM-Media Management-Swing; &IT ACIOEOPS-ECC-DM-Media Management-Midnight; &IT ACIOEOPS-ECC-DM-Media Management-Day 2; Wojcik Karen; Gammon Jerry R; Clark Rick S
Cc: Robair Jodi W
Subject: FW: Information Retention Policy Revision

All see below. Karen, and Jerry please distribute.

Chuck Stanton, MHR

Section Chief Media Mgt (Detail)
Supervisor, Computer Clerks
Media Management
TOD Sun - Thurs

Internal Revenue Service
250 Murall Drive
Kearneysville, West Virginia 25430
Fax: 304-264-7063
Office: 304-264-7481

JrCharles.T.Stanton@irs.gov

"Do not pray for easy lives. Pray to be stronger men." - **John F. Kennedy**

"When we assumed the Soldier, we did not lay aside the Citizen." - **George Washington**

From: Palmer Don W
Sent: Thursday, May 23, 2013 9:32 AM
To: Stanton Jr Charles T
Cc: Robair Jodi W; Adams Robert A; Wojcik Karen
Subject: RE: Information Retention Policy Revision

I confirmed with Darrin Brown that backup tapes from the email systems ARE being stored in the tape libraries at all three computing centers. We need to make sure all of the staff (all three locations) understands NOT to erase, degauss, or reuse those tapes until further directed. They are working to change the retention dates for new ones on now.

Don W. Palmer

Acting Chief, Mainframe Operations Branch

IT - OS:CTO:EOPS:ECC:MOB

Voice: 901-546-3567

Fax: 901-546-3035

Cell: 304-839-8756

From: [Duval Catherine](#)
To: [Manning Stephen \(DCIO\)](#)
Cc: [Stern Christopher B](#); [Kane Thomas J \(Thomas.J.Kane@irs.counsel.treas.gov\)](#)
Subject: Lerner email issue
Date: Monday, February 03, 2014 1:37:00 PM

This is to confirm our discussion in today's meeting concerning the apparent lack of Lois Lerner email from before May 9, 2011. As discussed, your office will do the following as soon as possible:

- Confirm that Lerner's government laptop is secured;
- Ensure that the earliest possible network back-up tapes are available for review;
- Confirm that no back-up tapes have been recycled since the hold on recycling was instituted last spring;
- Conduct an analysis to determine whether any Lerner emails were inadvertently omitted from the collection, processing, or production to Clearwell; and
- Determine whether any missing emails can be retrieved.

Thank you for your help. Please let us know if any questions arise or if there is anything that we can do to help expedite any of the above.

Kate Duval
Counselor to the Commissioner
202-317-4066

From: Melcher Glenn J <Glenn.J.Melcher@irs.counsel.treas.gov>
Sent: Thursday, May 16, 2013 5:57 PM
To: Parry Jeffrey L; Lee Nancy J; Stahl Raymond J; Khoury Mireille; Marshall David L; Griffin Kenneth M; Giuliano Amy F; Jones Courtney D; Corwin Erik H; Sterner Christopher B; Wilkins William J; Grant Joseph H; Marks Nancy J; Lerner Lois G; Light Sharon P; Kindell Judith E; Paz Holly O; Lowe Justin; Malone Robert; Miller Thomas J; Richardson Virginia G; Fish David L; Seto Michael C; Thomas Cindy M; Grodnitzky Steven; Flax Nikole C; Miller Steven T; Spellmann Don R; Cook Janine; Judson Victoria A; Brown Susan D; Barre Catherine M; Bowling Steven F; Waddell Jon M; Abner Donna J; Herr Joseph R; Seok Stephen D; Bell Ronald D; Shafer John H; Hofacre Elizabeth L; Steele Mitchell P; Hull Carter C; Shoemaker Ronald J; Goehausen Hilary; Medina Moises C; Koester John J; Muthert Gary A; Chumney Tyler N; Vozne Jennifer L; Best Jennifer L; Kane Thomas J
Subject: IMPORTANT LITIGATION HOLD NOTICE
Importance: High

You are receiving this e-mail because you have been identified as a person who may have information potentially relevant to a TIGTA audit of criteria used to identify tax-exempt applications for review in which litigation is reasonably anticipated.

Information relevant to this matter will include all communications, documents drafted or reviewed, spreadsheets created or reviewed, notes from meetings, notes relating to specific taxpayers and/or applications, information requests to applicants, training materials, or any other items that relate to the process by which selection criteria were used to identify tax-exempt applications for advocacy organizations for review, including but not limited to Be On the Look Out, from January 1, 2008 to the present.

Under the Federal Rules of Civil Procedure, the Service has an obligation to search, identify, preserve, and isolate all paper records and electronically stored information (ESI) potentially relevant to the above-described matter. Generally, ESI includes, but is not limited to: all e-mail and attachments; word processing documents, spreadsheets, graphics and presentation documents, images, text files, and other information stored on hard drives or removable media (e.g., desktops, portable thumb drives and CDs), meta-data, databases, instant messages, transaction logs, audio and video files, voicemail, webpages, computer logs, text messages, and backup and archived material.

Although we do not need you to gather the ESI at this time, please ensure that steps are put in place so that both ESI information and any paper documents are preserved and not deleted. You may already have been contacted by IRS IT to begin the preservation process but that does not change your obligations to preserve information and to respond to this email. Under no circumstances should ESI information or paper documents be destroyed until this matter is completed or a litigation hold is lifted.

Please provide an e-mail response to this e-mail **within five business days**. In that e-mail, please also provide your SEID and indicate whether you created ESI of the following types while working on anything related to this matter.

- 1 E-mail and attachments
2. Microsoft Office Suite documents (e.g., Word documents, Excel spreadsheets, PowerPoint presentations)
3. ESI maintained in any other program, application, system or database – please specify.

Please indicate in the e-mail the timeframe during which the ESI was created and your post of duty at the time you created the ESI. If you maintain a particular folder in your e-mail box or in your document folders related to this matter, please include the name of the folder(s) in your e-mail. Also, please indicate whether any of the ESI is maintained offline, that is, on any external drive or storage device (e.g., CDs or flash drives). **If you have Grand Jury information of any kind on your computer or other storage device, please note that in your response.**

Also provide a brief description of the paper files or documents you have related to this case and an estimate of the quantity of such paper files or documents, if any.

Once located, the ESI needs to be preserved and isolated. Preservation of ESI means that the ESI cannot be altered or destroyed and must be maintained in its native format throughout the duration of this matter. This means that all normal retention schedules related to the ESI have been suspended until such time as the ESI is isolated. ESI is isolated when a mirror image of the ESI in its native format is created and moved to a separate drive, CD, or server for storage for the duration of the litigation. This office will coordinate with the Service's IT personnel to have your ESI isolated and preserved. You should expect IT personnel to need access to your computer and any removable storage devices when they collect the ESI. In the meantime, do not alter or destroy the ESI. **The destruction of ESI could result in judicial sanctions against the agency.** This office also will coordinate the collection of any related paper documents you may have.

In the event you received this e-mail and, after a search of your records, you determine that you were not involved in any way in this matter, please provide an e-mail response to this e-mail **within five business days** informing the sender you were not involved in the subject matter described above.

If you have questions related to this e-mail, please contact the undersigned immediately.

Glenn J. Melcher
Special Counsel for E-Discovery
IRS Office of Chief Counsel
(Procedure and Administration)
Telephone: 202-622-2366
Glenn.J.Melcher@irscounsel.treas.gov

From: Melcher Glenn J <Glenn.J.Melcher@irsounsel.treas.gov>
Sent: Wednesday, June 05, 2013 6:55 PM
To: Brown Christopher R; Day Crystal B; Schaber Dale T; Kastenbergl Elizabeth C; Fierro Gerardo; Heitbrink Jamie N; Krotine Jason A; Gaunce Jeffrey; Palmer Justin R; Allen Karen J; Craig Karen K; Payton Kevin W; O'Bannon Kimberly; Kerr Mike M; Kemble Richard J; Sanders Shawntel R; Adigun Sonya I; Sandifer Theodora; Brinkley Lynn A; Combs Peggy L; Bibb Kenneth B; Ng Faye H; Herring Donald Grant; Lewis Jovonnie; Perry Lori A; Young Carly; Lahey Victoria; Estes Janine L; Garuccio Jodi L; Phegley Joseph Kevin; Morris Annetta R; Jefferson-White Beverly J; Woo Gregory; Shankling Lonnie; Marquez Elizabeth J; Haley Philip H; Drexler Kenneth J; San Juan Eric A; Macnabb Jill; Olson Nina E; Weir Matthew A; Wall Judith M; Hartford Susan L; Feldman Janice R; Parry Jeffrey L; Lee Nancy J; Stahl Raymond J; Khoury Mireille; Marshall David L; Griffin Kenneth M; Giuliano Amy F; Jones Courtney D; Corwin Erik H; Sterner Christopher B; Wilkins William J; Grant Joseph H; Marks Nancy J; Lerner Lois G; Light Sharon P; Kindell Judith E; Paz Holly O; Lowe Justin; Malone Robert; Miller Thomas J; Richardson Virginia G; Fish David L; Seto Michael C; Thomas Cindy M; Grodnitzky Steven; Flax Nikole C; Miller Steven T; Spellmann Don R; Cook Janine; Judson Victoria A; Brown Susan D; Barre Catherine M; Bowling Steven F; Waddell Jon M; Abner Donna J; Herr Joseph R; Seok Stephen D; Bell Ronald D; Shafer John H; Hofacre Elizabeth L; Steele Mitchell P; Hull Carter C; Shoemaker Ronald J; Goehausen Hilary; Medina Moises C; Koester John J; Muthert Gary A; Chumney Tyler N; Vozne Jennifer L; Best Jennifer L; Kane Thomas J
Subject: UPDATED IMPORTANT LITIGATION HOLD NOTICE
Importance: High

This is an update to the the litigation hold notice you previously received (set forth below).

First, this update is to inform you that the Department of Justice has requested that we preserve documents and things potentially relevant to this matter in the same manner as and subject to the same potential sanctions as would apply if a federal grand jury subpoena had been served on the custodians of the materials at issue. This reinforces the obligations originally imposed upon you to preserve any information that may be relevant to this matter.

Second, if you used your home computer or other personal device to create or store any information potentially relevant to this matter, the same preservation obligations attach to any such information. If you did create or store any information on your home computer or any other personal device, please immediately respond to this email and provide details about that information.

Glenn J. Melcher
Special Counsel for E-Discovery
IRS Office of Chief Counsel
(Procedure and Administration)
Telephone: 202-622-2366
Glenn.J.Melcher@irsounsel.treas.gov

PRIOR LITIGATION HOLD NOTICE:

From: Melcher Glenn J
Sent: Tuesday, June 04, 2013 10:26 AM
To: Brown Christopher R; Day Crystal B; Schaber Dale T; Kastenbergl Elizabeth C; Fierro Gerardo; Heitbrink Jamie N; Krotine Jason A; Gaunce Jeffrey; Palmer Justin R; Allen Karen J; Craig Karen K; Payton Kevin W; Tucker Kimberly; Kerr Mike M; Kemble Richard J; Sanders Shawntel R; Adigun Sonya I; Sandifer Theodora

Subject: IMPORTANT LITIGATION HOLD

Importance: High

You are receiving this e-mail because you have been identified as a person who may have information potentially relevant to a TIGTA audit of criteria used to identify tax-exempt applications for review in which litigation is reasonably anticipated.

Information relevant to this matter will include all communications, documents drafted or reviewed, spreadsheets created or reviewed, notes from meetings, notes relating to specific taxpayers and/or applications, information requests to applicants, training materials, or any other items that relate to the process by which selection criteria were used to identify tax-exempt applications for advocacy organizations for review, including but not limited to Be On the Look Out, and including the actual review of any such applications, from January 1, 2008 to the present.

Under the Federal Rules of Civil Procedure, the Service has an obligation to search, identify, preserve, and isolate all paper records and electronically stored information (ESI) potentially relevant to the above-described matter. Generally, ESI includes, but is not limited to: all e-mail and attachments; word processing documents, spreadsheets, graphics and presentation documents, images, text files, and other information stored on hard drives or removable media (e.g., desktops, portable thumb drives and CDs), meta-data, databases, instant messages, transaction logs, audio and video files, voicemail, webpages, computer logs, text messages, and backup and archived material.

Although we do not need you to gather the ESI at this time, please ensure that steps are put in place so that both ESI information and any paper documents are preserved and not deleted. You may already have been contacted by IRS IT to begin the preservation process but that does not change your obligations to preserve information and to respond to this email. Under no circumstances should ESI information or paper documents be destroyed until this matter is completed or a litigation hold is lifted.

Please provide an e-mail response to this e-mail **within five business days**. In that e-mail, please also provide your SEID and indicate whether you created ESI of the following types while working on anything related to this matter.

- 1 E-mail and attachments
2. Microsoft Office Suite documents (e.g., Word documents, Excel spreadsheets, PowerPoint presentations)
3. ESI maintained in any other program, application, system or database – please specify.

Please indicate in the e-mail the timeframe during which the ESI was created and your post of duty at the time you created the ESI. If you maintain a particular folder in your e-mail box or in your document folders related to this matter, please include the name of the folder(s) in your e-mail. Also, please indicate whether any of the ESI is maintained offline, that is, on any external drive or storage device (e.g., CDs or flash drives). **If you have Grand Jury information of any kind on your computer or other storage device, please note that in your response.**

Also provide a brief description of the paper files or documents you have related to this case and an estimate of the quantity of such paper files or documents, if any.

Once located, the ESI needs to be preserved and isolated. Preservation of ESI means that the ESI cannot be altered or destroyed and must be maintained in its native format throughout the duration of

this matter. This means that all normal retention schedules related to the ESI have been suspended until such time as the ESI is isolated. ESI is isolated when a mirror image of the ESI in its native format is created and moved to a separate drive, CD, or server for storage for the duration of the litigation. This office will coordinate with the Service's IT personnel to have your ESI isolated and preserved. You should expect IT personnel to need access to your computer and any removable storage devices when they collect the ESI. In the meantime, do not alter or destroy the ESI. **The destruction of ESI could result in judicial sanctions against the agency.** This office also will coordinate the collection of any related paper documents you may have.

In the event you received this e-mail and, after a search of your records, you determine that you were not involved in any way in this matter, please provide an e-mail response to this e-mail **within five business days** informing the sender you were not involved in the subject matter described above.

If you have questions related to this e-mail, please contact the undersigned immediately.

Glenn J. Melcher
Special Counsel for E-Discovery
IRS Office of Chief Counsel
(Procedure and Administration)
Telephone: 202-622-2366
Glenn.J.Melcher@irsounsel.treas.gov

From: Melcher Glenn J
Sent: Wednesday, July 03, 2013 1:05 PM
To: &TEGE; &TEGE All Ees; 'cl.ees@irs.gov'; 'cl.mgrs@irs.gov'
Cc: Avrutine Melissa
Subject: IMPORTANT LITIGATION HOLD NOTICE

Importance: High

You are receiving this e-mail because the agency is involved in investigations related to a TIGTA audit of criteria used to identify tax-exempt applications for review for which litigation is reasonably anticipated. This e-mail is in addition to, and not separate from, any e-mail you may have previously received regarding this matter.

Information relevant to this matter will include all communications, documents drafted or reviewed, spreadsheets created or reviewed, notes from meetings, notes relating to specific taxpayers and/or applications, information requests to applicants, training materials, or any other items that relate to the process by which selection criteria were used to identify tax-exempt applications for advocacy organizations for review, including but not limited to Be On the Look Out ("BOLO") criteria and lists, and including the actual review of any such applications, from January 1, 2008 to the present.

Under the Federal Rules of Civil Procedure, the Service has an obligation to search, identify, preserve, and isolate all paper records and electronically stored information (ESI) potentially relevant to the above-described matter. Generally, ESI includes, but is not limited to: all e-mail and attachments; word processing documents, spreadsheets, graphics and presentation documents, images, text files, and other information stored on hard drives or removable media (e.g., desktops, portable thumb drives and CDs), meta-data, databases, instant messages, transaction logs, audio and video files, voicemail, webpages, computer logs, text messages, and backup and archived material.

Although we do not need you to gather the ESI at this time, please ensure that steps are put in place so that both ESI information and any paper documents are preserved and not deleted. Under no circumstances should ESI information or paper documents be destroyed until this matter is completed or a litigation hold is lifted. You will be notified when the litigation hold is lifted.

In addition, the Department of Justice has requested that we preserve documents and items potentially relevant to this matter in the same manner as and subject to the same potential sanctions as would apply if a federal grand jury subpoena had been served on the custodians of the materials at issue. This reinforces the obligations imposed upon you to preserve any information that may be relevant to this matter. **The destruction of ESI could result in judicial sanctions against the agency.**

Finally, you may have been previously contacted by the Office of Chief Counsel about this matter. **If you were not previously contacted by the Office of Chief Counsel and had involvement with this matter, please contact Melissa Avrutine (Melissa.Avrutine@ircounsel.treas.gov) immediately.** Otherwise, there is no need to respond to this e-mail; however, and in all events, you still must comply with the preservation obligations described in this e-mail if you have any material that may be related to the matter described above. If you have questions related to this e-mail, please contact the undersigned immediately.

IRS Office of Chief Counsel
(Procedure and Administration)
Telephone: 202-622-2366
Glenn.J.Melcher@irs.counsel.treas.gov

From: Avrutine Melissa
Sent: Monday, September 16, 2013 1:06 PM
To: &TEGE; Corwin Erik H
Subject: Important Litigation Hold

You are receiving this e-mail because the agency is involved in investigations related to a TIGTA audit of criteria used to identify tax-exempt applications for review for which litigation is reasonably anticipated. Additionally, a Congressional subpoena is currently pending in this matter. A copy of the subpoena is attached to this e-mail. This e-mail is in addition to, and not separate from, any e-mail you may have previously received regarding this matter.

Information relevant to this matter will include all communications, documents drafted or reviewed, spreadsheets created or reviewed, notes from meetings, notes relating to specific taxpayers and/or applications, information requests to applicants, training materials, or any other items that relate to the process by which selection criteria were used to identify tax-exempt applications for advocacy organizations for review. This includes, but is not limited to, Be On the Look Out and the actual review of any such applications. The general time frame for this information related to this investigation is from January 1, 2008 to the present.

Information specifically relevant to the Congressional subpoena include the following—

- documents related to the evaluation of tax-exempt applications and the examination of tax-exempt organizations from January 1, 2009 to August 2, 2013;
- communications between the IRS Office of Chief Counsel and employees at the Department of Treasury and employees of the Executive Office of the President related to tax-exempt organizations or applications for tax-exempt status from February 1, 2010 to August 2, 2013; and
- all communications received or sent between IRS Employees and an e-mail address with the domain name "who.eop.gov" from February 1, 2010 to August 2, 2013.

Under the Federal Rules of Civil Procedure, the Service has an obligation to search, identify, preserve, and isolate all paper records and electronically stored information (ESI) potentially relevant to the above-described matter. Generally, ESI includes, but is not limited to: all e-mail and attachments; word processing documents, spreadsheets, graphics and presentation documents, images, text files, and other information stored on hard drives or removable media (e.g., desktops, portable thumb drives and CDs), meta-data, databases, instant messages, transaction logs, audio and video files, voicemail, webpages, computer logs, text messages, and backup and archived material.

ESI related to this matter must be preserved. Preservation of ESI means that the ESI cannot be altered or destroyed and must be maintained in its native format throughout the duration of this matter. This means that all normal retention schedules related to the ESI have been suspended. **Although we do not need you to gather the ESI at this time, please ensure that steps are put in place so that both ESI and any paper documents are preserved and not deleted. Under no circumstances should ESI or paper documents be destroyed until this matter is completed or a litigation hold is lifted. You will be notified when the litigation hold is lifted. The destruction of ESI could result in judicial sanctions against the agency.**

In addition, the Department of Justice has requested that we preserve documents and items potentially relevant to this matter in the same manner as and subject to the same potential sanctions as would apply if a federal grand jury subpoena had been served on the custodians of the materials at issue. This reinforces the obligations imposed upon you to preserve any information that may be relevant to this matter.

If you used your home computer or other personal device to create or store any information potentially relevant to this matter, the same preservation obligations attach to any such information.

you may have been previously contacted by the Office of Chief Counsel about this matter. There is no need to respond to this e-mail; however, and in all events, you still must comply with the preservation obligations described in this e-mail if you have any material that may be related to the matter described above. If you have questions related to this e-mail, please contact the undersigned immediately. Further information is available on the following Web page: [Litigation Hold Home Page](#).



Melissa Avrutine
Attorney, Branch 6
Procedure & Administration
202-622-3847 (phone)
202-622-3614 (fax)

From: Avrutine Melissa
Sent: Monday, September 21, 2015 12:11 PM
To: Brantley Alesia D; Ronk Alice L; Giuliano Amy F; Morris Annetta R; McClernan Betty A; Nance Brad K; Williams Brooke; Musselman Bryan L; Young Carly; Campbell Carol A; Walker Charles A (DEL/MD); Claybough Cheryl P; Sterner Christopher B; Brown Christopher R; Jones Courtney D; Day Crystal B; Dragoo Daniel D; Cardon David C; Marshall David L; Fish David L; Marx Dawn R; Sharp Debbra M; Kant Deborah R; Gentry Diane M; Spellmann Don R; Herring Donald Grant; Abner Donna J; Zaebs Elizabeth A; Kastenber Elizabeth C; Marquez Elizabeth J; Hofacre Elizabeth L; San Juan Eric A; Corwin Erik H; Ng Faye H; Johnson Felicia; Fierro Gerardo; Collins Glenn W; Goehausen Hilary; Paz Holly O; Heitbrink Jamie N; Cook Janine; Estes Janine L; Krotine Jason A; Cullen Jeffery A; Gaunce Jeffrey; Parry Jeffrey L; Colson Jeffrey T; Best Jennifer L; Vozne Jennifer L; Macnabb Jill; Garuccio Jodi L; Barker John D; Waddell Jon M; Phegley Joseph Kevin; Herr Joseph R; Lewis Jovonnie; Kindell Judith E; Chen Julie; Palmer Justin R; Allen Karen J; Craig Karen K; Beckerich Karl J; Bibb Kenneth B; Drexler Kenneth J; Griffin Kenneth M; Bradley Kenneth W; Rinehart Kent H; Payton Kevin W; Ta Kieu T; Kitchens Kimberly L; O'Bannon Kimberly; Kummer-Mehas Kim M; Ghougasian Laurice A; Tuzynski Laurie; Williams Lavena B; Dry Lehman S; Gingerich Linda A; Shankling Lonnie; Perry Lori A; Brinkley Lynn A; McNaughton Mackenzie P; Morgan Marc J; Epps Mary A; Biss Meghan R; Partner Melaney J; Seto Michael C; Murray Michael; Eldridge Michelle L; Kerr Mike M; Khoury Mireille; Steele Mitchell P; Medina Moises C; Lee Nancy J; Heagney Nancy L; Todd Nancy M; Downing Nanette M; Flax Nikole C; Owens Noreen B; Lumpkins Noreen; Bender Paul D; Agosto Pedro A (TAS); Combs Peggy L; Smith Philip A; Haley Philip H; Stahl Raymond J; Hall Regeina D; Norton Renee Railey; Kemble Richard J; Choi Robert S; Malone Robert; Vance Roger W; Bell Ronald D; Neiser Rosemary; Sanders Shawntel R; Whitaker Sherry L; Adigun Sonya I; Seok Stephen D; Clarke Stephen M; Shellie Steven B; Bowling Steven F; Lough Sunita B; Brown Susan D; Deidrich Susan H; Cundiff Susan M; Maloney Susan; Ripperda Tamera L; Farr Teresa; Eppich Terri L; Lemons Terry L; Sandifer Theodora; Kane Thomas J; Adle Timothy P; Wallington Tonya; Chumney Tyler N; Nair Vasu T; Judson Victoria A; Lahey Victoria; Fusco Vincent A; Angner William J; Wilkins William J; Kerr William Y; Jefferson-White Beverly J; Muthert Gary A; Livingston Gerald C; Megosh Andrew F; Williams Melinda G; Salins Mary J; Park Nalee; Lieber Theodore R; Richardson Virginia G
Subject: RE: Litigation Hold Reminder--TIGTA audit of criteria used to identify tax-exempt applications for review and on-going congressional inquiries regarding treatment of tax exempt organizations by the IRS

In accordance with Chief Counsel Notice 2012-017, this reminder follows the litigation hold notification you received in the above-referenced matter in the spring/summer of 2013. Please be advised that this matter remains ongoing. To acknowledge receipt of this e-mail, please respond to this message within five business days providing a brief statement as to whether the ESI in your possession remains preserved and unaltered and where the information is stored. A copy of the litigation hold in this matter is below. Thank you for your cooperation.

You are receiving this e-mail because you have been identified as a person who may have information potentially relevant to a TIGTA audit of criteria used to identify tax-exempt applications for review and on-going congressional inquiries regarding treatment of tax exempt organizations by the IRS in which litigation is reasonably anticipated.

Information relevant to this matter includes all communications, documents drafted or reviewed, spreadsheets created or reviewed, notes from meetings, notes relating to specific taxpayers and/or applications, information requests to applicants, training materials, or any other items that relate to the process by which selection criteria were used to identify tax-exempt applications for advocacy organizations for review and/or examination. This includes, but is not limited to, Be On the Look Out and the actual review of any such applications. This also includes, but is not limited to, communications and documents that relate to responses to congressional inquiries and written materials and testimony related to congressional hearings regarding tax exempt organizations. The time frame for this information related to this investigation is from January 1, 2008 to the present.

Under the Federal Rules of Civil Procedure, the Service has an obligation to search, identify, preserve, and isolate all paper records and electronically stored information (ESI) potentially relevant to the above-described matter. Generally, ESI includes, but is not limited to: all e-mail and attachments; word processing documents, spreadsheets, graphics and presentation documents, images, text files, and other information stored on hard drives or removable media (e.g., desktops, portable thumb drives and CDs), meta-data, databases, instant messages, transaction logs, audio and video files, voicemail, webpages, computer logs, text messages, and backup and archived material.

In addition, the Department of Justice has requested that we preserve documents and items potentially relevant to this matter in the same manner as and subject to the same potential sanctions as would apply if a federal grand jury subpoena had been served on the custodians of the materials at issue. This reinforces the obligations imposed upon you to preserve any information that may be relevant to this matter.

Please provide an e-mail response to this e-mail **within five business days**. In that e-mail, please also provide your SEID and indicate whether you created ESI of the following types while working on anything related to this matter.

1. E-mail and attachments
2. Microsoft Office Suite documents (e.g., Word documents, Excel spreadsheets, PowerPoint presentations)
3. ESI maintained in any other program, application, system or database – please specify.

Please indicate in the e-mail the timeframe during which the ESI was created and your post of duty at the time you created the ESI. If you maintain a particular folder in your e-mail box or in your document folders related to this matter, please include the name of the folder(s) in your e-mail. Also, please indicate whether any of the ESI is maintained offline, that is, on any external drive or storage device (e.g., CDs or flash drives). **If you have Grand Jury information of any kind on your computer or other storage device, please note that in your response.**

Also provide a brief description of the paper files or documents you have related to this case and an estimate of the quantity of such paper files or documents, if any.

If you used your home computer or other personal device to create or store any information potentially relevant to this matter, the same preservation obligations attach to any such information. If you did create or store any information on your home computer or any other personal device, please indicate that in your response and provide details about that information.

Once located, the ESI needs to be preserved and isolated. Preservation of ESI means that the ESI cannot be altered or destroyed and must be maintained in its native format throughout the duration of this matter. This means that all normal retention schedules related to the ESI have been suspended until such time as the ESI is isolated. ESI is isolated when a mirror image of the ESI in its native format is created and moved to a separate drive, CD, or server for storage for the duration of the litigation. This office will coordinate with the Service's IT personnel to have your ESI isolated and preserved. You should expect IT personnel to need access to your computer and any removable storage devices when they collect the ESI. In the meantime, do not alter or destroy the ESI. **The destruction of ESI could result in judicial sanctions against the agency.** This office also will coordinate the collection of any related paper documents you may have.

In the event you received this e-mail and, after a search of your records, you determine that you were not involved in any way in this matter, please provide an e-mail response to this e-mail **within five business days** informing the sender you were not involved in the subject matter described above. Further information is available on the following Web page: [Litigation Hold Home Page](#).

DECLARATION OF JOHN ANDREW KOSKINEN

I, John Andrew Koskinen, do hereby declare as follows:

1. I am the Commissioner of the Internal Revenue Service (IRS), a position that I have held since December 23, 2013. In my capacity as Commissioner, I serve as the chief executive officer for the IRS. I am responsible for overseeing the administration of federal tax laws and for managing the operations of the IRS. I also oversee the planning, direction, and evaluation of IRS policies, programs, and performance.
2. By letter dated May 20, 2013, the United States Senate Committee of Finance (Committee) requested of then-Acting IRS Commissioner Steven Miller certain records and information in the possession of the IRS that are relevant to an investigation being conducted by the Committee relating to the use by the IRS of improper criteria to identify possible political activity by certain applicants for tax-exempt status.
3. Since May 20, 2013, the IRS, under the executive leadership of my predecessors as well as myself, has fully cooperated with the Committee's investigation. In response to the May 20, 2013 letter, as well as subsequent requests for documents and information made to the IRS by Committee investigators, the IRS conducted a broad and deliberate search for relevant records. Throughout the course of this search, the IRS discussed with the Committee various aspects of our document collection, review, and production, including the set of employees from whom records were collected, as well as the search terms used to identify potentially responsive electronic records. As a result of this search, the IRS identified and produced to the Committee approximately 1.3 million pages of documents responsive to the Committee's requests.
4. This document production consists of the following records: every document the IRS has identified for the time period from January 2009 through May 2013 (the "investigations period") pertaining to Internal Revenue Code Section 501(c)(4) determinations; every email the IRS has identified for the investigations period to which Lois Lerner was a party, regardless of subject matter; and every email the IRS has identified for the investigations period to which Holly Paz was a party, regardless of subject matter. There is one exception: The IRS has not produced to the Committee certain documents that it received from the Treasury Inspector General for Tax Administration (TIGTA), which TIGTA had forensically recovered from IRS disaster recovery tapes and other electronic equipment, as I understand that TIGTA has provided these documents directly to the Committee.

5. Should the IRS identify or locate any additional documents in its possession that are responsive to any of the Committee's requests for information related to its investigation, I will cause the IRS to promptly produce those documents to the Committee. Furthermore, the IRS will continue to provide the Committee with copies of all relevant documents that it produces to other committees of Congress conducting investigations into the same matter, including the House Ways and Means Committee, the House Oversight and Government Reform Committee, and the Senate Committee on Homeland Security and Governmental Affairs Permanent Subcommittee on Investigations.
6. I declare, under penalties of perjury, that the foregoing is true and accurate to the best of my knowledge and belief.

Executed the 1st day of July, 2015.



John A. Koskinen



COMMISSIONER

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

August 18, 2016

The Honorable Orrin Hatch
Chairman
Committee on Finance
United States Senate
Washington, DC 20510

The Honorable Ron Wyden
Ranking Member
Committee on Finance
United States Senate
Washington, DC 20510

Dear Chairman Hatch and Ranking Member Wyden:

Given your important role in ensuring the fairness of the tax system, I want to share with you some updates and clarifications regarding the Internal Revenue Service's Exempt Organizations area. In particular, this follows some media reports questioning the IRS's permanent elimination of the "Be On the Lookout" (BOLO) list following the recent decision by the Court of Appeals for the District of Columbia Circuit in *True the Vote, Inc. v. Internal Revenue Service, et al.* and *Linchpins of Liberty, et al. v. United States of America, et al.*, ___ F.3d ___, 2016 WL 4151231 (Aug. 5, 2016).

I want to emphasize in clear terms that the IRS Exempt Organizations area stopped the use of the BOLO lists over three years ago. I have repeatedly stated this point in congressional testimony and in public speeches. Other independent parties, including the Treasury Inspector General for Tax Administration in its March 2015 report (2015-10-025), have also confirmed this point. Since the initial TIGTA report (2013-10-053) on this issue in 2013, the IRS and its leadership team have been, and remain, absolutely committed to avoiding any selection and further review of potential political cases based on names and policy positions. There should be no doubt on this point, or regarding the continued, ongoing commitment by the IRS to be guided by the tax law and nothing else.

In its opinion, the D.C. Circuit held that the controversy regarding the IRS's processing of applications for tax-exempt status based on organizations' viewpoints was not moot. The D.C. Circuit's opinion noted the IRS's interim guidance issued in 2013 announcing that it was "suspending" the use of the BOLO lists. The Court construed this to mean that it was possible that the IRS had not conclusively eliminated the use of the BOLO lists.

I want to be clear that no matter how you say it – whether it's suspended, eliminated or ended – the IRS stopped this practice long ago and is committed to never using such a list or process ever again.

The IRS's 2013 interim guidance was formally incorporated into the Internal Revenue Manual (IRM) in 2014 by removing any reference to the use of a BOLO list. The agency also conducted significant training for employees on the new procedures. With these

actions, there should be no doubt that the use of BOLO lists has not just been temporarily suspended, it has been eliminated.

In 2015, TIGTA noted, "The IRS eliminated the use of Be On the Look Out (BOLO) listings, which TIGTA determined had contained inappropriate criteria regarding political advocacy cases. TIGTA conducted interviews with a random sample of employees, who confirmed that BOLOs or similar listings were no longer being used." However, the D.C. Circuit, while noting the existence of this report, did not consider it because the report was issued after the District Court's opinion in 2014 and, therefore, was not part of the formal court record before the D.C. Circuit.

The D.C. Circuit's opinion also focused on another point, noting that the applications of a few organizations engaged in litigation against the government are still pending. The applications of these organizations remain pending because the IRS has a longstanding policy of ordinarily suspending administrative action on a pending application if an issue involving the organization's exempt status is pending in litigation. After reading the D.C. Circuit's opinion, I have asked the IRS Exempt Organizations leadership to consult the Department of Justice and attempt to resolve the applications that remain pending by making determinations as soon as practicable.

I would note that, in 2013, the IRS offered an optional expedited approval process for organizations whose applications for tax-exempt status under Internal Revenue Code § 501(c)(4) had been pending for more than 120 days as of May 28, 2013. Currently, the applications of 142 of the 145 organizations, or 98 percent, included in the expedited process have been resolved one way or another. The applications of the remaining three organizations have not been resolved because they opted for litigation.

As I have testified on many occasions, the IRS has acted on all of the recommendations made by TIGTA in its May 2013 report describing the use of inappropriate criteria in identifying tax-exempt applications for review. In addition, the IRS acted on all of the recommendations made in the Senate Finance Committee's August 2015 report that are within our control. They include 15 of the report's 18 bipartisan recommendations and six of the recommendations in the separate sections of the report prepared by the Majority and Minority. These actions reflect that the IRS is committed to assuring that no organization applying for tax-exempt status is ever subject to inappropriate selection criteria, information requests or delays.

This is part of a larger, ongoing effort to ensure the IRS runs its tax administration efforts in a fair manner for the nation's taxpayers. This has been a central component of my work as Commissioner, and fairness remains a cornerstone commitment for the IRS.

I hope this information is helpful. I am also sending this letter to Representative Brady, Representative Chaffetz, Representative Cummings, and Representative Levin. If you have further questions, we are happy to discuss them with you to the degree we can given the ongoing litigation. You may contact me or a member of your staff may contact Leonard Oursler, Director, Legislative Affairs, at (202) 317-6985.

Sincerely,

A handwritten signature in cursive script that reads "John A. Koskinen". The signature is written in black ink and is centered on the page.

John A. Koskinen



COMMISSIONER

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

August 18, 2016

The Honorable Kevin Brady
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

The Honorable Sander Levin
Ranking Member
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Brady and Ranking Member Levin:

Given your important role in ensuring the fairness of the tax system, I want to share with you some updates and clarifications regarding the Internal Revenue Service's Exempt Organizations area. In particular, this follows some media reports questioning the IRS's permanent elimination of the "Be On the Lookout" (BOLO) list following the recent decision by the Court of Appeals for the District of Columbia Circuit in *True the Vote, Inc. v. Internal Revenue Service, et al.* and *Linchpins of Liberty, et al. v. United States of America, et al.*, ___ F.3d ___, 2016 WL 4151231 (Aug. 5, 2016).

I want to emphasize in clear terms that the IRS Exempt Organizations area stopped the use of the BOLO lists over three years ago. I have repeatedly stated this point in congressional testimony and in public speeches. Other independent parties, including the Treasury Inspector General for Tax Administration in its March 2015 report (2015-10-025), have also confirmed this point. Since the initial TIGTA report (2013-10-053) on this issue in 2013, the IRS and its leadership team have been, and remain, absolutely committed to avoiding any selection and further review of potential political cases based on names and policy positions. There should be no doubt on this point, or regarding the continued, ongoing commitment by the IRS to be guided by the tax law and nothing else.

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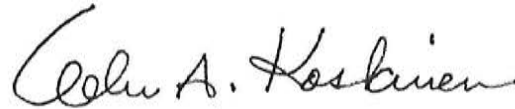
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This is part of a larger, ongoing effort to ensure the IRS runs its tax administration efforts in a fair manner for the nation's taxpayers. This has been a central component of my work as Commissioner, and fairness remains a cornerstone commitment for the IRS.

I hope this information is helpful. I am also sending this letter to Representative Chaffetz, Representative Cummings, Senator Hatch, and Senator Wyden. If you have further questions, we are happy to discuss them with you to the degree we can given the ongoing litigation. You may contact me or a member of your staff may contact Leonard Oursler, Director, Legislative Affairs, at (202) 317-6985.

Sincerely,

A handwritten signature in cursive script that reads "John A. Koskinen". The signature is written in dark ink and is centered on the page.

John A. Koskinen



COMMISSIONER

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

August 18, 2016

The Honorable Jason Chaffetz
Chairman
Committee on Oversight and
and Government Reform
U.S. House of Representatives
Washington, DC 20515

The Honorable Elijah Cummings
Ranking Member
Committee on Oversight
and Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Chaffetz and Ranking Member Cummings:

Given your important role in ensuring the fairness of the tax system, I want to share with you some updates and clarifications regarding the Internal Revenue Service's Exempt Organizations area. In particular, this follows some media reports questioning the IRS's permanent elimination of the "Be On the Lookout" (BOLO) list following the recent decision by the Court of Appeals for the District of Columbia Circuit in *True the Vote, Inc. v. Internal Revenue Service, et al.* and *Linchpins of Liberty, et al. v. United States of America, et al.*, ___ F.3d ___, 2016 WL 4151231 (Aug. 5, 2016).

I want to emphasize in clear terms that the IRS Exempt Organizations area stopped the use of the BOLO lists over three years ago. I have repeatedly stated this point in congressional testimony and in public speeches. Other independent parties, including the Treasury Inspector General for Tax Administration in its March 2015 report (2015-10-025), have also confirmed this point. Since the initial TIGTA report (2013-10-053) on this issue in 2013, the IRS and its leadership team have been, and remain, absolutely committed to avoiding any selection and further review of potential political cases based on names and policy positions. There should be no doubt on this point, or regarding the continued, ongoing commitment by the IRS to be guided by the tax law and nothing else.

In its opinion, the D.C. Circuit held that the controversy regarding the IRS's processing of applications for tax-exempt status based on organizations' viewpoints was not moot. The D.C. Circuit's opinion noted the IRS's interim guidance issued in 2013 announcing that it was "suspending" the use of the BOLO lists. The Court construed this to mean that it was possible that the IRS had not conclusively eliminated the use of the BOLO lists.

I want to be clear that no matter how you say it – whether it's suspended, eliminated or ended – the IRS stopped this practice long ago and is committed to never using such a list or process ever again.

The IRS's 2013 interim guidance was formally incorporated into the Internal Revenue Manual (IRM) in 2014 by removing any reference to the use of a BOLO list. The agency

also conducted significant training for employees on the new procedures. With these actions, there should be no doubt that the use of BOLO lists has not just been temporarily suspended, it has been eliminated.

In 2015, TIGTA noted, "The IRS eliminated the use of Be On the Look Out (BOLO) listings, which TIGTA determined had contained inappropriate criteria regarding political advocacy cases. TIGTA conducted interviews with a random sample of employees, who confirmed that BOLOs or similar listings were no longer being used." However, the D.C. Circuit, while noting the existence of this report, did not consider it because the report was issued after the District Court's opinion in 2014 and, therefore, was not part of the formal court record before the D.C. Circuit.

The D.C. Circuit's opinion also focused on another point, noting that the applications of a few organizations engaged in litigation against the government are still pending. The applications of these organizations remain pending because the IRS has a longstanding policy of ordinarily suspending administrative action on a pending application if an issue involving the organization's exempt status is pending in litigation. After reading the D.C. Circuit's opinion, I have asked the IRS Exempt Organizations leadership to consult the Department of Justice and attempt to resolve the applications that remain pending by making determinations as soon as practicable.

I would note that, in 2013, the IRS offered an optional expedited approval process for organizations whose applications for tax-exempt status under Internal Revenue Code § 501(c)(4) had been pending for more than 120 days as of May 28, 2013. Currently, the applications of 142 of the 145 organizations, or 98 percent, included in the expedited process have been resolved one way or another. The applications of the remaining three organizations have not been resolved because they opted for litigation.

As I have testified on many occasions, the IRS has acted on all of the recommendations made by TIGTA in its May 2013 report describing the use of inappropriate criteria in identifying tax-exempt applications for review. In addition, the IRS acted on all of the recommendations made in the Senate Finance Committee's August 2015 report that are within our control. They include 15 of the report's 18 bipartisan recommendations and six of the recommendations in the separate sections of the report prepared by the Majority and Minority. These actions reflect that the IRS is committed to assuring that no organization applying for tax-exempt status is ever subject to inappropriate selection criteria, information requests or delays.

This is part of a larger, ongoing effort to ensure the IRS runs its tax administration efforts in a fair manner for the nation's taxpayers. This has been a central component of my work as Commissioner, and fairness remains a cornerstone commitment for the IRS.

I hope this information is helpful. I am also sending this letter to Representative Brady, Representative Levin, Senator Hatch, and Senator Wyden. If you have further questions, we are happy to discuss them with you to the degree we can given the ongoing litigation. You may contact me or a member of your staff may contact Leonard Oursler, Director, Legislative Affairs, at (202) 317-6985.

Sincerely,

A handwritten signature in cursive script that reads "John A. Koskinen". The signature is written in black ink and is centered on the page.

John A. Koskinen