



*Fiscal Year 2016 Statutory  
Review of Compliance With  
the Freedom of Information Act*

**September 1, 2016**

**Reference Number: 2016-30-072**

This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.

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## HIGHLIGHTS

### FISCAL YEAR 2016 STATUTORY REVIEW OF COMPLIANCE WITH THE FREEDOM OF INFORMATION ACT

## Highlights

**Final Report issued on  
September 1, 2016**

Highlights of Reference Number: 2016-30-072 to the Internal Revenue Service Director, Privacy, Governmental Liaison and Disclosure.

### IMPACT ON TAXPAYERS

The IRS must ensure that the provisions of the Freedom of Information Act (FOIA) and Internal Revenue Code (I.R.C.) Section (§) 6103 are continually followed. Errors can violate taxpayer rights and result in improper disclosures of taxpayer information.

### WHY TIGTA DID THE AUDIT

TIGTA is required to conduct periodic audits to determine whether the IRS properly denied written requests for taxpayer information pursuant to the FOIA exemption 5 United States Code (U.S.C.) § 552(b)(7) and I.R.C. § 6103. The overall objective of this audit was to determine whether the IRS improperly withheld information requested by taxpayers in writing based on the FOIA exemption 5 U.S.C. § 552(b)(7) or I.R.C. § 6103 or by replying that responsive records were not available or did not exist. This included determining whether these requests were processed timely and whether the IRS erroneously disclosed sensitive taxpayer information when responding to written FOIA or I.R.C. § 6103 information requests.

TIGTA also evaluated the processing of I.R.C. § 6104 information requests in the Tax Exempt and Government Entities Division related to applications for tax-exempt status and information returns to determine whether the requested information was appropriately provided or if sensitive information was erroneously disclosed.

### WHAT TIGTA FOUND

TIGTA reviewed a statistically valid sample of 60 information requests from a population of 2,720 FOIA requests and found seven (11.7 percent) in which taxpayer rights may have been violated. Although the IRS properly released thousands of pages from these documents, taxpayer rights may have been violated because these information requests had some information erroneously withheld. In addition, TIGTA selected a statistically valid sample of 55 I.R.C. § 6103 information requests and found that the IRS adequately provided information to the requestors in all of the requests reviewed.

Even though the number of backlogged FOIA requests increased for the third straight year, TIGTA found that responses to all sampled FOIA requests were timely. While there are no statutory time frames within which the IRS must respond to taxpayers' I.R.C. § 6103 information requests, the IRS requires disclosure specialists to provide a status report to the requestors if their requests are not completed within 30 business days. For nine (16.4 percent) of the 55 I.R.C. § 6103 information requests reviewed, the IRS took more than 30 business days to provide a status report to the requestor. According to the IRS, the cases TIGTA identified in which the requestors were not timely informed of the status of their requests could have resulted from an oversight by the caseworkers when completing their reviews.

Additionally, disclosure specialists inadvertently disclosed sensitive taxpayer information in two instances when responding to FOIA requests. Lastly, based on a judgmental sample of 19 I.R.C. § 6104 information requests received by the Tax Exempt and Government Entities Division, TIGTA found that the information requests were processed timely and did not find any sensitive information that was inadvertently disclosed.

### WHAT TIGTA RECOMMENDED

TIGTA made no recommendations in this report. However, key IRS officials reviewed this report prior to its issuance and agreed with the facts and conclusions presented.



TREASURY INSPECTOR GENERAL  
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

September 1, 2016

**MEMORANDUM FOR** DIRECTOR, PRIVACY, GOVERNMENTAL LIAISON, AND  
DISCLOSURE

**FROM:** Michael E. McKenney  
Deputy Inspector General for Audit

**SUBJECT:** Final Audit Report – Fiscal Year 2016 Statutory Review  
of Compliance With the Freedom of Information Act  
(Audit # 201630008)

This report presents the results of our review to determine whether the Internal Revenue Service (IRS) improperly withheld information requested by taxpayers in writing based on the Freedom of Information Act (FOIA) exemption 5 United States Code Section (§) 552(b)(7) or Internal Revenue Code (I.R.C.) § 6103 or by replying that responsive records were not available or did not exist. This included determining whether these requests were processed timely and whether the IRS erroneously disclosed sensitive taxpayer information when responding to written FOIA or I.R.C. § 6103 information requests. We also evaluated the processing of I.R.C. § 6104 information requests in the Tax Exempt and Government Entities Division related to applications for tax-exempt status and information returns to determine whether the requested information was appropriately provided or if sensitive information was erroneously disclosed.<sup>1</sup>

The Treasury Inspector General for Tax Administration is required to conduct periodic audits to determine whether the IRS properly denied written requests for taxpayer information. We are also required to include the results in one of our Semiannual Reports to Congress. This is our seventeenth review of denials of FOIA and I.R.C. § 6103 information requests. This review is included in our Fiscal Year 2016 Annual Audit Plan and addresses the major management challenge of Taxpayer Protection and Rights.

Management's complete response to the draft report is included as Appendix VI.

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<sup>1</sup> I.R.C. § 6104 relates to the IRS disclosure of information required from certain exempt organizations and certain trusts.



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If you have any questions, please contact me or Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations).



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*Abbreviations*

AFOIA	Automated Freedom of Information Act
DQMS	Disclosure Quality Measurement System
FOIA	Freedom of Information Act
I.R.C.	Internal Revenue Code
IRS	Internal Revenue Service
TE/GE	Tax Exempt and Government Entities
TIGTA	Treasury Inspector General for Tax Administration
U.S.C.	United States Code



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## *Background*

### **Statutory requirements**

The Internal Revenue Code (I.R.C.) requires the Treasury Inspector General for Tax Administration (TIGTA) to:

*Conduct periodic audits of a statistically valid sample of the total number of determinations made by the Internal Revenue Service to deny written requests to disclose information to taxpayers on the basis of section 6103 of this title or section 552(b)(7) of title 5, United States Code.<sup>1</sup>*

The two primary laws that govern the types of requests for information reviewed in this audit are the Freedom of Information Act (FOIA) and I.R.C. § 6103.

The FOIA requires Federal Government agencies to make records available to the public upon request unless specifically exempted.<sup>2</sup> Information that is “specifically exempted from disclosure by statute” is one of the exemptions. I.R.C. Section (§) 6103 is an example of such a statute; it protects the confidentiality of tax returns and return information. Records or information compiled for law enforcement purposes are also exempt from disclosure under the FOIA. Section 552(b)(7) provides the following exception to the FOIA’s general disclosure rules by allowing nondisclosure of records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

- A) Could reasonably be expected to interfere with enforcement proceedings.
- B) Would deprive a person of a right to a fair trial or an impartial adjudication.
- C) Could reasonably be expected to constitute an unwarranted invasion of personal privacy.
- D) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source.

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<sup>1</sup> I.R.C. § 7803.

<sup>2</sup> 5 United States Code (U.S.C.) § 552.





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- E) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.
- F) Could reasonably be expected to endanger the life or physical safety of any individual.

I.R.C. § 6103 protects the confidentiality of taxpayers' returns and return information. However, it also provides for certain exceptions, such as allowing the taxpayer, or a person designated by the taxpayer, to request and receive the taxpayer's specific documents and information.

### **Internal Revenue Service (IRS) processing and reporting of FOIA requests**

Effective June 2011, the Office of the Deputy Commissioner for Operations Support (through its Office of Privacy, Governmental Liaison, and Disclosure) became responsible for ensuring the IRS's timely compliance with the FOIA and I.R.C. § 6103. The Disclosure Office within the Office of Privacy, Governmental Liaison, and Disclosure sets IRS policy and issues instructions, guidelines, and procedures to the various IRS functions to ensure compliance with the disclosure statutes.

The Disclosure Office processes FOIA and I.R.C. § 6103 information requests received by the IRS. In the *Department of the Treasury 2015 Freedom of Information Act Annual Report to the Attorney General of the United States*, the IRS reported that a total of 10,416 FOIA requests were processed. This is consistent with the 10,415 FOIA requests processed on the Automated Freedom of Information Act (AFOIA) system during Fiscal Year 2015.<sup>3</sup>

In addition, the report stated that the IRS denied or partially denied information to requestors in 2,825 (27.1 percent) of the 10,416 FOIA requests processed in Fiscal Year 2015. This was a small decrease from the 30.6 percent reported in Fiscal Year 2014. The report further stated that the IRS advised requestors that there were no records responsive to requests in 983 (9.4 percent) of the 10,416 FOIA requests. This was an increase compared to the 6.4 percent reported in the prior fiscal year. The remaining information requests were either granted in full or closed for miscellaneous reasons, such as the request was improper or had been withdrawn.

### **Audit limitations and standards**

Individual IRS disclosure offices or other IRS offices having custody of taxpayer records also process written requests for information made under I.R.C. § 6103. Although TIGTA is required to audit denials of taxpayer requests for information made pursuant to I.R.C. § 6103, the IRS

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<sup>3</sup> The AFOIA application system meets all Office of Privacy, Governmental Liaison and Disclosure business requirements including data capture for processing disclosure casework under I.R.C. § 6103 and the FOIA. A fiscal year is any yearly accounting period, regardless of its relationship to a calendar year. The Federal Government's fiscal year begins on October 1 and ends on September 30.



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only tracks on its AFOIA system I.R.C. § 6103 information requests worked by its Disclosure Office employees. Requests made under I.R.C. § 6103 that were received and processed by IRS offices, other than the Disclosure Office, are not controlled on the AFOIA system or otherwise inventoried in a centralized location. Consequently, the IRS does not know the volume of all these requests; however, this volume of uncontrolled inventory may be substantially larger than what the Disclosure Office tracks on its AFOIA system.

As a result, for this audit we statistically sampled only the I.R.C. § 6103 information requests processed directly by the IRS's Disclosure Office and tracked on the AFOIA system. We reviewed only those information requests processed by the Disclosure Office that were denied, partially denied, or had no responsive records during the period of October 1, 2014, through September 30, 2015. However, this year we also judgmentally sampled I.R.C. § 6104 information requests in the Tax Exempt and Government Entities (TE/GE) Division related to applications for tax-exempt status and information returns.<sup>4</sup> We will continue to evaluate other IRS offices and functions that process these types of information requests in future reviews.

This review was performed with information obtained from the Disclosure Office within the Office of Privacy, Governmental Liaison, and Disclosure and at the Determinations Unit in the TE/GE Division's Rulings and Agreements function in Cincinnati, Ohio, during the period September 2015 through May 2016. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.

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<sup>4</sup> A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population.



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*Results of Review*

**Disclosure Specialists Did Not Always Properly Respond to Freedom of Information Act Requests**

The IRS was not consistent in its service to individuals who requested information under the FOIA based on the statistically valid sample of information requests reviewed. Specifically, disclosure specialists improperly withheld information on seven (11.7 percent) of the 60 FOIA requests reviewed. The seven cases we identified included improperly withheld information related to the taxpayers' own cases with the IRS, *e.g.*, bank statements, examination materials, and other tax return information. Although the IRS properly released thousands of pages from these documents, taxpayer rights still may have been violated because these information requests had some information erroneously withheld. According to Disclosure Office management, the FOIA cases we identified with improperly withheld information could have resulted from an oversight by the caseworker when completing the review or management in their reviews of the case files. When projected to the population of 2,720 FOIA requests closed during the period October 1, 2014, through September 30, 2015, the sample results indicate that approximately 317 FOIA requests may have had information erroneously withheld.<sup>5</sup> See Appendix IV for an explanation of this projection.

In addition, we did not find any instances of information being erroneously withheld in the 55 I.R.C. § 6103 information requests reviewed. Although we did not identify any issues with information being erroneously withheld in the sampled I.R.C. § 6103 information requests, the IRS must ensure that the provisions of the FOIA and I.R.C. § 6103 are continually followed. Errors can violate taxpayer rights and result in improper disclosures of taxpayer information. Figure 1 shows the audit results for Fiscal Years 2011 through 2015.<sup>6</sup>

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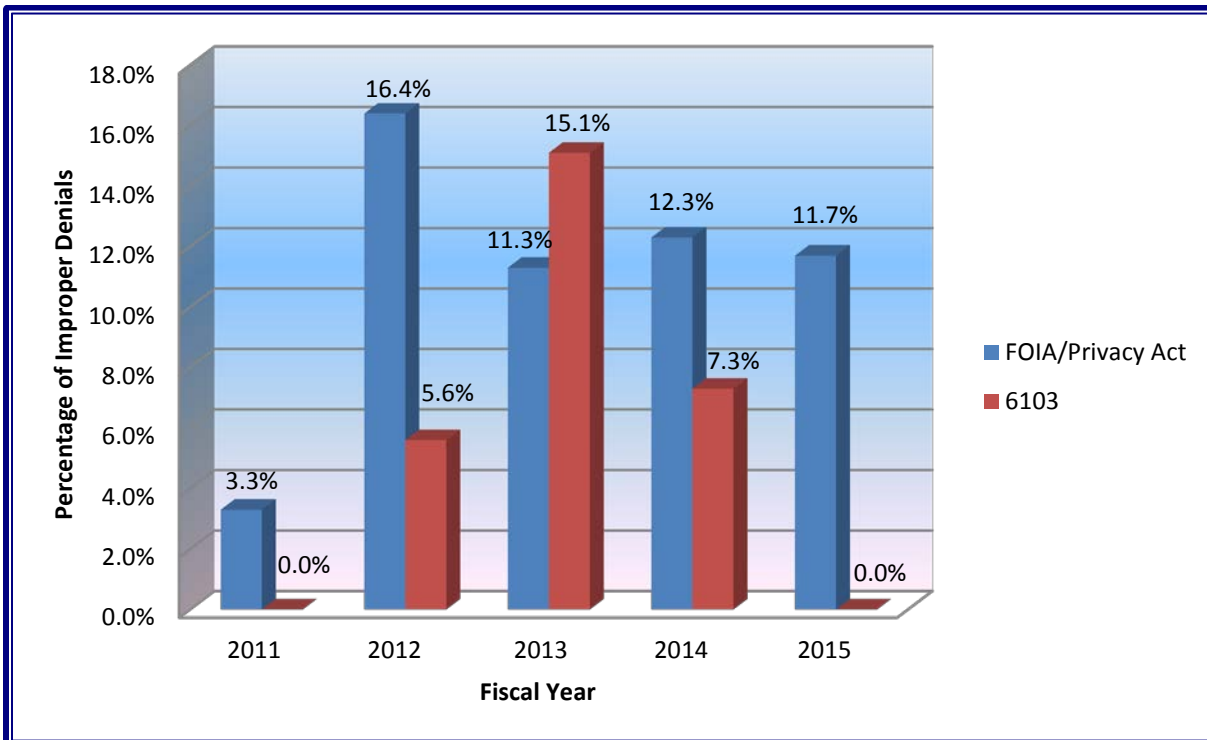
<sup>5</sup> The population of 2,720 is a subset of the 10,415 records discussed earlier. They are records with a § 552(b)(7) exemption and a disposition of either denied, partially denied, or no responsive records were available. The point estimate projection is based on a two-sided 90 percent confidence interval, a  $\pm 6.8$  percent precision rate, and a 11.7 percent error rate. We are 90 percent confident that the point estimate is between 132 and 502 information requests.

<sup>6</sup> The population consists of 434 I.R.C. § 6103 information requests closed during the period October 1, 2014, through September 30, 2015. We researched all 434 information requests to identify cases with a disposition of denied, partially denied, or no responsive records were available for our sample of 55 I.R.C. §§ 6103 (c) and (e) information requests. The 55 requests were selected out of 68 I.R.C. §§ 6103(c) and (e) information requests that met our sampling criteria. Out of those 55 information requests, there were no exceptions.



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Figure 1: Improper FOIA and I.R.C. § 6103 Information Request Withholdings



Source: TIGTA audit results for Fiscal Years 2011 through 2015. Percentages were rounded to the nearest tenth.

The IRS relies on its disclosure personnel to ensure that information requests under the FOIA and I.R.C. § 6103 are properly handled in accordance with laws and regulations. Internal Revenue Manual 11.3 provides guidance to disclosure personnel nationwide.<sup>7</sup> Procedures throughout the Internal Revenue Manual instruct personnel to properly document in case files all aspects of their work during the receipt, control, research, response, and closing phases of the requests. This documentation is important because it provides the principal evidence that procedures were followed as well as provides the foundation for other control processes such as management reviews.

Disclosure Office management developed the Disclosure Quality Measurement System (DQMS) to monitor the quality of all Disclosure Office work nationwide. The DQMS element that corresponds to FOIA and I.R.C. § 6103 information requests is *Accuracy – Proper Determination Made on Releasibility*. This element evaluates whether a caseworker:

- Conducted appropriate and adequate research for all responsive records.
- Located and considered for release all responsive records.

<sup>7</sup> Contains the policies, procedures, instructions, guidelines, and delegations of authority which direct the operation and administration of the IRS. Topics include tax administration, personnel and office management, and others.



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- Disclosed responsive records to the extent legally possible.
- Decided to withhold records based on the correct interpretation and application of exemptions.
- Released all records that were within the scope of the request.

Each type of disclosure request is evaluated individually on the DQMS; therefore, FOIA requests, I.R.C. § 6103(c) information requests (disclosure of returns and return information to designee of taxpayer), and I.R.C. § 6103(e) information requests (disclosure to persons with a material interest) have their own DQMS performance results. The DQMS performance results for this element, as well as a Disclosure Office operational review of the DQMS results, are generally consistent with those determined by TIGTA for the Fiscal Year 2015 FOIA sample. Figure 2 compares the cumulative DQMS and TIGTA performance results for this element at the end of Fiscal Year 2015.

**Figure 2: Fiscal Year 2015 Comparison of the DQMS and TIGTA Accuracy Results for FOIA and I.R.C. § 6103 Information Requests**

Type of Request	Met	Not Met	Not Applicable	Percentage Met <sup>8</sup>
<b>DQMS FOIA/Privacy Act</b>	332	57	183	85.3%
<b>DQMS I.R.C. § 6103(c)</b>	54	9	68	85.7%
<b>DQMS I.R.C. § 6103(e)</b>	56	11	47	83.6%
<b>TIGTA FOIA</b>	53	7	0	88.3%
<b>TIGTA I.R.C. § 6103</b>	55	0	0	100.0%

*Source: IRS DQMS Reports and TIGTA audit tests conducted during this review. Percentages were rounded to the nearest tenth.*

The Office of Privacy, Governmental Liaison, and Disclosure’s mission is “to preserve and enhance public confidence by advocating for the protection and proper use of identity information.” However, other than occasionally performing reviews of some of the other IRS functions that process I.R.C. § 6103 information requests (such as the Return and Income Verifications Services program), the Disclosure Office does not have direct control over how these requests are processed, nor does it regularly assess the quality of disclosure responses throughout the IRS. Because the Disclosure Office is responsible for establishing rules for the access to IRS records and the protection of tax information within the IRS, we recommended in our Fiscal Year 2015 review that the Disclosure Office develop and implement a formalized plan to periodically review the quality and processing of I.R.C. § 6103 information requests worked

<sup>8</sup> Formula used by the IRS to calculate the Percentage Met is column Met divided by columns Met plus Not Met (Met / [Met + Not Met]).



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in the other IRS offices and functions.<sup>9</sup> Office of Privacy, Governmental Liaison, and Disclosure management agreed that quality reviews of the processing of I.R.C. § 6103 information requests completed by other offices and functions is a part of their responsibility. They agreed to conduct a risk-based assessment and, upon completion of that assessment, evaluate the findings and develop a plan, within the constraints of available resources, to periodically review and document the IRS's compliance with I.R.C. § 6103. This corrective action is scheduled to be implemented in September 2016, and we will follow up on this issue in next year's review.

### **Inadvertent Disclosures by Disclosure Specialists Have Been Reduced**

Casework is reviewed for any inadvertent disclosures during operational and regular managerial reviews. The DQMS also has procedures in place to review casework for inadvertent disclosures and to report those disclosures when discovered.

As a result of our findings in a previous report, Office of Privacy, Governmental Liaison, and Disclosure management developed and implemented a mandatory Disclosure Technical Update training session for all disclosure specialists and managers to review the various types of inadvertent disclosures and stress the need for a careful review of documents prior to release to avoid unauthorized disclosures. The Disclosure Technical Update includes a review of the procedures for reporting any such disclosures. Disclosure Office managers are now required to certify on an annual basis that their employees reviewed this training. The training session is also a permanent part of the disclosure orientation training for new disclosure employees. We found that 133 disclosure specialists and managers had completed this training as of March 2016. A training attendance report showed there were 12 employees who were absent, but Disclosure Office management stated that all employees have since received the training.

This training seems to be effective because during our Fiscal Year 2016 review we identified only two instances in which disclosure specialists inadvertently disclosed sensitive taxpayer information in response to FOIA requests. This is less than the three inadvertent disclosures we found during last fiscal year's review. These inadvertent disclosures included names in a business report, a bank account number, and a credit score.

Disclosure Office management stated that these inadvertent disclosures could have resulted from several contributing factors, such as an oversight by:

- The caseworker when completing the review of responsive records.
- Management in the review of the case files.

The timely identification and reporting of all inadvertent unauthorized disclosures of sensitive information is critical to quickly initiate any needed investigation or recovery of information. A

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<sup>9</sup> TIGTA, Ref. No. 2015-30-084, *Fiscal Year 2015 Statutory Review of Compliance With the Freedom of Information Act* p 7 (Sept. 2015).



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prompt report decreases the possibility that the information may be compromised and used to perpetuate identity theft or other forms of harm to taxpayers or the Federal Government. Disclosure Office management addressed the disclosures with the disclosure specialists and their managers who processed and reviewed the requests we identified. Disclosure Office management responded that no action was required as the information inadvertently disclosed was the taxpayers' but was outside the scope of the request. The taxpayer did not need to be notified.

### **Freedom of Information Act Requests Were Responded to Timely**

The IRS responded timely to all 60 Fiscal Year 2015 FOIA requests in our statistical sample. The FOIA requires Federal Government agencies to respond within 20 business days of the receipt of an information request or, if the 20 business days are not sufficient, to notify the requestor of the reason why the request cannot or will not be filled. If they are unable to respond to an information request within the time limit, Federal Government agencies are required to immediately notify the requestor of this fact, of the reasons why they are unable to respond, and of the requestor's right to appeal.

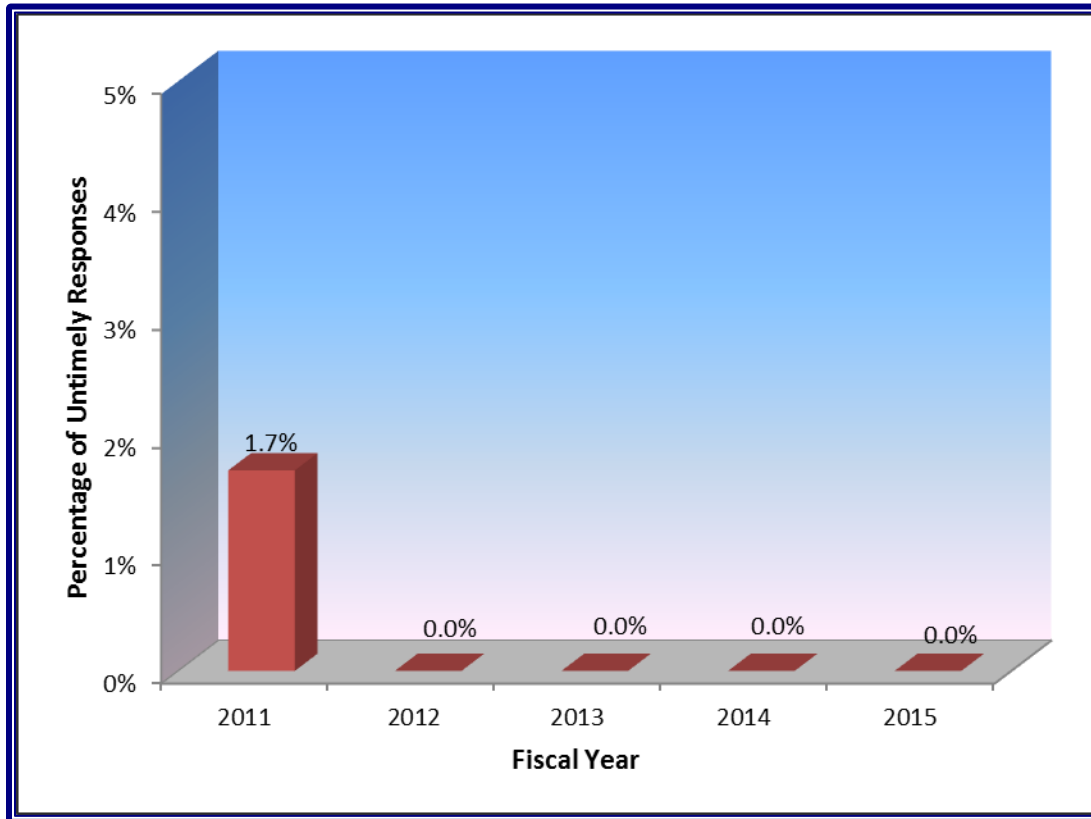
The due date for a FOIA request is revised when the IRS sends a letter to the requestor exercising its right for an automatic 10-business-day extension and/or requesting a voluntary extension in excess of the initial statutory 20-business-day period. The requestor must agree to the voluntary extension, and the IRS must notify the requestor of its ability to respond by the end of the extension period. A FOIA request is considered untimely when the IRS responds to the requestor after the due date.

Since Fiscal Year 2001, the IRS has made significant improvement in the timeliness of its responses to FOIA requests. Our audits, including this review, indicate that the percentage of untimely responses was zero for four of the last five years. The results of our last four audits found that the IRS has remained relatively consistent in providing responses to requestors within the statutory time periods. Figure 3 shows the percentages of untimely information requests we have reported since Fiscal Year 2011.



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**Figure 3: Comparison of Untimely FOIA Request Responses**



Source: TIGTA audit results for Fiscal Years 2011 through 2015. Percentages were rounded to the nearest tenth.

**Status Reports Were Not Always Timely Sent to Taxpayers Submitting Internal Revenue Code Section 6103 Information Requests**

Although there are statutory time frames in which the IRS must respond to FOIA requests, there are no such requirements for responding to I.R.C. § 6103 information requests. However, in response to our Fiscal Year 2013 report, Office of Privacy, Governmental Liaison, and Disclosure management established guidelines for all disclosure personnel to contact the requestor and either provide an interim response or submit a status report within 30 business days.<sup>10</sup> However, in our review of 55 I.R.C. § 6103 information requests, we identified nine (16.4 percent) requests in which the requestor did not receive a status update within 30 business days.

<sup>10</sup> TIGTA, Ref. No. 2013-30-109, *Fiscal Year 2013 Statutory Review of Compliance With the Freedom of Information Act* (Sept. 2013).





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In a memorandum dated November 7, 2013, all disclosure caseworkers were advised of the following procedural change:

*Beginning immediately, Disclosure personnel processing requests pursuant to I.R.C. § 6103(e) and 6103(c) will ensure that an interim response letter or a status report is initiated by the 30th business date from the IRS received date. All interim letters or status reports must inform the requester when to expect a final response and must provide a contact name and number for additional inquiries. If a final response is not provided by the expected final response date of the initial interim response letter or status report, an additional status report must be provided every 30 business days until a final response is issued.*

These timeliness procedures were also included in the applicable disclosure sections of the Internal Revenue Manual and are included as an evaluative DQMS and managerial quality review element for I.R.C. §§ 6103 (c) and (e) cases. According to Disclosure Office management, the cases we identified in which the requestors were not timely informed of the status of their requests could have resulted from an oversight by the caseworkers when completing their reviews.

### **Backlogged Freedom of Information Act Requests Increased for the Third Year in a Row**

The IRS relies on its disclosure personnel to ensure that information requests received under the FOIA are handled timely and in accordance with laws and regulations. The IRS supports the FOIA program with a broad policy statement and the Internal Revenue Manual that provides guidance to disclosure personnel. The policy statement, among other things, affirms the IRS's commitment to full compliance with the FOIA and administering it in a manner consistent with "the fundamental values held by our society, including public accountability, safeguarding national security, enhancing the effectiveness of law enforcement agencies and the decision-making processes, protecting sensitive business information, and protecting personal privacy."

In Calendar Year 2005, President George W. Bush signed an Executive Order mandating Federal agencies to identify ways to reduce their FOIA request backlog consistent with resources, case complexity, and volume.<sup>11</sup> Overall, national Disclosure Office statistics show that the IRS reduced its backlog of FOIA requests from Fiscal Years 2011 to 2012. In contrast, the number of backlogged requests increased during the last three years.

At the end of Fiscal Year 2015, there was a 15.8 percent increase in the number of backlogged FOIA requests (367 requests) compared to the number of backlogged FOIA requests at the end of Fiscal Year 2014 (317 requests). This increase follows a 46 percent increase for Fiscal Year 2014. Disclosure Office management stated that case complexity, including requests

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<sup>11</sup> Executive Order 13392 (December 14, 2005).

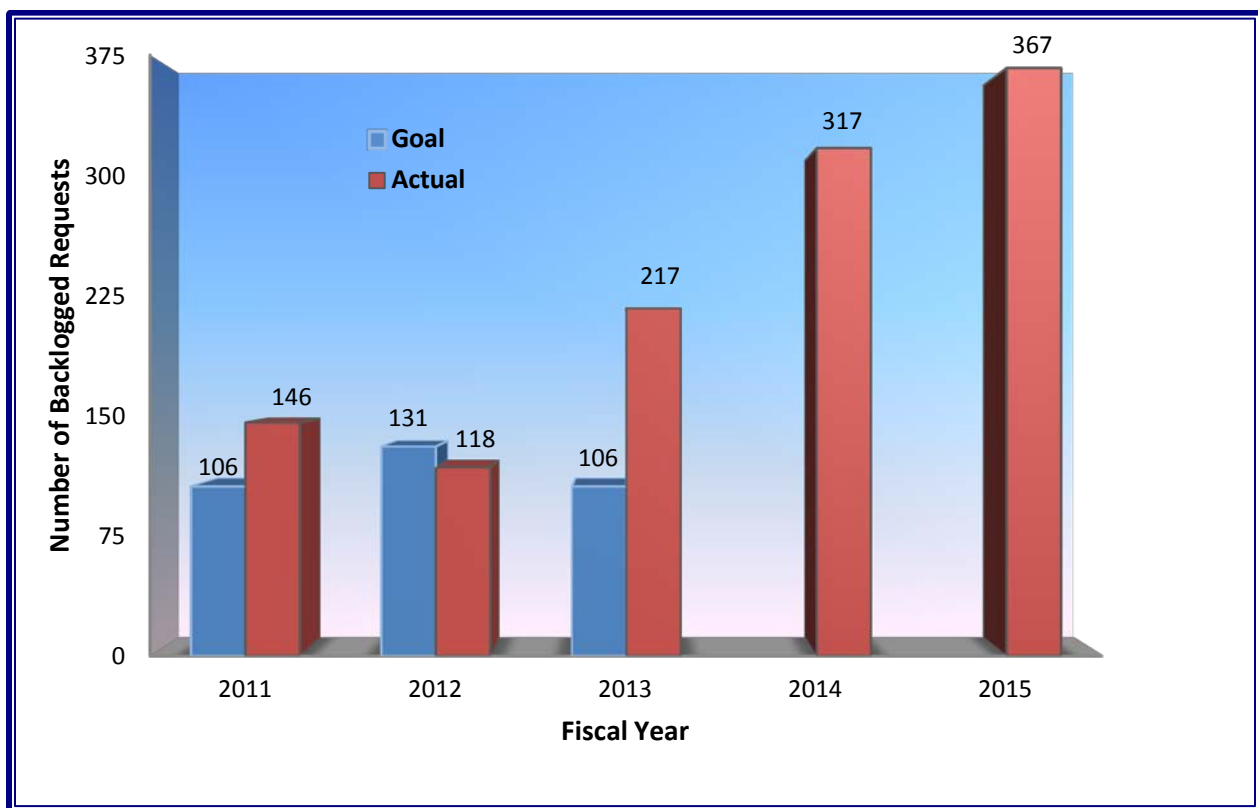


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involving the IRS Office of Chief Counsel and multiple business units, as well as a reduction in experienced staffing and the current inability to timely backfill critical vacancies due to budgetary constraints has caused their backlog to increase.

Prior to Fiscal Year 2014, the U.S. Department of the Treasury established a yearly numerical FOIA request backlog goal for the IRS. For example, the IRS's backlog goal in Fiscal Year 2013 was 106 FOIA requests. In Fiscal Year 2014, the U.S. Department of the Treasury eliminated its backlog goal and now requires that only the 10 oldest FOIA requests in its own inventory be worked. While the IRS voluntarily follows the same goal, according to Disclosure Office management, their strategy is to resolve as many of the backlogged cases as resources will allow. Figure 4 shows the inventory of backlogged FOIA requests for Fiscal Years 2011 through 2015.

**Figure 4: Inventory of Backlogged FOIA Requests**



Source: Unaudited data provided by the IRS Headquarters Disclosure Office and TIGTA audit reports issued in Fiscal Years 2011 through 2015.

The IRS has tools to effectively manage its FOIA request backlog. For example, the Disclosure Office Headquarters and field office managers review weekly over-age reports and monthly inventory monitoring reports, both of which include FOIA and I.R.C. § 6103 information request



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inventory and backlog information. Disclosure Office management uses these reports to make informed decisions to better manage their information request inventory.

Based on our review results, this backlog does not currently appear to be causing any significant delays in processing most information requests. However, reducing the number of backlogged requests is particularly important because of the processing time frames that need to be met under the FOIA. In response to a recommendation in last year's review, Office of Privacy, Governmental Liaison, and Disclosure management agreed to develop a plan to reduce the number of backlogged requests. The plan was scheduled to be implemented on January 13, 2016, and its impact will be evaluated during next year's review.

### **The Tax Exempt and Government Entities Division Properly Processed Taxpayer Information Requests**

In an effort to do a more comprehensive review of the IRS's processing of taxpayer information requests, we expanded our review to include additional IRS offices and functions. During this year's review, we evaluated the TE/GE Division's processing of information requests related to applications for tax-exempt status and information returns. The TE/GE Division receives information requests under I.R.C. § 6104, which makes certain tax exempt organization documents available to the public and to State charity officials. In addition, the IRS is required by law to disclose tax exempt organizations' applications to the public.

The TE/GE Division receives information requests by mail and e-fax. Requests are entered into a computerized inventory system, where they are then assigned to be worked. Tax examiners review the information that will be disclosed to the requestors to ensure that any erroneously included Social Security Numbers are not inadvertently disclosed. In the instructions for the application to be recognized as a tax-exempt organization, the TE/GE Division warns taxpayers that their Social Security Numbers could be disclosed. Specifically, the instructions state:

*Do Not Include Social Security Numbers on Publicly Disclosed Forms. Because the IRS is required to disclose approved exemption applications and information returns, exempt organizations should not include Social Security Numbers on these forms. Documents subject to disclosure include supporting documents filed with the form, and correspondence with the IRS about the filing.*

We reviewed a judgmental sample of 19 taxpayer information requests received by the TE/GE Division and did not find any sensitive information that was inadvertently disclosed. We also reviewed the processed requests for timeliness. TE/GE Division management stated that information requests made under I.R.C. § 6104 do not have any timeliness guidelines; however, the instructions for Form 4506-A, *Request for Public Inspection or Copy of Exempt or Political Organization IRS Form*, tell the requestor that "It could take up to 60 [calendar] days to process your request." In our sample, none of the 19 requestors had information provided to them after



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60 calendar days. Figure 5 shows the last two fiscal years of I.R.C. § 6104 information requests and the TE/GE Division's average processing time.

**Figure 5: Volume of I.R.C. § 6104 Information Requests and Average Processing Time**

<b>Time Period</b>	<b>Volume</b>	<b>Average Processing Time</b>
Fiscal Year 2015	18,305	260 Calendar Days
Fiscal Year 2016 (through March 4, 2016)	4,540	66 Calendar Days

*Source: TE/GE Division Cycle Report for Fiscal Years 2015 and 2016 (through March 4, 2016).*

If the level of I.R.C. § 6104 information requests remains consistent with the first five months of Fiscal Year 2016, the total number of information requests that the TE/GE Division will receive in Fiscal Year 2016 appears to be approximately half of what it received in Fiscal Year 2015. In addition, the average information request processing time based on midyear statistics has decreased by almost 200 calendar days.



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## **Appendix I**

### *Detailed Objective, Scope, and Methodology*

The overall objective of this audit was to determine whether the IRS improperly withheld information requested by taxpayers in writing based on the FOIA exemption 5 U.S.C. § 552(b)(7) or I.R.C. § 6103 or by replying that responsive records were not available or did not exist. This included determining whether these requests were processed timely and whether the IRS erroneously disclosed sensitive taxpayer information when responding to written FOIA or I.R.C. § 6103 information requests. We also evaluated the processing of I.R.C. § 6104 information requests in the TE/GE Division related to applications for tax-exempt status and information returns to determine whether the requested information was appropriately provided or if sensitive information was erroneously disclosed. To accomplish this, we:

- I. Determined the applicable policies, procedures, and controls that are in place to ensure compliance with the FOIA when denying information.
  - A. Reviewed policies, operating procedures, documents/files, risks, laws, and regulations related to the receipt, disposition, and resolution or denials of requests for information under the FOIA.
  - B. Reviewed specific management controls and systems (such as the DQMS) that are in place to ensure the timely and proper receipt, disposition, and resolution or denials of requests for information under the FOIA.
  - C. Verified that managers conducted the initial certification process to ensure that their employees reviewed the Disclosure Technical Update training.
  - D. Verified that I.R.C. § 6103 guidelines were incorporated into the disclosure portion of the Internal Revenue Manual.
- II. Determined whether IRS disclosure officers are adhering to statutory requirements when denying written requests received from taxpayers under the FOIA.
  - A. Obtained extracts from the AFOIA system for the period October 1, 2014, through September 30, 2015, and identified 2,720 FOIA cases closed as denied/partially denied based on the FOIA exemption 5 U.S.C. § 552(b)(7) in conjunction with I.R.C. § 6103 or for which the IRS replied that responsive records did not exist.<sup>1</sup> We assessed the reliability of the data by 1) performing electronic testing of required data elements, 2) reviewing existing information about the data and the system that produced them, and 3) interviewing agency officials knowledgeable about the data.

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<sup>1</sup> By law, tax records may not be disclosed to any individual unless authorized by I.R.C. § 6103.



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- We determined that the data were sufficiently reliable for purposes of this report. We then performed specialized queries on the IRS-provided database extracts to ensure that the data met our criteria.
- B. Designed a statistically valid sample based on a confidence level of 90 percent, an expected error rate of 8.77 percent, and an estimated precision of  $\pm 5.4$  percent. Based on these parameters, we selected a statistically valid sample of 60 FOIA requests. This sampling methodology was chosen so we could project the number of requests with improper withholdings to the universe of information requests that were partially or fully denied based on the FOIA exemption 5 U.S.C. § 552(b)(7) or for which requestors were told records were not available or did not exist.
  - C. Reviewed the 60 sampled FOIA requests and determined whether the decision to withhold information was appropriate, the record search was adequate, and the determination was made in a timely manner.
  - D. Discussed all exceptions with Disclosure Office management.
  - E. Projected the number of requests for which information was improperly withheld from the requestor for FOIA requests that were partially or fully denied based on the FOIA exemption 5 U.S.C. § 552(b)(7) or for which requestors were told records were not available or did not exist. The projection was made using the Normal Approximation method for attribute sampling, with a 90 percent confidence level and an actual error rate of 11.67 percent. The accuracy of our projection was reviewed and confirmed by our contracted statistician.
- III. Determined whether IRS disclosure officers are adhering to legal requirements when denying written requests received from taxpayers under I.R.C. § 6103.
- A. Obtained extracts from the AFOIA system for the period October 1, 2014, through September 30, 2015, and identified 434 closed I.R.C. § 6103 (c) and (e) information requests. We assessed the reliability of the data by 1) performing electronic testing of required data elements, 2) reviewing existing information about the data and the system that produced them, and 3) interviewing agency officials knowledgeable about the data. We determined that the data were sufficiently reliable for purposes of this report. We then performed specialized queries on the IRS-provided database extracts to ensure that the data met our criteria.
  - B. Designed a statistically valid sample based on a confidence level of 90 percent, an expected error rate of 6.33 percent, and an estimated precision of  $\pm 5.5$  percent. Based on these parameters, we selected a statistically valid sample of 55 I.R.C. § 6103 information requests. This sampling methodology was chosen because it would allow us to project the number of requests with improper withholdings to the universe of closed I.R.C. §§ 6103(c) and (e) information requests that were partially or fully denied or for which the IRS replied that responsive records were not available



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- or did not exist. To identify 55 I.R.C. §§ 6103(c) and (e) cases for review, we had to evaluate the total population of 434 information requests closed during the period October 1, 2014, through September 30, 2015. We identified 68 cases in the total population of 434 I.R.C. §§ 6103(c) and (e) cases that met our sampling criteria. We then selected the 55 cases for the sample.
- C. Reviewed the 55 sampled I.R.C. § 6103 information requests and determined whether the decision to withhold the information was appropriate, the record search was adequate, and the determination was made in a timely manner.
- IV. Determined whether IRS disclosure officers erroneously disclosed sensitive taxpayer information when responding to written FOIA or I.R.C. § 6103 information requests.
- A. Reviewed the FOIA and I.R.C § 6103 information requests selected for our samples in Steps II.B and III.B for any information outside the scope of the request that may have been erroneously disclosed.
  - B. Discussed all exception cases with Disclosure Office management.
- V. Determined whether the TE/GE Division is adhering to legal requirements when denying written information requests received from taxpayers under I.R.C. § 6104.
- A. Reviewed the TE/GE Division's Internal Revenue Manual to determine if there are adequate procedures for processing I.R.C. § 6104 information requests related to applications for tax-exempt status and information returns.
  - B. Interviewed TE/GE Division management to determine what procedures and guidance are used to process I.R.C. § 6104 information requests related to applications for tax-exempt status and information returns.
  - C. Performed a walkthrough of the TE/GE Division's application and tax return processing units to determine how I.R.C. § 6104 information requests related to applications for tax-exempt status and information returns are processed.
  - D. Selected and reviewed a judgmental sample of 19 I.R.C. § 6104 information requests (Forms 4506-A, *Request for Public Inspection or Copy of Exempt or Political Organization IRS Form*) related to a population of 4,540 applications for tax-exempt status processed by the TE/GE Division as of March 4, 2016.<sup>2</sup> A judgmental sample was used because the IRS does not maintain complete electronic files for the information that is provided to the requestor. We determined if the appropriate Treasury Regulations were followed including determining whether all information the requestor was entitled to was provided and ensured that any sensitive information was not erroneously disclosed. We also determined whether Forms 4506-A were

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<sup>2</sup> A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population.



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processed timely under the self-imposed TE/GE Division guidelines of 60 calendar days.

**Internal controls methodology**

Internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined that the following internal controls were relevant to our audit objective: IRS policies, operating procedures, laws, and regulations related to the receipt, disposition, and resolution or denials of requests for information made under the FOIA and I.R.C. § 6103. We evaluated these controls by reviewing source materials, interviewing management, and reviewing statistically valid samples of closed FOIA and I.R.C. § 6103 information requests. In addition, we reviewed a judgmental sample of I.R.C. § 6104 information requests related to applications for tax-exempt status and information returns processed by the TE/GE Division.





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**Appendix II**

*Major Contributors to This Report*

Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations)

Bryce Kisler, Director

Tina Parmer, Audit Manager

John Chiappino, Lead Auditor

Daniel O'Keefe, Auditor



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**Appendix III**

*Report Distribution List*

Commissioner  
Office of the Commissioner – Attn: Chief of Staff  
Deputy Commissioner for Operations Support  
Commissioner, Tax Exempt and Government Entities Division  
Director, Office of Audit Coordination



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## **Appendix IV**

### *Outcome Measures*

This appendix presents detailed information on the measurable impact that the results of our audit will have on tax administration. These benefits will be incorporated into our Semiannual Report to Congress.

#### **Type and Value of Outcome Measure:**

- Taxpayer Rights and Entitlements – Potential; 317 responses to FOIA requests for which information may have been improperly withheld during the period October 1, 2014, through September 30, 2015 (see page 4).<sup>1</sup>

#### **Methodology Used to Measure the Reported Benefit:**

We reviewed a statistically valid sample of 60 requests from a population 2,720 FOIA requests closed nationally during the period October 1, 2014, through September 30, 2015, as either a:

- 1) Full or partial denial with the FOIA exemption 5 U.S.C. § 552(b)(7) cited as one of the reasons for withholding information.
- 2) Request for which the IRS replied that responsive records were not available or did not exist.

We identified seven requests for which disclosure specialists improperly withheld the requested information. Based on our sample error rate of 11.67 percent and a confidence level of 90 percent, we estimated that the number of requestors erroneously denied information to be 317 [2,720 x 11.67 percent], with a range of 132 to 502. We arrived at the estimate by multiplying the number of requests closed as either condition 1) or 2), as previously noted, by the percentage of erroneously denied responses identified in our sample. The projection was made using the Normal Approximation method for attribute sampling, with a confidence level of 90 percent and an actual error rate of 11.67 percent. As a result, the actual precision factors were 4.87 percent and 18.46 percent.

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<sup>1</sup> 5 U.S.C. § 552 and 5 U.S.C. § 552a.



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**Type and Value of Outcome Measure:**

- Taxpayer Privacy and Security – Actual; two responses with sensitive taxpayer information inadvertently disclosed (see page 7).

**Methodology Used to Measure the Reported Benefit:**

While conducting our review, we identified only two instances in which disclosure specialists inadvertently disclosed sensitive taxpayer information in response to either a FOIA or an I.R.C. § 6103 information request. These inadvertent disclosures included names in a business report, a bank account number, and a credit score.<sup>2</sup>

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<sup>2</sup> The scope of this audit focused on information being withheld, not on the information that was inadvertently released to the taxpayer. Therefore, due to the nature of the samples, the results of this finding cannot be projected.



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**Appendix V**

*Previous Audit Reports Related  
to This Statutory Review*

TIGTA, Ref. No. 2000-10-116, *Taxpayers Should Be Provided Timely Service When Appealing Denied Requests Under the Freedom of Information Act* (Aug. 2000).

TIGTA, Ref. No. 2001-10-112, *The Internal Revenue Service Should Continue Taking Action to Improve Compliance With the Freedom of Information Act and Related Procedures* (July. 2001).

TIGTA, Ref. No. 2002-10-093, *Actions Should Continue to Be Taken to Improve Compliance With the Freedom of Information Act and Related Procedures* (May 2002).

TIGTA, Ref. No. 2003-10-164, *Opportunity for Improvement Exists for Compliance With the Freedom of Information Act and Related Procedures* (Aug. 2003).

TIGTA, Ref. No. 2004-40-064, *Improvements Are Needed to Ensure Compliance With the Freedom of Information Act* (Mar. 2004).

TIGTA, Ref. No. 2005-10-089, *Some Improvements Have Been Made to Better Comply With Freedom of Information Act Requirements* (May 2005).

TIGTA, Ref. No. 2006-10-129, *Compliance With Freedom of Information Act Requirements Has Increased* (Aug. 2006).

TIGTA, Ref. No. 2007-10-133, *The Office of Disclosure Can Improve Compliance With the Freedom of Information Act Requirements* (Aug. 2007).

TIGTA, Ref. No. 2008-30-164, *The Office of Disclosure Continued to Improve Compliance With the Freedom of Information Act Requirements* (Aug. 2008).

TIGTA, Ref. No. 2009-30-115, *The Office of Disclosure Continues to Improve Upon Its Responses to Taxpayers' Requests Under the Freedom of Information Act* (Sept. 2009).

TIGTA, Ref. No. 2010-30-090, *The Office of Disclosure Continues to Improve Compliance With the Freedom of Information Act Requirements* (Aug. 2010).

TIGTA, Ref. No. 2011-30-093, *The Office of Disclosure Continues to Improve Compliance With the Freedom of Information Act Requirements* (Sept. 2011).

TIGTA, Ref. No. 2012-30-098, *Fiscal Year 2012 Statutory Review of Compliance With the Freedom of Information Act* (Aug. 2012).

TIGTA, Ref. No. 2013-30-109, *Fiscal Year 2013 Statutory Review of Compliance With the Freedom of Information Act* (Sept. 2013).



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TIGTA, Ref. No. 2014-30-064, *Fiscal Year 2014 Statutory Review of Compliance With the Freedom of Information Act* (Sept. 2014).

TIGTA, Ref. No. 2015-30-084, *Fiscal Year 2015 Statutory Review of Compliance With the Freedom of Information Act* (Sept. 2015).



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**Appendix VI**

*Management's Response to the Draft Report*



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

PRIVACY, GOVERNMENTAL  
LIAISON, DISCLOSURE AND SAFEGUARDS

August 24, 2016

MEMORANDUM FOR MICHAEL E. MCKENNEY  
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Edward T. Killen   
Director, Privacy, Governmental Liaison and Disclosure

SUBJECT: Draft Audit Report – Fiscal Year 2016 Statutory Review of  
Compliance with the Freedom of Information Act Audit (#201630008)

Thank you for the opportunity to respond to the above referenced draft audit report. The IRS remains committed to openness in Government to ensure public trust and to support the ideals of transparency, public participation and collaboration. We appreciate your recognition of the positive steps taken by the IRS to operate an effective Freedom of Information Act program and as always, we will continue to work towards improving the processing of information requests in a timely and quality manner.

Although there were no recommendations cited in the report, it is important for the public to understand our offices process and release hundreds of thousands of pages during each fiscal year. The cases identified with errors involved the release of 15,660 pages of records. Of those 15,660 pages, only 124 pages had errors in under or over withholding.

We will continue to ensure that the provisions of the Freedom of Information Act, the Privacy Act and Internal Revenue Code §6103 are followed. If you have any questions, please contact me at (202) 317-6449, or a member of your staff may contact Maribel De La Rocha, Associate Director, Disclosure at (213) 833-1114.