



*Fiscal Year 2017 Statutory
Review of Compliance With
the Freedom of Information Act*

September 7, 2017

Reference Number: 2017-30-075

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 2017 Statutory Review of Compliance With the Freedom of Information Act

Highlights

Final Report issued on September 7, 2017

Highlights of Reference Number: 2017-30-075 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 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 FOIA exemptions 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 FOIA exemption 5 U.S.C. § 552(b)(7) or I.R.C. § 6103, as well as cases in which the IRS replied that responsive records were not available.

WHAT TIGTA FOUND

TIGTA reviewed a statistically valid sample of 70 information requests from a population of 2,693 FOIA information requests and found 10 (14.3 percent) requests for which disclosure specialists improperly withheld information. Although the IRS properly released thousands of pages from these documents, taxpayer rights may have been violated because the IRS improperly withheld information from the requestors. When the sample results are projected to the population, approximately 385 FOIA information requests may have had information erroneously withheld. The IRS

adequately searched for and provided information for all 35 I.R.C. § 6103 information requests TIGTA also reviewed.

TIGTA found that 69 (98.6 percent) of the 70 sampled FOIA requests were responded to 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 requestor if the request is not completed within 30 business days. However, for five (16.7 percent) of the 35 I.R.C. § 6103 information requests reviewed, the IRS took more than 30 business days to provide a status report to the requestor.

Additionally, disclosure specialists inadvertently disclosed sensitive taxpayer information in three responses to FOIA and I.R.C. § 6103 information requests. Lastly, at the end of Fiscal Year 2016, the number of backlogged information requests (334 requests) only decreased by about 4 percent from Fiscal Year 2015 (348 requests); however, that is a reversal of the increase we identified over the previous four years.

WHAT TIGTA RECOMMENDED

TIGTA made no recommendations in this report.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

September 7, 2017

MEMORANDUM FOR DIRECTOR, PRIVACY, GOVERNMENTAL LIAISON, AND
DISCLOSURE

FROM: Michael E. McKenney
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Fiscal Year 2017 Statutory Review of Compliance
With the Freedom of Information Act (Audit #201730008)

This report presents the results of our review to determine whether the IRS improperly withheld information requested by taxpayers in writing, based on Freedom of Information Act (FOIA) exemption 5 United States Code (U.S.C.) Section (§) 552(b)(7) or Internal Revenue Code (I.R.C.) § 6103, as well as cases in which the IRS replied that responsive records were not available.¹ Specifically, this included determining whether the IRS had adequate and effective policies and procedures to ensure that all of these requests were processed timely and information was not improperly withheld. In addition, we determined whether IRS disclosure officers erroneously disclosed sensitive taxpayer information when responding to written FOIA or I.R.C. § 6103 information requests.²

The Treasury Inspector General for Tax Administration is required to conduct periodic audits to determine if the IRS properly denied written requests for tax account information. We are also required to include the results in one of our Semiannual Reports to Congress. This is our eighteenth review of denials of FOIA and I.R.C. § 6103 requests. This review is included in our Fiscal Year 2017 Annual Audit Plan and addresses the major management challenge of Protecting Taxpayer Rights.

Management's complete response to the draft report is included as Appendix VI. Copies of this report are also being sent to the Director, Office of Audit Coordination, for appropriate distribution within the Internal Revenue Service.

¹ 5 U.S.C. § 552.

² 5 U.S.C. § 552a.



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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
NQRS	National Quality Review System
TIGTA	Treasury Inspector General for Tax Administration



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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.¹

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. Section (§) 6103.

The FOIA requires Federal Government agencies to make records available to the public upon request unless specifically exempted. Information that is “specifically exempted from disclosure by statute” is one of the exemptions. I.R.C. § 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 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 that 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.
- (E) Would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or

¹ I.R.C. Section 7803.



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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 does allow 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 Headquarters 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 2016 Freedom of Information Act Annual Report to the Attorney General of the United States*, the IRS reported that a total of 8,791 FOIA information requests were processed. This is consistent with the 8,809 FOIA requests shown as processed during Fiscal Year 2016² on the Automated Freedom of Information Act (AFOIA) system.

In addition, the report stated that the IRS denied or partially denied information to requestors for 2,793 (31.8 percent) of the 8,791 FOIA information requests processed in Fiscal Year 2016. This is a 3 percent increase from the 2,708 denials reported for Fiscal Year 2015. The report further stated that the IRS advised requestors that there were no records responsive to requests for 953 (10.8 percent) of the 8,791 FOIA requests. This is an increase compared to the 9.4 percent reported for 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 previously granted.

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 only tracks on the AFOIA system I.R.C. § 6103 requests received by its Disclosure Office. 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

² 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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centralized location. Consequently, the volume of all these requests is not easily determined but is probably more than what is currently being tracked on the AFOIA system. As a result of not being able to visit all offices for this audit, we reviewed a statistically valid sample for only the I.R.C. § 6103 information requests processed directly by the IRS Disclosure Office and tracked on the AFOIA system.

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 offices and functions that process I.R.C. § 6103 information requests, the Headquarters Disclosure Office does not have direct control over how these types of requests are processed in the field.

We conducted this performance audit in accordance with generally accepted government auditing standards during the period September 2016 through June 2017. 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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. 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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Results of Review

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

The IRS was not consistent in its service to individuals who requested information under the FOIA. Specifically, disclosure specialists improperly withheld information for 10 (14.3 percent) of the 70 FOIA information requests reviewed. The 10 cases we identified included improperly withheld information such as publicly available information (*e.g.*, prints of Internet sites) and taxpayer requests for information concerning their own cases (*e.g.*, tax information, examination reports). Although the IRS properly released thousands of pages from these documents, taxpayer rights may have been violated because the IRS improperly withheld information from the requestors. When projected to the population of 2,693 FOIA requests closed during the period October 1, 2015, through September 30, 2016, the sample results indicate that approximately 385 FOIA information requests may have had information erroneously withheld.³ See Appendix IV for an explanation of the projections.

We did not find any instances of information being erroneously withheld for the 35 I.R.C. § 6103 information requests TIGTA reviewed.⁴ Figure 1 shows the audit results for Fiscal Years 2012 through 2016.

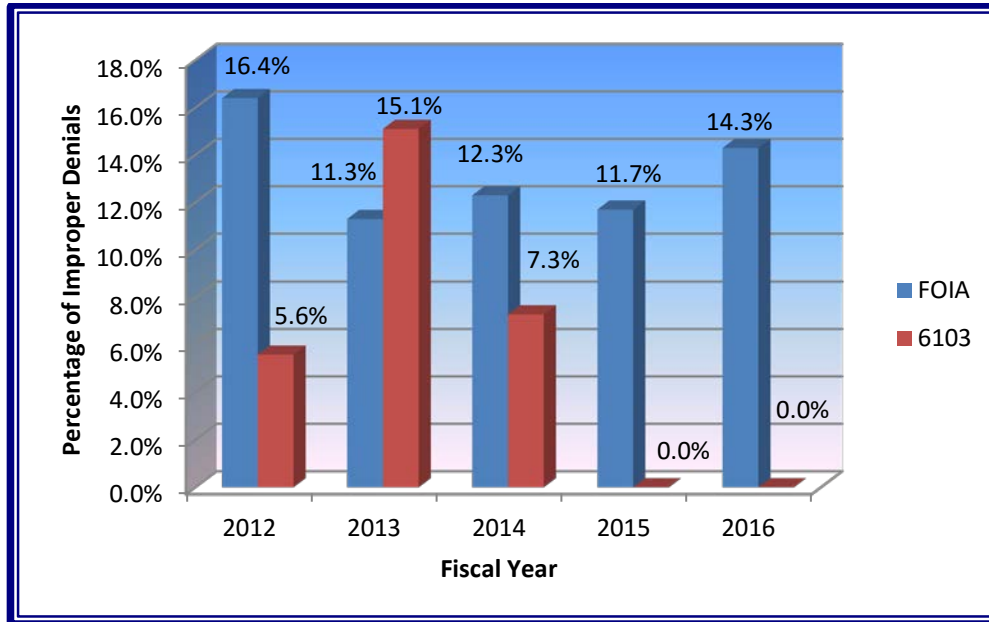
³ The population of 2,693 is a subset of the 8,809 records discussed earlier. They are records with a § 552(b)(7) exemption and a disposition of either denied, partially denied, or no responsive records were available. The point estimate projection is based on a two-sided 90 percent confidence interval, a ± 7.43 percent precision rate, and a 14.3 percent error rate. We are 90 percent confident that the point estimate is between 217 and 617 information requests.

⁴ The population consists of 332 I.R.C. § 6103 information requests closed during the period October 1, 2015, through September 30, 2016. We screened all 332 of them to identify our sample of 35 I.R.C. §§ 6103 (c) and (e) information requests. Of those 35 cases, there were no exception cases. An error rate of 0 percent was calculated based on the 35 cases.



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



Source: TIGTA audit reports issued in Fiscal Years 2012 through 2016 and audit tests conducted during this review. Percentages were rounded to the closest 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.⁵ Throughout the Internal Revenue Manual, personnel are instructed 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 the foundation for other control processes such as management reviews.

For Fiscal Year 2016, the Office of Privacy, Governmental Liaison, and Disclosure had two different quality review systems. In August of 2016, it changed its quality review system from the Disclosure Quality Management System (DQMS) to the National Quality Review System (NQRS). Each type of disclosure request was evaluated individually on the NQRS and DQMS; therefore, FOIA requests, I.R.C. § 6103(c) requests (requests for information made by the taxpayer's designee), and I.R.C. § 6103(e) requests (disclosure to persons having a material interest) have their own performance results. The DQMS/NQRS performance results were generally consistent with those determined by TIGTA for the FOIA and combined I.R.C. §§ 6103(c) and (e) Fiscal Year 2016 samples. Figure 2 compares the cumulative NQRS and TIGTA performance results for this element at the end of Fiscal Year 2016.

⁵ Contains the policies, procedures, instructions, guidelines, and delegations of authority that direct the operation and administration of the IRS. Topics include tax administration, personnel and office management, and others.



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**Figure 2: Fiscal Year 2016 Comparison of the DQMS/NQRS and
TIGTA Accuracy Results for FOIA and I.R.C. § 6103 Information Requests**

Type of Request	Met	Not Met	Not Applicable	Percentage Met ⁶
DQMS/NQRS FOIA	196	41	0	82.7 %
DQMS/NQRS I.R.C. § 6103(c)	68	1	0	98.6 %
DQMS/NQRS I.R.C. § 6103(e)	72	8	0	90.0 %
TIGTA FOIA	60	10	0	85.7 %
TIGTA I.R.C. § 6103	35	0	0	100.0 %

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

In addition to the sample of 70 FOIA cases, we reviewed an additional 33 cases for which the requestor did not receive any information (fully denied cases) due to a § 552(b)(7) exemption.⁷ The Director, Governmental Liaison, Disclosure, and Safeguards, and the Director's delegate have authority to make FOIA determinations concerning the release of most IRS agency records.

Section 552(b)(7) exempts the disclosure of information records or information compiled for law enforcement purposes. In Fiscal Year 2016, only 33 (1.2 percent) of 2,693 FOIA requests were completely denied (the requestor received no information) based on § 552(b)(7). We reviewed all 33 of these requests and did not identify any instances for which § 552(b)(7) was improperly applied.

Disclosure Specialists Inadvertently Disclosed Information

FOIA casework is reviewed for any inadvertent disclosures during operational and regular managerial reviews. The NQRS also has procedures in place to review casework for inadvertent disclosures and to report those disclosures when discovered. During our Fiscal Year 2017 review, we did not specifically review the cases for inadvertent disclosures. However, during our review for improper denials, we identified four requests for which information was inadvertently disclosed (*e.g.*, tax information from a year not covered by a Power of Attorney and a list of Employer Identification Numbers).

⁶ Formula used by the IRS to calculate the Percentage Met is [column Met]/[columns Met + Not Met].

⁷ The sample was initially 35 cases, but two of the cases were misclassified and actually did give the requestor some information (partial denial).



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As a result of our findings in a previous report, the Director, Office of Privacy, Governmental Liaison, and Disclosure, 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 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 146 disclosure specialists and managers had completed this training as of May 2017.

Disclosure Office officials have 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 or by 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 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. Caseworkers use a PII Breach Reporting form⁸ and input the inadvertent disclosure online directly to the Incident Management office.

Freedom of Information Act Requests Were Responded to Timely

The IRS provided timely response letters for 69 (98.6 percent) of the 70 Fiscal Year 2016 FOIA information requests in our statistical sample. Management informed us that the one late FOIA case was closed in 27 business days due to a miscalculated response date in the tracking system.

All cases we reviewed from Fiscal Years 2012 through 2015 were timely. The FOIA requires Federal 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 agencies are required to immediately notify the requestor of this fact, of the reasons why the agency is unable to respond, and of the requestor's right to appeal.

The due date for a FOIA information request is revised when the IRS sends a letter to the requestor exercising its right for an automatic 10-day extension or requesting a voluntary extension in excess of the initial statutory 20-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 response letter is considered untimely when the IRS responds to the requestor after the due date.

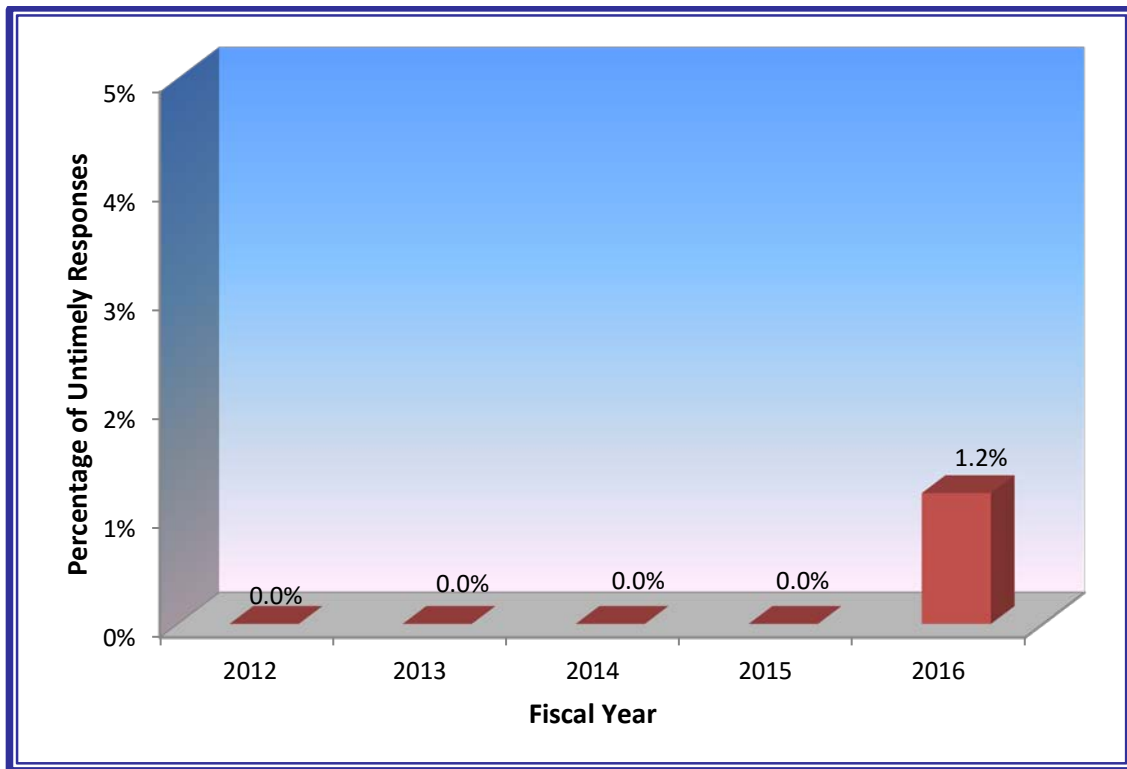
⁸ PII is Personally Identifiable Information.



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Our audits, including this review, have indicated that the percentage of untimely responses has been low. There were no untimely responses in four of the last five years we have done this review. Figure 3 shows the percentages of untimely information requests we have reported since Fiscal Year 2012.

Figure 3: Comparison of Untimely FOIA Responses



Source: TIGTA audit reports issued for Fiscal Years 2013 through 2016 and audit tests conducted during this review. Percentages were rounded to the closest 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 information requests, there are no such requirements for responding to I.R.C. § 6103 requests. However, in response to our Fiscal Year 2013 report, the Director, Office of Privacy, Governmental Liaison, and Disclosure, established guidelines for all Disclosure personnel to issue a status update to the requestor if the request was not filled within 30 days. In our review of 35 I.R.C. § 6103 information requests, we identified five (16.7 percent) for which the taxpayer did not receive a status update within the 30 days.



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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.

To ensure that requestors are responded to in a timely manner or notified of any processing delays, the Disclosure Office should ensure that these procedures for I.R.C. § 6103 information requests are being followed.

The Number of Backlogged Cases Has Stabilized

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 that agencies identify ways to reduce FOIA backlogs consistent with resources, case complexity, and volume.⁹ At the end of Fiscal Year 2016, the number of backlogged information requests (334 requests) decreased by only about 4 percent from Fiscal Year 2015 (348 requests); however, this is a reversal of the increase we observed over the four previous years. The IRS agreed to implement a plan to reduce the number of backlogged cases beginning January 15, 2016. The plan appears to have reversed the backlog trend.

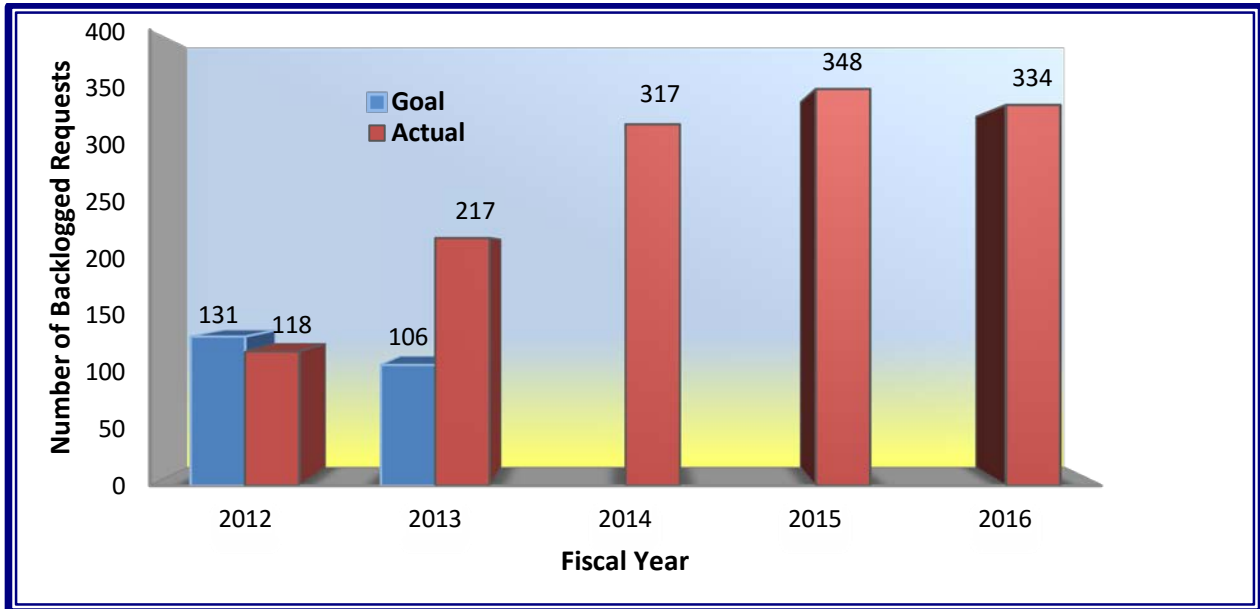
Prior to Fiscal Year 2014, the U.S. Department of the Treasury established a yearly numerical case backlog goal for the IRS. For example, the IRS's backlog goal in Fiscal Year 2013 was 106 cases. In Fiscal Year 2014, the U.S. Department of the Treasury eliminated the case numeric backlog goal for the IRS and now requires the 10 oldest FOIA cases in its inventory be worked. Figure 4 shows the inventory of backlogged FOIA information requests for Fiscal Years 2012 through 2016.

⁹ Executive Order 13392, *Improving Agency Disclosure of Information* (Dec. 2005).



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Figure 4: Inventory of Backlogged FOIA Information Requests



Source: Unaudited data provided by the IRS Headquarters Disclosure Office and TIGTA audit reports issued in Fiscal Years 2013 through 2017.

The IRS has tools to effectively manage its FOIA backlog. For example, the 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 inventory and backlog information. Disclosure management uses these reports to make informed decisions to better manage their information request inventory. Reducing the number of backlogged requests is particularly important because of the processing time frames that need to be met under the FOIA.



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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 5 U.S.C. § 552(b)(7) or I.R.C. § 6103, as well as cases in which the IRS replied that responsive records were not available. To accomplish this objective, we:

- I. Determined the applicable policies, procedures, and controls that are in place to ensure compliance with the FOIA when denying information.
 - A. Reviewed 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 management controls and systems (such as the Disclosure Quality Measurement System) 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 the 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, 2015, through September 30, 2016, and identified all FOIA cases closed as fully or partially denied based on FOIA exemptions 5 U.S.C. § 552(b)(7) in conjunction with I.R.C. § 6103 or IRS reply that responsive records did not exist.¹ 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 also performed specialized queries on database extracts provided by the IRS to ensure that the data met our criteria.

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



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- B. Randomly selected the proper number based on a confidence level of 90 percent, an expected error rate of 8.77 percent, and an estimated precision of ± 5.5 percent. Based on these parameters, we selected a statistically valid sample of 70 FOIA requests of fully denied, partially denied, and “no responsive records available” cases from the FOIA population using our sampling plan. The sampling plan was reviewed by TIGTA’s contract statistician to ensure selection of a statistically valid random sample by which we could project the error rate to the entire population of FOIA cases.
 - C. Reviewed the sample cases from Step II.B to determine if the decision to withhold information was appropriate, the record search was adequate, and the determination was made timely.
 - D. Discussed any exception cases with Privacy, Governmental Liaison, and Disclosure management to obtain agreement. For all exception cases for which agreement cannot be reached, we requested that TIGTA Counsel review the case and obtained their opinion.
 - E. For any exception cases, we determined whether the requestor appealed the denial and the outcome of the appeal.
 - F. Projected the number of requests for which information was improperly withheld to the FOIA population. We coordinated with TIGTA’s contract statistician to ensure the accuracy of the projection.
 - G. Reviewed data for all of the FOIA exemption 5 U.S.C. § 552(b)(7) denials for the period October 1, 2015, through September 30, 2016.
- 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, 2015, through September 30, 2016, and identified all closed I.R.C. § 6103 (c) and (e) 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 also performed specialized queries on database extracts provided by the IRS to ensure that the data met our criteria.
 - B. Randomly selected the proper number based on a confidence level of 90 percent, an expected error rate of 4.55 percent, and an estimated precision of ± 5.5 percent. Based on these parameters, we selected a statistically valid sample of 35 closed § 6103 requests of fully denied, partially denied, and “no responsive records available” cases from the I.R.C. § 6103 population using our sampling plan. The



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- sampling was reviewed by TIGTA's contract statistician to ensure selection of a statistically valid random sample by which we could project the error rate to the entire population of I.R.C. § 6103 cases.
- C. Reviewed the sampled cases from Step III.B to determine if the decision to withhold information was appropriate, the record search was adequate, and the determination was made timely. For I.R.C. § 6103 cases, we determined timeliness using 30 business days. If we determined that information was improperly withheld or was not provided timely, we identified and documented the potential cause(s) for such. Reviewed legal case precedents, as appropriate.
 - D. Discussed any exception cases with Privacy, Governmental Liaison, and Disclosure management to obtain agreement.
- 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 any exception cases with Privacy, Governmental Liaison, and Disclosure management to obtain agreement.

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 the following internal controls were relevant to our audit objectives: IRS policies, operating procedures, laws, and regulations related to the receipt, disposition, and resolution or denials of requests for information made under the FOIA or 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.



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Appendix II

Major Contributors to This Report

Matthew A. Weir, Assistant Inspector General for Audit (Compliance and Enforcement Operations)
Glen Rhoades, Director
Tina Parmer, Audit Manager
John Chiappino, Senior Auditor
John Park Auditor



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Appendix III

Report Distribution List

Commissioner
Office of the Commissioner – Attn: Chief of Staff
Deputy Commissioner for Operations Support
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; 385 responses to FOIA information requests for which information may have been improperly withheld during the 12-month period October 1, 2015, through September 30, 2016 (see page 4).

Methodology Used to Measure the Reported Benefit:

We reviewed a statistically valid sample of 70 requests from a population of 2,693 FOIA information requests closed nationally during the period October 1, 2015, through September 30, 2016, as fully or partially denied with FOIA exemption (b)(7) cited as one of the reasons for withholding information or as a “no responsive records available” I.R.C. § 6103 request.

We identified 10 requests for which disclosure specialists improperly withheld the requested information. Based on our sample error rate of 14.3 percent and a confidence level of 90 percent, we estimate the number of requestors erroneously denied information to be 385 [2,693 x 14.3 percent], with a range of 217 to 617. We arrived at the estimate by multiplying the number of requests closed as any of the conditions listed above 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 14.3 percent. As a result, the actual precision factors were 8.1 percent and 22.9 percent.

Type and Value of Outcome Measure:

- Taxpayer Privacy and Security – Actual; four responses with sensitive taxpayer information inadvertently disclosed in response to FOIA and I.R.C. § 6103 information requests (see page 6).

Methodology Used to Measure the Reported Benefit:

While conducting our review, we identified that disclosure specialists inadvertently disclosed sensitive taxpayer information in four responses to FOIA and I.R.C. § 6103 information



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requests.¹ These inadvertent disclosures included a list of Employer Identification Numbers and tax information outside the scope of the Power of Attorney's authority.

¹ 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).

TIGTA, Ref. No. 2016-30-072, *Fiscal Year 2016 Statutory Review of Compliance With the Freedom of Information Act* (Sept. 2016).



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Appendix VI

Management's Response to the Draft Report

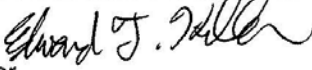


PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

August 25, 2017

MEMORANDUM FOR MICHAEL E. MCKENNEY
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Edward T. Killen 
Chief Privacy Officer

SUBJECT: Draft Audit Report – Fiscal Year 2017 Statutory Review of
Compliance with the Freedom of Information Act Audit
(201730008)

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 (FOIA) program.

Although there were no recommendations cited in the report, we will continue to work towards further improving the processing of information requests in a timely and quality manner. It is important for the public to understand our offices process and release hundreds of thousands of pages in response to FOIA requests each fiscal year. The cases identified with errors accounted for less than one percent of the sample size audited.

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.