



DEPUTY COMMISSIONER

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

August 2, 2013

The Honorable Darrell Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Jim Jordan
Chairman
Subcommittee on Economic Growth, Job Creation
and Regulatory Affairs
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Issa and Chairman Jordan:

I am responding to your letter dated July 30, 2013. Your letter suggests we have not fully cooperated with the Congress. Those statements are inaccurate and unfair. The IRS is fully committed to transparency and cooperation with the ongoing review being conducted by four committees of the Congress, including your committee.

This commitment is demonstrated by our level of effort to date. The IRS is working hard to provide information requested by you and other committees as quickly as possible and to respond to your other requests. No process is perfect, but we are continually striving to improve this one. This effort includes:

- Dedicating more than 100 employees who are working diligently to gather documents, review them, and protect the taxpayer-specific information in them as is required by law. This includes 70 attorneys who are reviewing documents full time.
 - Providing – as of today – weekly rolling productions of documents, including more than 70,000 pages of documents produced to Congress, which includes more than 16,500 pages of documents after review to remove taxpayer information. These include significant documents specifically requested by you and other committees such as: various iterations of “Be on the lookout” or BOLO spreadsheets; the transmission emails associated with those spreadsheets which reflect changes made to the spreadsheets; training materials used by screeners; emails self-selected by witnesses appearing for interviews with your staff; responsive documents in the electronic materials of Doug Shulman that contained the terms tea party,

White House, 501(c), patriot and variations of 9/12; and responsive documents from the electronic materials of Chief Counsel Bill Wilkins and the Office of Chief Counsel, as described more fully below.

- Responding to more than 41 different letters from Members of Congress about these issues.
- Answering questions related to the subjects of your investigation at 15 different hearings as of the end of this week, four of which were hearings before your committee.
- Dedicating hundreds of staff hours in meetings with congressional staff and internal meetings to help ensure we are responsive to questions asked at congressional hearings.
- Engaging in dozens of phone calls and meetings with staff of your committee and others regarding documents and witnesses.
- Facilitating 29 interviews of 19 employees by congressional committees. Many of these employees traveled for full day interviews and spent additional time preparing to answer the questions of congressional staff.

By any measure, this is an enormous undertaking for the IRS. We are aggressively working to share, gather and provide information requested by your committee and others, and we intend to continue to do so. That said, any process can be improved, and we are refining ours on a regular basis. As always we are happy to continue to discuss any specific issues with you and your staff.

Now I will turn to the specific points in your letter. Your letter contains certain misunderstandings I would like to correct.

There are not 64 million responsive documents.

Sixty-four million is not an accurate number to use when determining a baseline for document production in this matter. That number referred to raw data that is largely unrelated to and unresponsive to congressional requests. To ensure documents are responsive to congressional requests, the initial set of raw electronic data must be processed with preliminary search terms that eliminate a portion of non-responsive information. For example, we eliminate material created prior to 2008 because it is not responsive to congressional requests. To date, this application of preliminary search terms to raw data associated with 48 individuals resulted in identification of approximately 660,000 documents, which we loaded into our document review system. Ultimately, once we load into the system information from the remaining individuals identified by your committee and others, we expect there may be a rough approximation of 1.64 million documents to be reviewed by IRS attorneys to further eliminate non-responsive information and for other purposes as described below.

Seventy-two percent of the documents reviewed by the IRS are not responsive to congressional inquiries.

We have found that a high percentage of the documents already reviewed by IRS attorneys are not responsive to congressional requests. Our manual reviews by IRS attorneys indicate approximately 28 percent of documents already reviewed are responsive to the various requests and 72 percent are not. This means that a fraction of the 1.64 million documents will ultimately be produced. We have attempted to prioritize the document review to focus on the information from those individuals we anticipate had the most significant involvement with the issues your committee is reviewing; thus, the ultimate production set may be smaller than a straight extrapolation of 28 percent would suggest.

There are a variety of reasons the material is so heavily non-responsive. First, some of the 119 individuals have little knowledge and information about the events under review because they were identified for collection simply because they work in an IRS office that had involvement with these events. Many of the names were put on the list at the request of congressional staffers, including your staff, and not because the IRS determined that they had a major role in the events under investigation. Second, even individuals who have been identified as having the most involvement in the events under investigation have large amounts of information unrelated to these events. For example, individuals who work in the Exempt Organizations Determinations Unit may work predominantly on cases in which there is no connection to political activity, and their electronic material will contain information largely relating to matters that are not at issue in your investigation.

The IRS is working hard to speed its production, protect taxpayer information as required by law, and respond to specific requests from Congress.

The IRS is taking important steps to ensure we are producing material as quickly as possible to the congressional committees. First, we have tasked 70 IRS attorneys, out of a Chief Counsel office of approximately 1,600 attorneys, to work full-time reviewing documents. These attorneys have ramped up from training to full-time review work over the course of the last four weeks and are now fully engaged on this project.

Second, the IRS is taking its obligations to protect the confidentiality of tax returns and return information under IRC § 6103 very seriously. Protecting taxpayer rights is a core obligation of this agency. Each document that the IRS contemplates releasing must be carefully reviewed by professionals trained in disclosure and privacy law to ensure that confidential tax information is not disclosed in an unauthorized fashion. We have thus dedicated a team of disclosure experts to work full time on this exacting and time-consuming task. Sometimes this process results in the redaction of whole pages, for example if the document is a memorandum about a particular taxpayer and may have come from that taxpayer's application file. Other times we are able to redact just words or lines, as in the case of the BOLO spreadsheets. Importantly, however, I must emphasize that we have produced in unredacted form to Chairman Camp, Ranking Member Levin,

Chairman Baucus and Ranking Member Hatch all of the material that we have produced to you in redacted form.

Third, we have reviewed the search terms requested by committee staff to identify those causing the most nonresponsive or false, "hits." Your staff and the staff of other committees provided the IRS with a total of approximately 80 search terms (initial version attached), some of which were generic and non-specific, for example "election, "independent, and "c3," (which are used in the context of many tax issues within the IRS). Some appear to be completely unrelated to the congressional investigations. The application of this unfocused set of search terms has produced an artificially inflated number of documents to be searched by IRS attorneys on a document-by-document basis. Some terms, such as "C3" are particularly problematic because employees in the Exempt Organizations Determinations Unit work on a broad range of cases and issues involving IRC §501 (c)(3) applications that have no indicators of political activity, such as applications by schools. Accordingly, to be responsive to the concerns raised by your committee and the Ways and Means Committee, this week we are beginning to switch to more focused search terms. We expect this closer focus to boost the percentage of documents reviewed that are responsive to your requests, reduce the total number of documents that must be reviewed manually by attorneys, and ultimately result in documents getting to you faster. We will continue to evaluate and refocus the search terms as needed.¹

Fourth, we work very hard to provide to you and other committees documents responsive to particular requests. For example, an IRS employee, Ms. Cindy Thomas, wished to provide IRS materials containing confidential taxpayer information to your staff prior to a scheduled interview. As you know and as discussed above, IRC §6103 permits such information only to be given to the Chairs of the tax-writing committees of the Congress or their designees. Accordingly, we needed to review this material in order to redact confidential taxpayer information. Had we not done so, Ms. Thomas would have faced civil or criminal exposure for making an unauthorized disclosure of taxpayer information.

Ms. Thomas' attorneys initially provided a disk of information to the IRS document production team that was password protected by Ms. Thomas, and she was unable to provide the password. Close to a week later, late afternoon on June 24, 2013, we received another disk and a working password. Because this was just days before her scheduled interview, my team informed your staff that processing the documents and redacting any confidential taxpayer information was going to be time-consuming and that we would not be able to perform the redactions in advance of her interview. We then provided it as soon as we were able to complete those redactions.²

¹ We are focused on maximizing the efficiency of our document production efforts, which includes eliminating duplicates to the extent possible. In this regard, consistent with the prevailing practice both in and out of government, the IRS relies on e-discovery technology to eliminate duplicate documents. Although our system eliminates a substantial number of duplicate documents from the set(s) of documents that we ultimately produce to the Congress, the elimination rate is not 100 percent. We are actively working with our technology team to find ways to further eliminate duplicates from the documents we produce to Congress.

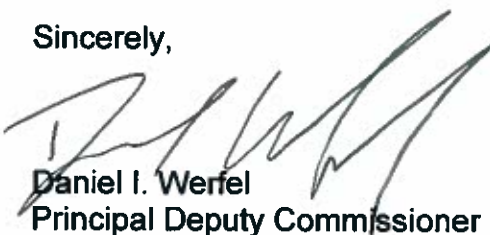
² I have been informed by my staff that your reference to 288,000 pages of documents cannot be confirmed. We received a disk from Ms. Thomas' attorneys that contained some documents that were either password-protected or unreadable, as we noted in our cover letter. The disk contained 425 emails and attachments that we could review. As we explained in our production letter to you, we

In another example, we quickly worked to address your requests for information from the Office of Chief Counsel as well as Chief Counsel Bill Wilkins. As we stated in our July 26 letter, we searched for emails to/from the Office of IRS Chief Counsel and the Treasury Department and to/from the Office of Chief Counsel and the White House with the specific terms you requested (Citizens United, 2010 election and tea party), and there were zero responsive emails. We specifically included the White House domain as well as Treasury domains in our search.

In addition, we searched all of Mr. Wilkins' emails for the following terms (using these terms only as search terms and not as a reference to any particular taxpayer or group of taxpayers): BOLO, lerner, paz, tea party, we the people, 9/12, political advocacy, emerge, patriot, occupy, acorn and progressive. That search produced seven emails with five attachments. Of those, we produced to you six emails with their attachments. The other document referred to in that letter is an email forwarded to Mr. Wilkins with a draft copy of the TIGTA report, which, as you know, has 6103 information in it; that document is being produced today with redactions. Although our July 26 letter indicates we did not search documents with the tag "private," my staff has reviewed the documents stored in our e-Discovery platform, and there are no documents from Mr. Wilkins tagged "private," so none were withheld on that basis.³ Further, we have offered to have Mr. Wilkins participate in an interview with your staff, and, they have indicated they prefer not to interview him at this time.

I continue to strongly disagree with the characterization of the facts set forth in your July 30 letter and your statement that the IRS has attempted, in any way, to impede the on-going investigations being conducted by your committee. I remain committed to working with the Congress and the ongoing investigations, and to restoring public trust in our nation's tax system.

Sincerely,



Daniel I. Werfel
Principal Deputy Commissioner

Enclosure

produced the material dated prior to May 10, 2013, because the material after that date appeared to raise issues of privileges available to the IRS. We explained that we would supplement the first production with additional materials from Ms. Thomas, and we will do so. That production will include the materials we have gathered from her computer, and thus, we expect, will contain the material we were unable to access on her disk.

³ Many documents the IRS has collected from individuals in connection with these congressional investigations have nothing whatsoever to do with the subject of the congressional investigations. Our instruction to the document reviewers is to tag as "private" a document that looks personal, such as a document discussing day-care arrangements or medical appointments. Documents that are truly private in nature are not responsive to the congressional requests.

EDR 2013 – 064 SEARCH TERMS 20130611

- 1) "Democrat!"
- 2) "Independent"
- 3) "Left wing"
- 4) "tea party"
- 5) "9/12"
- 6) "912"
- 7) "9-12"
- 8) "patriot"
- 9) "make america a better place to live"
- 10) "conservative"
- 11) "conservative!"
- 12) "republican"
- 13) "republican!"
- 14) "right wing"
- 15) "progress!"
- 16) "liberal"
- 17) "BOLO"
- 18) "watch list"
- 19) "task force"
- 20) "emerging issue"
- 21) "High" w/3 "profile"
- 22) "Government" w/4 "debt"
- 23) "We the People"
- 24) "Government" w/4 "spending"
- 25) "America" w/4 "better place to live"
- 26) "Critical" w/s "country"
- 27) "C(4)"
- 28) "C4"
- 29) "C(3)"
- 30) "C3"
- 31) "501c"
- 32) "Citizens United"
- 33) "TIGTA"
- 34) "Inspector General"
- 35) "Russell George"
- 36) "Audit"
- 37) "Issa"
- 38) "Oversight"
- 39) "Ways and Means"
- 40) "Camp"
- 41) "Boustany"
- 42) "Perjur!"
- 43) "Election"
- 44) "Be on the Lookout"

- 45) "Triage"
- 46) "Advocacy" w/3 "group"
- 47) "Criteria" w/5 "identify"
- 48) "Criteria" w/5 "search"
- 49) "Pro-life"
- 50) "Pro-choice"
- 51) "Pro-Israel"
- 52) "Glenn Beck"
- 53) "Constitution"
- 54) "Bill of Rights"
- 55) "Romney"
- 56) "Leadership Institute"
- 57) "Koch"
- 58) "Wynn"
- 59) "Adelson"
- 60) "Rove"
- 61) "Media"
- 62) "Donor!"
- 63) "White House"
- 64) "WH"
- 65) "Obama"
- 66) "POTUS"
- 67) "Rahm"
- 68) "Jarrett"
- 69) "Cutter"
- 70) "Kelley"
- 71) "NTEU"
- 72) "Union"
- 73) "Lerner"
- 74) "Paz"
- 75) "Roady"
- 76) "American Bar Association"
- 77) "ABA"
- 78) "Political"
- 79) "Campaign"
- 80) "consisten!"
- 81) "Emerging" w/2 "issue"

Any email message in which the to or the from line contain the terms:

- a) "Treasury"
- b) "treas"
- c) "who.eop.gov"