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ONE HUNDRED THIRTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
FACSIMILE (202) 225-3974
MINORITY (202) 225-5051
<http://oversight.house.gov>

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September 5, 2014

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

Dear Mr. Koskinen:

Thank you for agreeing to testify at a hearing of the Subcommittee on Economic Growth, Job Creation and Regulatory Affairs. This hearing will take place at 2:00 p.m. on Wednesday, September 17, 2014, in room 2154 of the Rayburn House Office Building. The hearing will address matters relating to the Internal Revenue Service's targeting of conservative tax-exempt applicants, including the IRS's destruction of Lois Lerner's e-mails and the IRS's efforts to recover this material. To ensure a productive discussion, I ask that you provide the information requested below in advance of the hearing, including whether the IRS has searched IRS exchange server drives for Ms. Lerner's e-mails.

The Committee has recently learned that the Treasury Inspector General for Tax Administration (TIGTA) has identified 760 IRS exchange server drives from the relevant period that currently exist and could contain Ms. Lerner's e-mails.¹ According to TIGTA, the IRS did not search these sources for Ms. Lerner's e-mails during its process of producing documents to Congress because the IRS was not aware that the exchange servers even existed.² According to TIGTA, the IRS was under the mistaken belief that the exchange servers had been destroyed in 2012 until TIGTA's review of IRS records indicated that the servers had not been destroyed due to budgetary constraints.³ These 760 exchange server tapes could be a potential source for the destroyed e-mails sent or received by Ms. Lerner.

This new information conflicts with previous assertions by the IRS that electronic media containing Ms. Lerner's e-mails do not exist. Late on Friday, June 13, 2014, the IRS disclosed – on page 7 of attachment 3 to a letter to the Senate Finance Committee – that the IRS had destroyed two years of e-mails sent or received by former IRS executive Lois Lerner.⁴ In this

¹ Conference call between Treasury Inspector Gen. for Tax Admin. and Congressional Staff (Sept. 4, 2014).

² *Id.*

³ *Id.*

⁴ Letter from Leonard Oursler, Internal Revenue Serv., to Ron Wyden & Orrin Hatch, S. Comm. on Finance, encl. 3, at 7 (June 13, 2014) (carbon copy to Darrell Issa, H. Comm. on Oversight & Gov't Reform).

initial disclosure to Congress, the agency noted that it had “[c]onfirmed that back-up tapes from 2011 no longer exist because they have been recycled.”⁵ On June 20, 2014, during sworn testimony before the House Ways and Means Committee, you similarly testified that the IRS “confirmed” that the agency no longer possessed back-up tapes. You testified:

In light of the hard-drive issue, the IRS took multiple steps over the past months to assess the situation and produce as much email as possible for which Ms. Lerner was an author or recipient. We retraced the collection process for her emails. We located, processed and included email from an unrelated 2011 data collection for Ms. Lerner. **We confirmed that backup tapes from 2011 no longer existed because they have been recycled, pursuant to the IRS normal policy.** We searched email from other custodians for material on which Ms. Lerner appears as author or recipient.⁶

The revelation about the existence of IRS exchange server drives is only the latest information that contradicts the IRS’s assertions. On July 17, 2014, IRS attorney Thomas Kane testified during a transcribed interview with Committee staff that “[t]here is an issue as to whether or not . . . all of the backup recovery tapes were destroyed on the 6-month retention schedule.”⁷ Subsequently, the IRS Director of Legislative Affairs, Leonard Oursler, confirmed this new information, testifying during a transcribed interview that he became aware of the existence of back-up tapes around July 4, 2014.⁸ The Committee also learned that TIGTA has identified as many as nine back-up tapes that were not overwritten by the IRS.⁹

Information made public by the watchdog group, Judicial Watch, casts further doubt on the IRS’s assertions that back-up tapes do not exist. According to the group, the Justice Department recently disclosed during a routine conversation about discovery in Judicial Watch’s Freedom of Information Act lawsuit against the IRS that the destroyed e-mails were backed up as a part of the federal government’s Continuity of Government program.¹⁰ Judicial Watch explained:

Department of Justice attorneys for the Internal Revenue Service told Judicial Watch on Friday that Lois Lerner’s emails, indeed all government computer records, are backed up by the federal government in case of a government-wide catastrophe. The Obama administration attorneys said that this back-up system would be too onerous to search.¹¹

⁵ *Id.*

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

⁷ Transcribed interview of Thomas Kane, Internal Revenue Service, in Wash., D.C. (July 17, 2014).

⁸ Transcribed interview of Leonard Oursler, Internal Revenue Serv., in Wash., D.C. (July 22, 2014).

⁹ Conference call between Treasury Inspector Gen. for Tax Admin. and Congressional Staff (July 29, 2014).

¹⁰ Press Release, Judicial Watch, Judicial Watch Statement on Discovery of Backups for “Missing” Lois Lerner IRS Emails (Aug. 25, 2014).

¹¹ *Id.*

Moreover, further information indicates that additional e-mails may have been lost during the relevant period. According to TIGTA, 31 custodians – out of 118 total – experienced computer issues, and at least eight custodians may have lost e-mails during the period under investigation.¹² In addition, according to a declaration filed in Judicial Watch’s lawsuit, the IRS admitted that it “wiped clean” Ms. Lerner’s blackberry in June 2012¹³ – months *after* Committee staff questioned Ms. Lerner about allegations that the IRS was targeting conservative groups and after Chairman Issa and I wrote to her about these allegations.¹⁴ TIGTA has stated that a second blackberry belonging to Ms. Lerner was destroyed in November 2010.¹⁵

In light of the inconsistent and ever-changing information about the existence of IRS back-up tapes and other media that could contain Lois Lerner’s destroyed e-mails, we ask that you provide the information below in advance of your testimony to better inform Members of the Subcommittee. Please provide this information as soon as possible but no later than 5:00 p.m. on September 12, 2014.

1. Please explain whether IRS back-up tapes from the period in or around June 2011 currently exist.
2. Please quantify how many IRS back-up tapes from the period in or around June 2011 currently exist.
3. Please explain whether the IRS maintains a separate electronic back-up system for IRS records as part of a Continuity of Government program.
4. Please explain whether any IRS e-mails or electronic records are maintained in any manner as part of a Continuity of Government program.
5. Please explain whether the IRS searched exchange server drives during the IRS’s four-month-long process from February 2014 to June 2014 of attempting to recover Lois Lerner’s destroyed e-mails.
6. Please explain whether the IRS searched exchange server drives for any documents or communications responsive to the Committee’s subpoenas of August 2, 2013, February 14, 2014, and June 17, 2014.
7. Please provide a list of all custodians whose e-mail accounts were searched for documents or communications responsive to the Committee’s subpoenas of August 2, 2013, February 14, 2014, and June 17, 2014.

¹² Conference call between Treasury Inspector Gen. for Tax Admin. and Congressional Staff (Sept. 4, 2014).

¹³ Declaration of Thomas J. Kane, *Judicial Watch, Inc. v. Internal Revenue Serv.*, 1:13-cv-1559-egs (D.D.C. filed Aug. 22, 2014).

¹⁴ See Letter from Darrell Issa & Jim Jordan, H. Comm. on Oversight & Gov’t Reform, to Lois Lerner, Internal Revenue Serv. (Mar. 27, 2012); Briefing by Lois Lerner, Internal Revenue Serv., to Committee staff (Feb. 24, 2012).

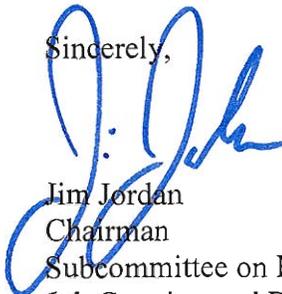
¹⁵ Conference call between Treasury Inspector Gen. for Tax Admin. and Congressional Staff (Sept. 4, 2014).

8. Please provide a list of all search terms used to identify all documents or communications responsive to the Committee's subpoenas of August 2, 2013, February 14, 2014, and June 17, 2014.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X.

You should be prepared to provide a five-minute opening statement and answer questions posed by Members. The enclosed Witness Instruction Sheet provides information for witnesses appearing before the Committee. In particular, please note the procedures for submitting written testimony at least two business days prior to the hearing. If you have any questions about this request, please contact Committee Staff at (202) 225-5074. Thank you for your attention to this matter.

Sincerely,



Jim Jordan
Chairman
Subcommittee on Economic Growth,
Job Creation and Regulatory Affairs

Enclosure

cc: The Honorable Matthew A. Cartwright, Ranking Minority Member
Subcommittee on Economic Growth, Job Creation and Regulatory Affairs

Witness Instruction Sheet
Governmental Witness
Subcommittee Hearing

The following are pertinent rules and procedures applicable to a witness testifying before the Committee on Oversight and Government Reform.

1. The witness should prepare written testimony and provide a short biographical summary. **These two documents need to be provided to the Committee no later than 10:00 a.m. two business days prior to the hearing.**
 - a. Electronic submission: The witness should submit an electronic version of the written testimony and biographical information to Sarah Vance, Assistant Clerk, at Sarah.Vance@mail.house.gov.
 - i. The Committee prints the final record after the hearing. Considering printing costs, please submit your testimony single-spaced and no font size larger than 12 point.
 - b. Delivery of hard copies: The witness should print 30 copies of the written testimony and staple a copy of the biographical summary behind each copy of the written testimony. These 30 packets should be delivered to Sarah Vance at 2157 Rayburn House Office Building. Please do not send the packets by U.S. Mail, UPS, Federal Express, or other shippers. Such packages are processed through an offsite security facility and will arrive 7-10 days late.
2. At the hearing, the witness will be asked to summarize his or her written testimony in five minutes or less in order to maximize the time available for discussion and questions. However, the written testimony may extend to any reasonable length.
3. At the conclusion of the hearing, the witness' written testimony and biographical summary will be posted on the Committee's website. The documents will also be entered into the hearing record. Therefore it is recommended that personally identifiable information, such as addresses and phone numbers, not be included.
4. The Committee does not provide financial reimbursement for witness travel or accommodations. However, a witness with extenuating circumstances may submit a written request for such reimbursements to Robin Butler, Financial Administrator, 2157 Rayburn House Office Building, at least one week prior to the hearing. Reimbursements will not be made without prior approval.
5. A witness with a disability should contact Committee staff to arrange any necessary accommodations.
6. The Committee on Oversight and Government Reform is the principal oversight committee in the U.S. House of Representatives. The jurisdiction of the Committee is set forth in the House Rules X, clauses 1(m), 2, 3, and 4.
7. Committee Rules governing this hearing are online at <http://oversight.house.gov/>.

For inquiries regarding these rules and procedures, please contact the Committee on Oversight and Government Reform at (202) 225-5074.