

**Some Improvements Have Been Made to
Better Comply With Freedom of Information
Act Requirements**

May 2005

Reference Number: 2005-10-089

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.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

INSPECTOR GENERAL
for TAX
ADMINISTRATION

May 26, 2005

MEMORANDUM FOR COMMISSIONER, SMALL BUSINESS/SELF-EMPLOYED
DIVISION

FROM: Pamela J. Gardiner
Deputy Inspector General for Audit

SUBJECT: Final Audit Report - Some Improvements Have Been Made to
Better Comply With Freedom of Information Act Requirements
(Audit # 200410032)

This report presents the results of our Fiscal Year (FY) 2005 Freedom of Information Act (FOIA)¹ review. The overall objective of this audit was to determine whether the Internal Revenue Service (IRS) improperly withheld information requested by taxpayers in writing, based on FOIA exemption (b)(3), in conjunction with Internal Revenue Code (I.R.C.) Section (§) 6103,² and/or FOIA exemption (b)(7), or by replying the requested records were not available. Under § 1102 (d)(3)(A) of the IRS Restructuring and Reform Act of 1998,³ the Treasury Inspector General for Tax Administration is required to conduct periodic audits of a statistically valid sample of the total number of determinations made by the IRS to deny written requests to disclose information to taxpayers on the basis of I.R.C. § 6103 and/or the FOIA exemption (b)(7).

In summary, in 7.1 percent of the FOIA and Privacy Act of 1974 (PA)⁴ cases we sampled, the IRS did not provide complete responses and improperly withheld information from requestors. This represents a higher percentage of improper withholdings than reported in our FY 2004 audit report (4.4 percent).⁵ In 4 of the 6 FOIA and PA error cases, the requestor asked for a document for a specific Document

¹ 5 U.S.C.A. § 552 (West Supp. 2003).

² I.R.C. § 6103 (2001).

³ Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2 U.S.C., 5 U.S.C. app., 16 U.S.C., 19 U.S.C., 22 U.S.C., 23 U.S.C., 26 U.S.C., 31 U.S.C., 38 U.S.C., and 49 U.S.C.).

⁴ 5 U.S.C. § 552a (2000).

⁵ *Improvements Are Needed to Ensure Compliance With the Freedom of Information Act* (Reference Number 2004-40-064, dated March 2004).

Locator Number (DLN).⁶ The Disclosure office caseworkers did not recognize that the DLNs may have a paper document associated with them and did not attempt to obtain the requested information. In an additional case, a caseworker responded the DLN did not exist when, in fact, it did.

In addition, the IRS improperly withheld information from requestors in 3.1 percent of the I.R.C. § 6103 cases sampled where information was denied or the IRS replied responsive records were not available. This represents a significantly lower percentage of improper withholdings than the 14.6 percent we reported last year. There were additional instances in which certain government agencies prepared standard information request form letters that appeared to request more information than the IRS provided. However, the Disclosure offices were able to provide us with supplementary documentation stating the requestors wanted only some of the items that were listed on the form letter. We confirmed with the requestor that the supplemental documentation superseded the information requested on the form letters.

The percentage of untimely responses to FOIA and PA requestors also significantly decreased to 13.1 percent of the cases in this year's sample, as compared with the untimely rates in our previous audit reports. In previous years' audits, the percentage ranged from 20 to 43 percent.

We recommended the Director, Communications and Liaison, clarify instructions for responding to requests for documents with specific DLNs. We also recommended the Director, Communications and Liaison, document agreements with repeat requestors. The agreements should be in writing and specify the procedure the requestor and IRS mutually developed.

Management's Response: IRS management agreed with our recommendations. The Director, Communications and Liaison, will revise the Internal Revenue Manual to clarify when documents associated with a specified DLN should be ordered. The Director, Communications and Liaison, will also issue guidance directing the field to document agreements in writing with repeat requestors from governmental agencies. Management's complete response to the draft report is included as Appendix V.

Copies of this report are also being sent to the IRS managers affected by the report recommendations. Please contact me at (202) 622-6510 if you have questions or Daniel R. Devlin, Assistant Inspector General for Audit (Headquarters Operations and Exempt Organizations Programs), at (202) 622-8500.

⁶ A unique number assigned to every tax return to assist in controlling, identifying, and locating the return and other documents.

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Background

Section (§) 1102 (d)(3)(A) of the Internal Revenue Service (IRS) Restructuring and Reform Act of 1998¹ requires the Treasury Inspector General for Tax Administration (TIGTA) to conduct periodic audits of a statistically valid sample of the total number of IRS determinations to deny written requests to disclose information to taxpayers on the basis of Internal Revenue Code (I.R.C.) § 6103² and/or Freedom of Information Act (FOIA) exemption (b)(7).³

The FOIA requires records of the Federal Government to be made available to the public upon request, unless specifically exempt. FOIA exemption (b)(3)⁴ restricts the release of records specifically exempt from disclosure by statute (e.g., under I.R.C. § 6103). In turn, I.R.C. § 6103 provides a mechanism for taxpayers to request tax returns and return information or to request that it be disclosed to their designee. FOIA exemption (b)(7) restricts the release of records or information compiled for law enforcement purposes.

The Privacy Act of 1974 (PA)⁵ contains a provision that prevents Federal Government agencies from relying on any exemption in the PA to withhold records that are otherwise available to an individual under the FOIA. We included PA cases in the sampled population but only those partially or fully denied under FOIA exemption (b)(3), in conjunction with I.R.C. § 6103, and/or FOIA exemption (b)(7), to determine if the IRS properly withheld the requested information.

Within the IRS, the Small Business/Self-Employed Division Office of Communications and Liaison, through its Office of Disclosure, is responsible for ensuring the IRS complies with FOIA, PA, and I.R.C. § 6103 requirements and responds within the statutory time periods for FOIA and PA requests. The Office of Disclosure provides to field offices

¹ Pub. L. No. 105-206, 112 Stat. 685 (codified as amended in scattered sections of 2 U.S.C., 5 U.S.C. app., 16 U.S.C., 19 U.S.C., 22 U.S.C., 23 U.S.C., 26 U.S.C., 31 U.S.C., 38 U.S.C., and 49 U.S.C.).

² I.R.C. § 6103 (2001).

³ 5 U.S.C.A. § 552 (West Supp. 2003).

⁴ 5 U.S.C.A. § 552 (West Supp. 2003).

⁵ 5 U.S.C. § 552a (2000).

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national oversight and guidance on procedural and policy matters and related training.

The Disclosure offices process almost all the FOIA and PA requests received by the IRS. Written requests for information under I.R.C. § 6103 may be processed by either the individual Disclosure offices or other IRS offices having custody of the requested records.

Of the 26,654 FOIA and PA requests processed through the Disclosure offices between April 1, 2004, and September 30, 2004, the Disclosure offices denied or partially denied 3,206 FOIA and PA requests (12 percent) based on FOIA exemption (b)(3), in conjunction with I.R.C. § 6103 and replied that records were not available for 7,097 FOIA requests (26.6 percent). Of the 15,727 I.R.C. § 6103 requests processed during the same time period, the Disclosure offices denied information or told requestors records were not available for an estimated 6,382 requests (40.6 percent).⁶ The remaining requests were either granted in full, withdrawn by the requestor, or not provided for some other miscellaneous reason.

The FOIA, PA, and I.R.C. § 6103 requests received by the Disclosure offices are controlled on the Electronic Disclosure Information Management System (E-DIMS). The IRS is not required to track I.R.C. § 6103 requests for return or return information from taxpayers or individuals with a material interest (such as a spouse, child, estate, etc.). Nevertheless, the IRS has elected to track all I.R.C. § 6103 requests received by the Disclosure offices, but requests received by other IRS offices are not controlled on the E-DIMS or otherwise inventoried. Therefore, the volume of I.R.C. § 6103 requests received outside of the Disclosure offices is unknown. As a result, we can statistically sample only the I.R.C. § 6103 requests processed directly by the Disclosure offices and tracked on the E-DIMS. The universe of I.R.C. § 6103 requests closed by other IRS offices cannot be determined or statistically sampled.

⁶ This number was estimated by the TIGTA based on the ratio of cases in our sample where requestors were denied information or told records were not available (see Appendix I).

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Except for the limitations described above, this audit was conducted in accordance with *Government Auditing Standards* during the period November 2004 through March 2005. The records reviewed were from cases closed during the 6-month period of April 1, 2004, through September 30, 2004. The audit was performed at the Office of Communications and Liaison in Washington, D.C. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.

Some Responses to Requestors Were Not Complete

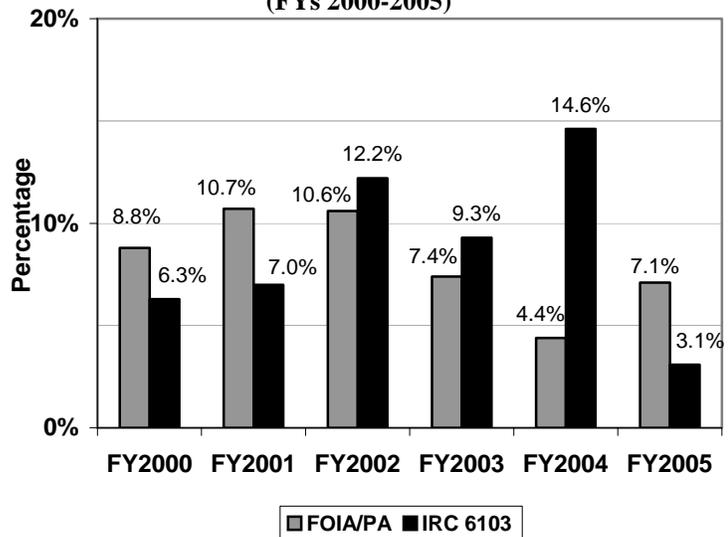
In 6 (7.1 percent) of the 84 FOIA and PA cases sampled and 3 (3.1 percent) of the 97 I.R.C. § 6103 cases sampled, the IRS did not provide complete responses and improperly withheld requested information. When projected to the population of 26,654 FOIA and PA cases and 15,727 I.R.C. § 6103 cases closed by the Disclosure offices from April 1, 2004, through September 30, 2004 (the period of our sample), we estimate there were 736 FOIA and PA cases and 197 I.R.C. § 6103 cases in which the Disclosure offices did not provide available tax records when requested by taxpayers.⁷ As a result, while the extent of nondisclosure varied, the taxpayers' rights were potentially violated and the IRS could risk incurring costs associated with administrative appeals and civil litigation initiated by those requestors improperly denied information.

Chart 1 shows the percentage of improper withholdings for FOIA/PA and I.R.C. § 6103 requests identified during the last six audits (Fiscal Years [FY] 2000-2005).

⁷ See Appendix I for an explanation of our sampling methodology and Appendix IV for a description of the outcome measures.

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Chart 1: Audit Results - Improper FOIA/PA and I.R.C. § 6103 Request Withholdings (FYs 2000-2005)



Source: TIGTA audit reports for FYs 2000-2005.

The IRS had a slightly higher percentage of improper FOIA and PA request withholdings during the period from which our sample cases were drawn (April 1, 2004, through September 30, 2004) than in the previous audit period. The rate of improper withholdings for I.R.C. § 6103 showed a significant decrease over the level reported in FY 2004.

We analyzed the six FOIA and PA cases and the three I.R.C. § 6103 cases with improper withholdings from our samples and determined the types of information being improperly withheld have remained relatively constant over all six audit periods. The most common types of information withheld were miscellaneous IRS forms and documents associated with tax transcript information.

Errors occurred mainly because caseworkers did not conduct complete research to identify the information available. Additional information should have been identified through more thorough research of the Integrated Data Retrieval System⁸ to identify older tax information and

⁸ IRS computer system capable of retrieving or updating stored information; it works in conjunction with a taxpayer's account records.

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documents related to various transactions. Some errors were due to simple oversights of requested information.

In four of the six FOIA and PA error cases, the requestor asked for a document for a specific transaction code and included the Document Locator Number (DLN)⁹ in the request. The Disclosure office caseworkers did not recognize that the DLNs may have a paper document associated with them and did not attempt to obtain the requested information. The caseworkers replied the transaction was computer generated and, therefore, there is no paper document responsive to the request. In an additional case, the caseworker responded the DLN did not exist when, in fact, it did. The Internal Revenue Manual (IRM) states that, when a request is submitted for records identified by DLN and the request also includes the tax form and tax period, Disclosure office personnel should attempt to locate the responsive records.

We also determined certain repeat requestors, such as State governments and probation offices, use self-designed form letters for their I.R.C. § 6103 information requests. For example, we initially identified an additional 13 I.R.C. § 6103 cases that used such a form letter. It appeared that these 13 cases were errors because the Disclosure office did not provide the requestors with all the information items listed on the form letter. However, the Disclosure offices were able to provide us with supplemental documentation stating the requestors wanted only some of the items that were listed on the form letter. We confirmed with the requestors that the supplemental documentation superseded the information requested on the form letters. The requestors and the Disclosure offices have agreed to a follow-up procedure if the requestor needs additional information.

⁹ A unique number assigned to every tax return to assist in controlling, identifying, and locating the return and other documents.

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Recommendations

The Director, Communications and Liaison, should:

1. Clarify procedures for responding to requests for documents with DLNs that represent computer-generated transactions. The procedures should specify the types of transactions that are computer-generated and have no associated paper documents. The procedures should also provide guidance on searching for documents with transactions that may not be computer generated.

Management's Response: The Director, Communications and Liaison, will revise IRM 11.3 Section 13, Freedom of Information Act, to clarify when documents associated with a specified DLN should be ordered.

2. Document agreements with repeat requestors. The agreements should be in writing and specify the procedure the requestor and IRS mutually developed.

Management's Response: The Director, Communications and Liaison, will issue guidance directing the field to document agreements in writing with repeat requestors from governmental agencies in the IRS' response letters.

In Certain Instances, Disclosure Offices Did Not Respond to the Requestors in the Time Required by Law

The FOIA requires Federal Government agencies to determine whether to comply within 20 workdays¹⁰ after the receipt of a FOIA request by the Disclosure office. Federal Government agencies are to immediately notify the person making the request of the resulting determination, the reasons for the determination, and the right to appeal the determination. For PA cases, the IRS must respond within 30 days of the taxpayer's request. The IRS may request an automatic 10-day extension and/or voluntary extension in excess of the initial statutory 20-day period for FOIA requests.¹¹ The requestor must agree to the voluntary extension, and the IRS must notify the requestor of its determination by the end of the extension period.

¹⁰ Excluding Saturdays, Sundays, and legal public holidays.

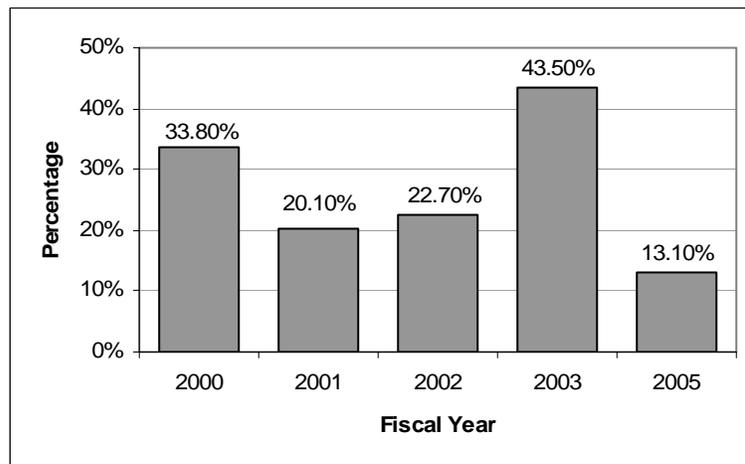
¹¹ The 10-day extension is "automatic" in that it is solely at the discretion of the Disclosure officer; the voluntary extension requires notification to the requestor who may then respond and file an appeal. Either or both extensions may be used in a given case.

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For 11 (13.1 percent) of the 84 cases in the FOIA and PA request random sample, the Disclosure office did not respond to the requestors in the time required by law. This represents a significant decrease in the number of untimely cases over any of the prior audit periods. We estimate from the population of 10,303 cases closed from April 1, 2004, through September 30, 2004, there were 1,349 FOIA and PA requests not processed in accordance with the statutory provisions. In these instances, taxpayers did not receive the level of service envisioned under the statute.

We did not evaluate the timeliness of responses to FOIA and PA requests in the FY 2004 audit. Chart 2 shows the cases reviewed for the FY 2005 audit had a smaller percentage of untimely cases than that reported for FY 2003.

**Chart 2: Comparison of FYs 2000-2005
Untimely FOIA/PA Responses**



Source: TIGTA audit reports for FYs 2000-2005.

We identified 2 primary reasons the 11 FOIA and PA cases were untimely. In 7 of the 11 cases, before the response could be provided, Disclosure office personnel needed information from other IRS functions such as Collection, Examination, or Criminal Investigation. However, due to the slow response from other IRS functions, Disclosure office personnel were unable to provide a timely response to the requestor. In the remaining four cases, Disclosure office personnel needed additional time to copy and review a large

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volume of documents, or other higher priority requests were processed first.

In 6 (55 percent) of the 11 untimely cases, the IRS had not requested the available 10-day extension and/or the voluntary extension. Three of these 6 cases were closed within the automatic 10-day extension period, and would have been in compliance with the FOIA, if the IRS had exercised this option.

In response to previous TIGTA audit reports, the IRS took actions to improve timeliness. The Director, Office of Government Liaison and Disclosure initiated biweekly conference calls with Disclosure Area Managers to address inventory imbalances and over-age cases. Also, the new internal peer review process included an evaluation of case timeliness. These efforts should continue to improve case timeliness.

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Appendix I

Detailed Objective, Scope, and Methodology

The objective of this audit was to determine whether the Internal Revenue Service (IRS) improperly withheld information requested by taxpayers in writing, based on Freedom of Information Act (FOIA) exemption (b)(3),¹ in conjunction with Internal Revenue Code (I.R.C.) Section (§) 6103,² and/or FOIA exemption (b)(7),³ or by replying the requested records were not available. To accomplish this objective, we:

- I. Determined if the IRS Disclosure offices adhered to statutory FOIA and Privacy Act of 1974 (PA)⁴ requirements and procedural requirements.
 - A. Obtained a national extract from the Electronic Disclosure Information Management System (E-DIMS) for the period April 1, 2004, through September 30, 2004, and identified 10,303 FOIA and PA cases closed as denied or partially denied based on FOIA exemption (b)(3), in conjunction with I.R.C. § 6103, and/or FOIA exemption (b)(7), or where the IRS replied responsive records did not exist. We validated the extract by performing specialized queries.
 - B. Designed an attribute sample based on a 90 percent confidence level, an expected error rate of 8.38 percent, and an estimated precision of ± 5 percent. This sampling methodology was chosen so that we could project the number of cases with improper withholdings to the universe of cases that were partially or fully denied based on FOIA exemption (b)(3), in conjunction with I.R.C. § 6103, and/or FOIA exemption (b)(7), or where requestors were told records were not available. The sampling plan and methodology are the same as those used in prior audits.
 - C. Randomly sampled 84 of the 10,303 FOIA and PA cases that were partially or fully denied based on FOIA exemption (b)(3), in conjunction with I.R.C. § 6103, and/or FOIA exemption (b)(7), or where requestors were told records were not available.
 - D. Reviewed the 84 sampled cases and determined if the decision to withhold information was appropriate, the record search was adequate, and the determination was made timely.
 - E. Projected the number of improper withholdings in the range of 262 to 1,210 (2.5 percent to 11.7 percent) FOIA and PA cases that were partially or fully denied based on FOIA exemption (b)(3), in conjunction with I.R.C. § 6103, and/or FOIA exemption (b)(7), or where requestors were told records were not available. The

¹ 5 U.S.C.A. § 552 (West Supp. 2003).

² I.R.C. § 6103 (2001).

³ 5 U.S.C.A. § 552 (West Supp. 2003).

⁴ 5 U.S.C. § 552a (2000).

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- projection was made using attribute sampling, with a 90 percent confidence level and an actual error rate of 7.1 percent. As a result, the actual precision factor was 4.60 percent.
- F. Projected the number of untimely determinations in the range of 609 to 2,089 (5.9 percent to 20.2 percent) FOIA and PA cases that were partially or fully denied based on FOIA exemption (b)(3), in conjunction with I.R.C. § 6103, and/or FOIA exemption (b)(7), or where requestors were told records were not available. The projection was made using attribute sampling, with a 90 percent confidence level and an actual error rate of 13.1 percent. As a result, the actual precision factor was 7.18 percent.
 - G. Discussed all exception cases with the National FOIA Team Leader.
- II. Determined if the IRS Disclosure offices adhered to legal requirements when denying written requests received from taxpayers under I.R.C. § 6103.
- A. Obtained a national extract from the E-DIMS for the period April 1, 2004, through September 30, 2004, and identified 15,727 I.R.C. § 6103 (c) and (e) requests.
 - B. Designed an attribute sample based on a 90 percent confidence level, an expected error rate of 9.87 percent, and an estimated precision of ± 5 percent. This sampling methodology was chosen because it would allow us to project the number of cases with improper withholdings to the universe of closed I.R.C. § 6103 (c) and (e) requests where information was partially or fully denied or where the IRS replied that responsive records did not exist.
 - C. Initially randomly sampled 325 of the 15,727 I.R.C. § 6103 (c) and (e) closed cases. We reviewed the first 239 cases sampled to obtain the required number of cases to statistically project our results.
 - 1. Determined that 97 (40.6 percent) of the 239 randomly sampled and reviewed cases included instances where information was partially or fully denied or where the IRS replied that responsive records did not exist.
 - 2. Based on an initial analysis of the 239 randomly sampled cases, estimated the population of 15,727 closed § 6103 (c) and (e) requests contained 6,382 where information was partially or fully denied or where the IRS replied responsive records did not exist.
 - D. Reviewed the 97 cases where information was partially or fully denied, or where the IRS replied that responsive records did not exist, and determined if the decision to withhold the information based on I.R.C. § 6103 was appropriate.

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- E. Projected the number of improper withholdings in the range of 3 to 418 (0 percent to 6.54 percent) for the § 6103 (c) and (e) requests where information was partially or fully denied or where the IRS replied that responsive records did not exist. The projection was made using attribute sampling, with a 90 percent confidence level and an actual error rate of 3.1 percent. As a result, the actual precision factor was 3.45 percent.
- F. Discussed all exception cases with the National FOIA Team Leader.

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Appendix II

Major Contributors to This Report

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Carl L. Aley, Audit Manager

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Michael Della Ripa, Auditor

Frank Maletta, Auditor

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Appendix III

Report Distribution List

Commissioner C
Office of the Commissioner – Attn: Chief of Staff C
Deputy Commissioner for Services and Enforcement SE
Director, Communications and Liaison, Small Business/Self-Employed Division SE:T:CL
Director, Disclosure SE:S:CL:D
Freedom of Information Act Team Leader SE:S:CL:D
Chief Counsel CC
National Taxpayer Advocate TA
Director, Office of Legislative Affairs CL:LA
Director, Office of Program Evaluation and Risk Analysis RAS:O
Office of Management Controls OS:CFO:AR:M
Audit Liaison: Commissioner, Small Business/Self-Employed Division SE:S

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Appendix IV

Outcome Measures

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

Type and Value of Outcome Measure:

- Taxpayer Rights – Potential; 736 responses to Freedom of Information Act (FOIA)¹ or Privacy Act of 1974 (PA)² requests where information was improperly withheld during the 6-month period of April 1, 2004, through September 30, 2004 (see page 3).

Methodology Used to Measure the Reported Benefit:

The attribute sample was randomly selected from the universe of FOIA and PA requests that were closed nationally during the period April 1, 2004, through September 30, 2004, as 1) a full or partial denial with either FOIA exemption (b)(3), in conjunction with Internal Revenue Code (I.R.C.) § 6103,³ and/or FOIA exemption (b)(7) cited as one of the reasons for withholding information, or 2) where the Internal Revenue Service (IRS) replied responsive records did not exist. We arrived at the estimate by:

- Multiplying the number of requests closed as partially or fully denied based on FOIA exemption (b)(3), in conjunction with I.R.C. § 6103, and/or FOIA exemption (b)(7), or where the IRS replied responsive records did not exist, by the error rate of cases reviewed. A case was considered an “error” if a Disclosure office improperly withheld information that was available and could have been released under the FOIA and PA.

10,303 * 7.142 percent⁴ = 736 cases.

Type and Value of Outcome Measure:

- Taxpayer Rights – Potential; 197 responses to I.R.C. § 6103 requests where information was improperly withheld during the 6-month period of April 1, 2004, through September 30, 2004 (see page 3).

Methodology Used to Measure the Reported Benefit:

The attribute sample was randomly selected from the universe of I.R.C. § 6103 (c) and (e) requests that were closed nationally during the 6-month period April 1, 2004, through

¹ 5 U.S.C.A. § 552 (West Supp. 2003).

² 5 U.S.C. § 552a (2000).

³ I.R.C. § 6103 (2001).

⁴ This figure was rounded to 7.1 percent for report presentation purposes; however, the actual calculation was performed as shown.

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September 30, 2004. The Disclosure offices are not required to input a disposition code showing how I.R.C. § 6103 cases are closed (granted, denied, etc.). We estimated the number of errors for the 6-month period by:

- Identifying 15,727 closed I.R.C. § 6103 (c) and (e) requests.
- Randomly selecting for review 239 of these cases to estimate the universe of denied, partially denied, or no requested record available cases closed during the period April 1, 2004, through September 30, 2004.
- Multiplying the total number of closed requests in the audit universe by the percentage of cases in the sample where information was partially or fully denied or where the IRS replied that responsive records did not exist (97 of 239 or 40.6 percent).

$15,727 * 40.586 \text{ percent}^5 = 6,382 \text{ cases.}$

- Multiplying the estimated universe of cases where information was partially or fully denied, or where the IRS replied that responsive records did not exist, by the error rate for the cases reviewed. A case was considered an “error” if the Disclosure office improperly withheld information from the requestor.

$6,382 * 3.093 \text{ percent}^6 = 197 \text{ cases.}$

Type and Value of Outcome Measure:

- Taxpayer Rights – Potential; 1,349 FOIA and PA requests partially or fully denied under FOIA exemption (b)(3), in conjunction with I.R.C. § 6103, and/or FOIA exemption (b)(7), or where the IRS replied responsive records did not exist that were not processed timely during the 6-month period April 1, 2004, through September 30, 2004 (see page 6).

Methodology Used to Measure the Reported Benefit:

The attribute sample was randomly selected from the universe of FOIA and PA requests that were closed nationally during the 6-month period of April 1, 2004, through September 30, 2004, as 1) a full or partial denial with either FOIA exemption (b)(3), in conjunction with I.R.C. § 6103, and/or FOIA exemption (b)(7) cited as one of the reasons for withholding information, or 2) where the IRS replied responsive records did not exist. We arrived at the estimate by:

- Multiplying the number of requests closed as partially or fully denied based on FOIA exemption (b)(3), in conjunction with I.R.C. § 6103, and/or FOIA exemption (b)(7), or

⁵ This figure was rounded to 40.6 percent for report presentation purposes; however, the actual calculation was performed as shown.

⁶ This figure was rounded to 3.1 percent for report presentation purposes; however, the actual calculation was performed as shown.

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where the IRS replied responsive records did not exist, by the percentage of untimely responses.

$10,303 * 13.095 \text{ percent}^7 = 1,349 \text{ cases.}$

⁷ This figure was rounded to 13.1 percent for report presentation purposes; however, the actual calculation was performed as shown.

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Appendix V

Management's Response to the Draft Report



COMMISSIONER
SMALL BUSINESS/SELF-EMPLOYED DIVISION

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

RECEIVED
MAY 17 2005

MAY 17 2005

MEMORANDUM FOR DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Kevin M. Brown *KMB*
Commissioner, Small Business/Self-Employed Division

SUBJECT: Draft Audit Report – Some Improvements Have Been Made to
Better Comply With Freedom of Information Act Requirements
(Audit No. 200410032)

We have reviewed your report and appreciate your acknowledgement of the significant improvement in the timeliness of our responses to Freedom of Information Act (FOIA) and Privacy Act (PA) requests. You also noted substantial improvement in our responses to Internal Revenue Code (IRC) 6103 requests. As in your previous audit, this current audit validates that we properly cited FOIA exemption (b)(3) in conjunction with IRC Section 6103, and FOIA exemption (b)(7) to withhold information in response to written requests. We agree with your specific recommendations.

Our comments on your recommendations follow:

RECOMMENDATION 1

The Director, Communications and Liaison, should clarify procedures for responding to requests for documents with DLNs that represent computer-generated transactions.¹ The procedures should specify the types of transactions that are computer-generated and have no associated paper documents. The procedures should also provide guidance on searching for documents with transactions that may not be computer-generated.

CORRECTIVE ACTION

We will revise IRM 11.3 Section 13, Freedom of Information Act, to clarify when documents associated with a specified DLN should be ordered.

IMPLEMENTATION DATE

September 30, 2005

¹ TIGTA report references title as Director, Communications, Governmental Liaison and Disclosure; this is the same position, but proposed title change has not yet taken effect officially.

**Some Improvements Have Been Made to Better
Comply With Freedom of Information Act Requirements**

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RESPONSIBLE OFFICIAL(S)

Director, Governmental Liaison and Disclosure

CORRECTIVE ACTION MONITORING PLAN

Director, Disclosure, will advise the Director, Governmental Liaison and Disclosure, of any delays.

RECOMMENDATION 2

The Director, Communications and Liaison, should document agreements with repeat requestors. The agreements should be in writing and specify the procedure the requestor and IRS mutually developed.

CORRECTIVE ACTION

We will issue guidance directing the field to document agreements in writing with repeat requestors from governmental agencies in our response letters.

IMPLEMENTATION DATE

September 30, 2005

RESPONSIBLE OFFICIAL(S)

Director, Governmental Liaison and Disclosure

CORRECTIVE ACTION MONITORING PLAN

Director, Disclosure, will advise the Director, Governmental Liaison and Disclosure, of any delays.

If you have any questions, please call me at (202) 622-0600 or Beth Tucker, Director, Communications and Liaison, at (202) 283-7407.