



*The Office of Disclosure Continued to
Improve Compliance With the Freedom of
Information Act Requirements*

August 29, 2008

Reference Number: 2008-30-164

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.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

August 29, 2008

MEMORANDUM FOR COMMISSIONER, SMALL BUSINESS/SELF-EMPLOYED
DIVISION

Michael R. Phillips

FROM:

Michael R. Phillips
Deputy Inspector General for Audit

SUBJECT:

Final Audit Report – The Office of Disclosure Continued to Improve
Compliance With the Freedom of Information Act Requirements
(Audit # 200830025)

This report presents the results of our review of taxpayer requests for information. The overall objective of this review was to determine whether the Internal Revenue Service (IRS) has adequate and effective policies and procedures to ensure compliance with Freedom of Information Act (FOIA)¹ provisions. Specifically, we determined whether the 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 that the requested records were not available.

The Treasury Inspector General for Tax Administration is required to conduct periodic audits to determine if the IRS properly denied taxpayers' 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 ninth review of denials of FOIA, Privacy Act of 1974,³ and I.R.C. § 6103 requests.

Impact on the Taxpayer

The IRS must ensure that the provisions of the FOIA, the Privacy Act, and I.R.C. § 6103 are followed, particularly because errors can violate taxpayer rights and result in improper disclosures of tax information. We reviewed a statistically valid sample of 82 FOIA/Privacy Act cases and found 3 (3.7 percent) cases in which taxpayer rights might have been violated because

¹ 5 U.S.C.A. Section 552 (West Supp. 2007).

² I.R.C. § 6103 (2004).

³ 5 U.S.C. § 552a (2000).



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the IRS improperly withheld information requested by the taxpayers. When projected to the population, our sample results indicate that 207 taxpayers might have been improperly denied information under the FOIA and/or the Privacy Act in Fiscal Year 2007. The IRS adhered to legal requirements under I.R.C. § 6103 in the sample of 84 cases we reviewed.

Synopsis

The IRS continued to improve the accuracy, timeliness, and completeness of its responses to requests for information covered by the FOIA. For example, the percentage of untimely responses to FOIA/Privacy Act requests continued to decrease, with only 1 (1.2 percent) of 82 cases reviewed having a response issued after the due date. In our previous 8 audits, the percentages of untimely responses ranged from a high of 43.5 percent to a low of 2.3 percent. In addition, we noted no exceptions in the 84 I.R.C. § 6103 cases reviewed. This is a marked improvement over our results⁴ from last year, when information was improperly withheld in 14.5 percent of the I.R.C. § 6103 cases reviewed.

The improved performance can be attributed in large part to the policies, procedures, and techniques (management controls) in place to help ensure that disclosure personnel handle requests made under the FOIA in a timely manner and in accordance with laws and regulations. While improvement was noted, management's continued attention is needed to ensure that disclosure personnel follow required procedures. In 3.7 percent (3 of 82 cases) of the FOIA/Privacy Act cases we reviewed, information was improperly withheld from the requestors. These errors occurred mainly because of inadequate research or simple oversight by disclosure personnel.

Response

We made no recommendations in this report because, in our opinion, management controls are operating as intended in providing reasonable assurance that FOIA/Privacy Act provisions are followed and that accurate and timely responses are forwarded to taxpayers when written requests for tax account information are received. IRS management reviewed this report prior to issuance and agreed with the facts, findings, and outcome measures presented.

Copies of this report are also being sent to IRS managers affected by the report issues. Please contact me at (202) 622-6510 if you have questions or Margaret E. Begg, Acting Assistant Inspector General for Audit (Small Business and Corporate Programs), at (202) 622-8510.

⁴ *The Office of Disclosure Can Improve Compliance With the Freedom of Information Act Requirements* (Reference Number 2007-10-133, dated August 31, 2007).



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Abbreviations

FOIA	Freedom of Information Act
FY	Fiscal Year
I.R.C.	Internal Revenue Code
IRS	Internal Revenue Service



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Background

Statutory requirements

The Internal Revenue Service (IRS) Restructuring and Reform Act of 1998¹ requires the Treasury Inspector General for Tax Administration 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 6103² of this title³ or section 552(b)(7) of title 5, United States Code.⁴

The three primary laws that govern the types of requests for information reviewed in this audit are:

The Freedom of Information Act (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. Internal Revenue Code (I.R.C.) Section (§) 6103 is an example of such a statute; it protects the confidentiality of tax returns and return information.

The FOIA requires agencies to make records of the Federal Government available to the public upon request unless specifically exempted.

Records or information compiled for law enforcement purposes are also exempt from disclosure under the FOIA.

The Privacy Act of 1974⁵ prohibits Federal Government agencies from relying on any exemption in the Privacy Act to withhold records that are otherwise available to an individual under the FOIA.

I.R.C. § 6103, while protecting the confidentiality of taxpayers’ returns and return information, does allow the taxpayer, or a person designated by the taxpayer, to request and receive the taxpayer’s specific documents and information.

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., and 49 U.S.C.). The requirements for this audit are in Section (§) 1102 (d)(3)(A) of the statute.

² Internal Revenue Code § 6103 (2004).

³ 26 U.S.C.

⁴ Freedom of Information Act, 5 U.S.C.A. § 552 (West Supp. 2007).

⁵ U.S.C. § 552a (2000).



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IRS processing and reporting of FOIA cases

Within the IRS, the Small Business/Self-Employed Division Office of Communications, Liaison, and Disclosure (through its Governmental Liaison and Disclosure Branch) is responsible for ensuring timely compliance with the FOIA, the Privacy Act, and I.R.C. § 6103. The Office of Disclosure within the Governmental Liaison and Disclosure Branch sets policy and issues instructions, guidelines, and procedures to ensure compliance with the disclosure statutes.

In its FOIA Annual Report for Fiscal Year (FY) 2007, the IRS reported that a total of 18,289 FOIA/Privacy Act cases were processed. This represents a decrease of 28 percent from the 25,404 FOIA/Privacy Act cases processed during FY 2006. The IRS attributes this decrease to:

- Identification of Abusive Tax Avoidance Transactions. As the number of promoters of the Individual Master File Decoding Schemes are identified and disciplined,⁶ there is a decrease in the number of FOIA requests received by the IRS.⁷
- An increase in IRS employee awareness of what types of documents can be released to taxpayers without formal FOIA/Privacy Act requests.
- Taxpayers being able to receive more information from IRS web sites without having to make formal requests.

The IRS denied or partially denied information to requestors in 2,531 (13.8 percent) of the 18,289 FOIA/Privacy Act cases processed in FY 2007. It advised requestors that there were no records responsive to requests in 3,393 (18.6 percent) of the 18,289 cases. The remaining 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 the records processed written requests for information made under I.R.C. § 6103. While the IRS is not required to track all requests made under I.R.C. § 6103, it has elected to do so for requests received by its Disclosure offices. Disclosure offices used the IRS Electronic-Disclosure Information Management System to track requests made under the FOIA, the Privacy Act, and I.R.C. § 6103 for FY 2007. However, requests made under I.R.C. § 6103 that were received and processed by IRS offices other than Disclosure offices are neither controlled on the Electronic-Disclosure Information Management System nor otherwise inventoried. Consequently, the volume of these

⁶ Disciplinary action can include injunction, disbarment, or a temporary or permanent suspension from practice.

⁷ Promoters of Individual Master File Decoding Schemes would make requests for information that cannot be granted or requests that are irrelevant or repetitive. In addition, single requestors generated multiple requests for pieces of information instead of using one request for all of the information they were seeking. The Individual Master File is the IRS database that maintains transactions or records of individual tax accounts.



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requests is not known. As a result, we could statistically sample only the I.R.C. § 6103 requests processed directly by the IRS Disclosure offices and tracked on the Electronic-Disclosure Information Management System.

In February 2006, responsibility for processing some requests for I.R.C. § 6103 tax compliance checks⁸ and transcripts was transferred from the Small Business/Self-Employed Division Disclosure offices to the Wage and Investment Division Return and Income Verification Services Units. The Small Business/Self-Employed Division continues to process the FOIA and Privacy Act requests for information. Transfer of responsibility for the processing of tax compliance checks and transcripts to the Return and Income Verification Services Units resulted in an increase in our scope limitation for this and future year audits because the Wage and Investment Division does not record its I.R.C. § 6103 cases on the Electronic-Disclosure Information Management System. We reviewed only those requests processed by the Small Business/Self-Employed Division Disclosure offices that were denied during the period October 1, 2006, through September 30, 2007.

During this 12-month period, IRS Disclosure offices processed approximately 12,801 requests made under I.R.C. § 6103. We estimated that the Disclosure offices denied information or told requestors that records were not available for approximately 29.37 percent of I.R.C. § 6103 requests (approximately 3,759 requests). The remaining requests were granted in full, or information on the disposition was not available.

This review was performed at the Small Business/Self-Employed Division Governmental Liaison and Disclosure Branch in New Carrollton, Maryland, during the period December 2007 through May 2008. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.

⁸ Tax compliance checks are conducted under the authority granted by I.R.C. § 6103(c), which permits the IRS to release specified tax information to a third party with written authorization from the taxpayer.



Results of Review

The policies, procedures, and techniques (management controls) the Office of Disclosure has implemented are providing a reasonable level of assurance that the IRS is complying with the laws and regulations governing the FOIA. As reflected in our case reviews, the IRS continued to improve the accuracy, timeliness, and completeness of its responses to requests for information covered by the FOIA.

Management Controls Are Providing Reasonable Assurance That Freedom of Information Act Requests Are Properly Handled in a Timely Manner

The IRS relies on its disclosure personnel to ensure that requests under the FOIA are handled in a timely manner and in accordance with laws and regulations. To assist disclosure personnel in meeting these objectives, the Office of Disclosure has established and implemented management controls that are in line with the Government Accountability Office *Standards for Internal Control in the Federal Government*. These Standards are designed to assist managers in establishing policies, procedures, and techniques that provide reasonable, not absolute, assurance that specified objectives are met.

An IRS broad policy statement and the Internal Revenue Manual provide guidance to disclosure personnel nationwide. The policy statement, among other things, affirms the IRS' commitment to full compliance with the FOIA and to 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."

The Internal Revenue Manual is an important control component at the top of the agency because it contains the official compilation of detailed instructions and explanations of the statutory, regulatory, and administrative procedures for disclosure personnel to follow when handling FOIA requests. 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 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. The importance of documentation is further emphasized in management directives; personnel training materials; and the standards for answering requests accurately, completely, and in a timely manner.



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Management reviews are key for identifying and correcting potential problems with FOIA requests

The Office of Disclosure uses a Balanced Measures Review Process⁹ to identify and correct potential problems with responses to FOIA/Privacy Act requests. The Balanced Measures Review Team examines a sample of FOIA/Privacy Act cases twice a year to 1) assess how well personnel are meeting the standards for accuracy, completeness, and timeliness; 2) communicate areas of concern to top management; 3) identify potential training needs; and 4) improve work processes. As shown in Figure 1, the percentages of cases meeting each of the standards have remained consistent (around 90 percent) since July 2005.

Figure 1: Balanced Measures Review Results

Standard	July 2005	January 2006	July 2006	January 2007	July 2007	January 2008
Accuracy	88%	91%	93%	89%	91%	91%
Completeness	92%	95%	95%	95%	96%	96%
Timeliness	87%	95%	95%	91%	97%	96%

Source: IRS Office of Disclosure Balanced Measures Review Reports.

The primary tool the Office of Disclosure uses to help ensure that the standards under the Balanced Measures Review Process are met is the review of ongoing work assigned to disclosure personnel. Disclosure managers, who are responsible for the quality of work done locally by the personnel they manage, conduct these reviews. By reviewing ongoing work, managers attempt to identify problems and correct potential problems before they have an adverse effect on taxpayers.

The IRS is carrying out its responsibilities to improve the disclosure of information under a Government-wide initiative

In addition to providing assurances that FOIA requests are handled in a timely manner and in accordance with laws and regulations, controls are helping to ensure that the IRS carries out its responsibilities under the Government-wide Improving Agency Disclosure of Information initiative. The initiative was introduced by Executive Order 13392 on December 14, 2005, and directed agencies to 1) reduce backlogs of FOIA requests, 2) take advantage of web sites and other technologies for disseminating information, 3) improve communications with FOIA requestors, and 4) increase public awareness of FOIA processing.

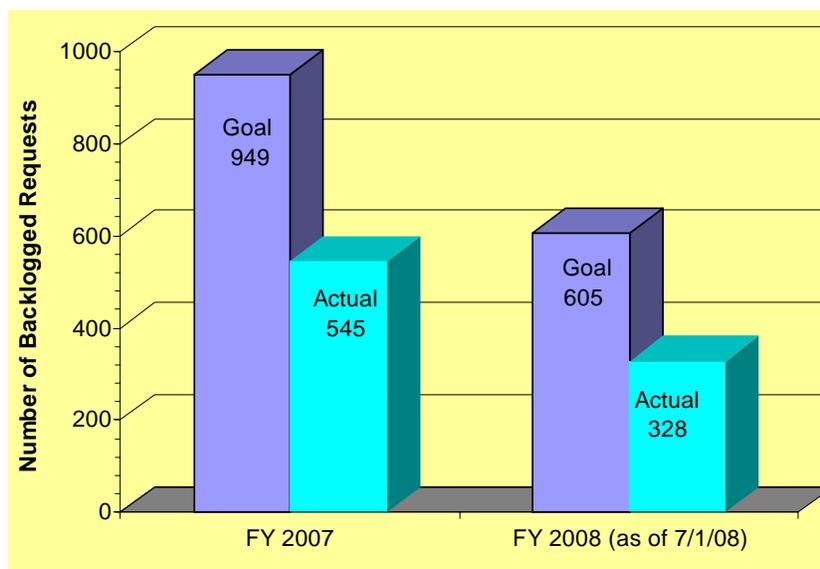
⁹ Appendix V contains additional information about and results from the Balanced Measures Review Process, including various elements that elaborate and expand on the three standards.



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While data are not available on the precise impact the initiative is having on improving the disclosure of information, statistics provided to the Department of Treasury (reproduced in Figure 2) show that the IRS has steadily improved in key areas under the initiative. In FY 2007 and FY 2008 through July 1, 2008, the IRS exceeded its backlog reduction goals. The IRS' initiative to reduce FOIA request response times has prevented additional requests from becoming part of the backlog inventory.

Figure 2: Reduction of Backlogged FOIA Requests



Source: IRS Office of Disclosure.

In FY 2007, the Department of the Treasury, with significant contribution from the IRS, was recognized by the Office of Management and Budget for its performance in decreasing the backlog of FOIA requests by more than any other Federal Government agency since the initiative began in 2005.

In addition, the IRS has expanded its efforts beyond the statutory obligations imposed by the FOIA and the Privacy Act to respond to these requests and provide better customer service. Some examples are the management-issued Disclosure Alerts¹⁰ and the Disclosure Dispatch.¹¹ Also, management has developed minimum standards for documenting case actions and is providing more national oversight of the FOIA program within the Office of Disclosure and the entire IRS.

¹⁰ Disclosure Alerts focus on a single issue, expectation, or announcement that requires the immediate attention of disclosure employees.

¹¹ The Disclosure Dispatch is a digest of important technical and procedural information for disclosure employees and managers.



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The Percentage of Improperly Denied Freedom of Information Act/Privacy Act Requests for Information Has Decreased

The IRS continued to improve its service to persons who requested information under the FOIA/Privacy Act based on the sample 82 of cases we reviewed.¹² In addition, the IRS adhered to legal requirements under I.R.C. § 6103 in the sample of 84 cases we reviewed.¹³ We noted no exceptions in the 84 I.R.C. § 6103 cases.

We attribute the improvement from the prior year to two factors. First, there was a 33 percent reduction in the total number of cases received by the Office of Disclosure in FY 2007 as compared to FY 2006. This reduction, at least in part, can be attributed to a transfer of I.R.C. § 6103 requests for tax compliance checks and transcripts from the Small Business/Self-Employed Division Disclosure offices to the Wage and Investment Division Return and Income Verification Services Units. Second, during FY 2007, the Office of Disclosure reinforced Internal Revenue Manual procedures and guidelines through technical training. Computer-based learning techniques were used to deliver consistent and timely training to disclosure personnel.

The IRS improperly withheld information from requestors in 3 (3.7 percent) of the 82 FOIA/Privacy Act cases. As a result, we estimate that the Disclosure offices did not provide available tax records for 207 FOIA/Privacy Act requests.¹⁴ While improvement is noted, management's continued attention is needed to ensure that disclosure personnel follow required procedures. Figure 3 shows the percentages of cases for which information was improperly withheld that we identified in this and prior year reports.

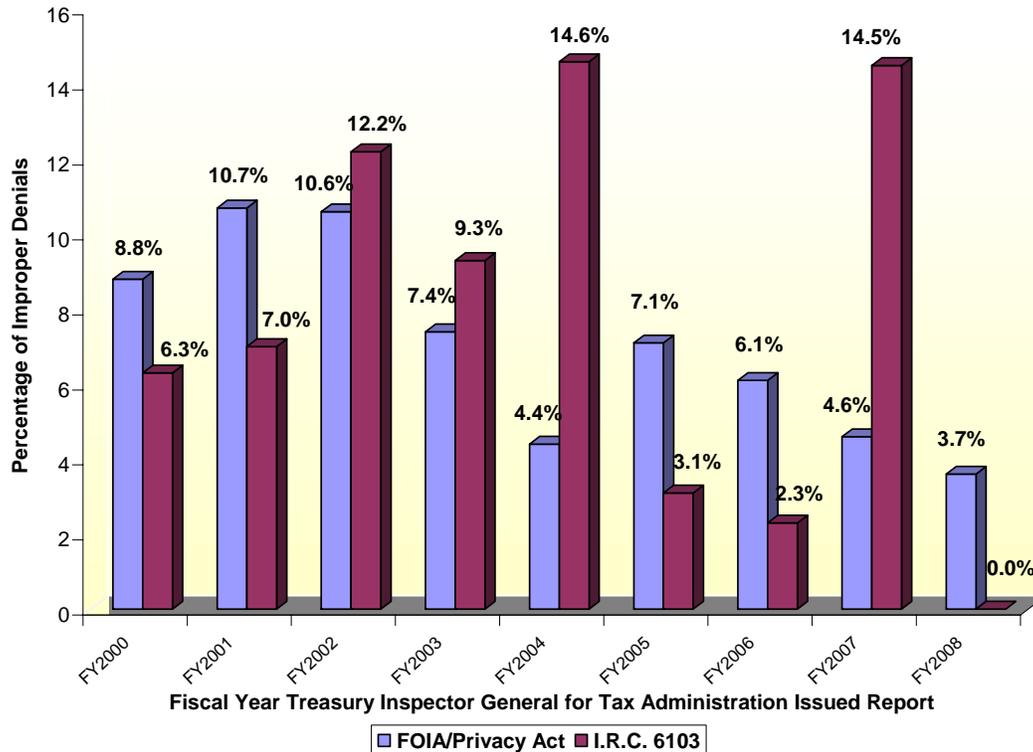
¹² We selected our sample of cases for audit review of denials of FOIA/Privacy Act requests from a total population of 5,589 cases closed during FY 2007 that were fully denied, were partially denied, or for which no records were found to be responsive to the requests. The total of 5,589 cases includes the 3,393 "no records responsive" closures plus 2,196 of the 2,531 cases denied or partially denied. The full 2,531 were not used due to filters identifying only cases denied for FOIA exemptions (b)(7) or (b)(3) in conjunction with I.R.C. § 6103 (which was our criterion).

¹³ See Appendix I for additional information about our sampling methodologies.

¹⁴ See Appendix IV for details.



Figure 3: Improper FOIA/Privacy Act and I.R.C. § 6103 Request Withholdings



Source: Treasury Inspector General for Tax Administration audit reports issued in FYs 2000-2008. Percentages were rounded to the closest tenth.

We analyzed the three FOIA/Privacy Act cases and determined that the types of information improperly withheld have remained relatively consistent with the types of information identified as improperly withheld during our prior reviews. The most common types of information withheld were miscellaneous IRS forms and documents associated with tax transcript information. Errors occurred mainly because of inadequate research or simple oversight by the Disclosure office caseworkers. For the three FOIA cases, the Disclosure office caseworkers either did not conduct complete research or did not follow guidelines when responding to requestors.

Because the IRS improperly denied available records, taxpayers' rights could have been violated, taxpayers could have been burdened unnecessarily, and the IRS might have incurred additional costs through the appeals process. For FOIA requests, if the IRS reports that no applicable records exist, or denies any part of the request, the requestor may administratively appeal the IRS decision. If the IRS denies the administrative appeal, the requestor has the right to appeal the



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denial in court. Preparing and processing the appeals would place additional burden on the requestor and additional costs on the IRS.

During FY 2007, the IRS processed 267 FOIA/Privacy Act appeals. The Office of Appeals completely upheld the Disclosure office's decision to deny records in 247 cases, partially reversed 18 denials, and completely reversed 2 denials. In the three FOIA cases in which the IRS improperly withheld records in our sample, the requestors did not appeal. Had these three taxpayers used the appeals process, the improper determinations might have been discovered and reversed.

Disclosure Offices Improved the Timeliness of Responding to Requests for Information

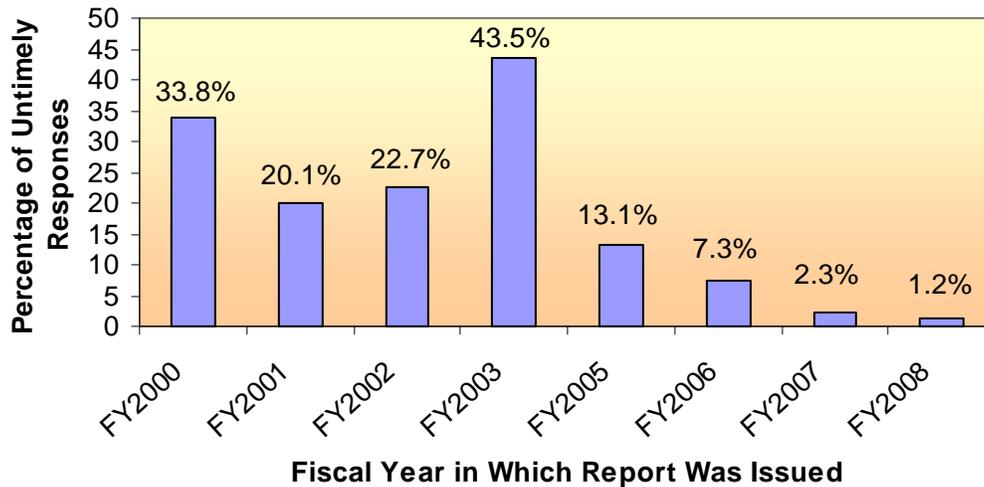
The FOIA requires that Federal Government agencies 1) respond within 20 business days of the receipt of a request or, 2) if the 20 days are not sufficient, notify the requestor of the reason why the request cannot or will not be filled. Federal Government agencies are required to immediately notify the requestor if they are unable to respond to the request within the time limit, to advise the requestor of the reason(s) why they are unable to respond, and to advise the requestor of his or her right to appeal. The due date for a FOIA request is revised when the IRS sends a letter to the requestor exercising its right for an automatic 10-business-day extension and/or requesting a voluntary extension in excess of the initial statutory 20-business-day period for FOIA requests. 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 case is untimely when the IRS responds to the requestor after the due date. For Privacy Act cases, the IRS must respond within 30 business days of the receipt of the request.

Since FY 2000, the IRS has made significant improvement in the timeliness of responses to FOIA/Privacy Act requests. Figure 4 shows the percentages of untimely cases we have reported since FY 2000.



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Figure 4: Comparison of Untimely FOIA/Privacy Act Responses



Source: Treasury Inspector General for Tax Administration audit reports issued in FYs 2000-2008. Percentages were rounded to the closest tenth.¹⁵

The Disclosure offices did not respond to the requestor in the time required by law for only 1 (1.2 percent) of the 82 FOIA/Privacy Act cases. In addition, the IRS reported a 97 percent timeliness rate for all FOIA/Privacy Act closures in its July 2007 Balanced Measures Review Report.

We estimate that, from the population of 5,589 cases closed during the period October 1, 2006, through September 30, 2007, there were 67 FOIA/Privacy Act requests not processed in a timely manner.¹⁶ However, the IRS is responding in a more timely manner than in prior years.

¹⁵ We did not evaluate the timeliness of responses to FOIA and Privacy Act requests in the FY 2004 audit because the IRS was in the process of implementing our recommendations to improve timeliness.

¹⁶ See Appendix IV for details.



Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of this audit was to determine whether the IRS has adequate and effective policies and procedures to ensure compliance with FOIA¹ provisions. Specifically, we determined whether the IRS improperly withheld information requested by taxpayers in writing, based on FOIA exemption (b)(3), in conjunction with I.R.C. Section (§) 6103,² and/or FOIA exemption (b)(7), or by replying that the requested records were not available. To accomplish this objective, we:

- I. Determined whether the IRS properly adhered to statutory FOIA and Privacy Act of 1974³ requirements and to procedural requirements.
 - A. Obtained an extract from the Electronic-Disclosure Information Management System⁴ for the period October 1, 2006, through September 30, 2007, and identified 5,589 FOIA and Privacy Act cases closed as denied or partially denied based on FOIA exemption (b)(3) in conjunction with I.R.C. § 6103, FOIA exemption (b)(7), or for which the IRS replied that responsive records did not exist. We validated the data extract by performing specialized queries.
 - B. Designed an attribute sample based on a 90 percent confidence level, an expected error rate of 7.5 percent, and an estimated precision of ± 5 percent. Based on these parameters, a statistically valid sample size was 75 cases. This sampling methodology was chosen so 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 for which requestors were told records were not available. We increased the attribute sample size from 75 cases to 85 cases to account for the possibility that some case files would be unavailable. For the 85 randomly selected cases requested, we received 82 case files.
 - C. Reviewed the 82 sampled cases and determined whether the decision to withhold information was appropriate, the record search was adequate, and the determination was made in a timely manner.

¹ 5 U.S.C.A. § 552 (West Supp. 2007).

² I.R.C. § 6103 (2004).

³ 5 U.S.C. § 552a (2000).

⁴ The Electronic-Disclosure Information Management System is the primary automated information system used by Government, Liaison, and Disclosure staff for inventory tracking, work planning, statistical management reports, daily time tracking, etc.



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- D. Projected the number of improper withholdings in the range of 15 to 393 (.27 percent to 7.04 percent) FOIA/Privacy Act 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 for which 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 3.7 percent. As a result, the actual precision factor was ± 3.39 percent.
 - E. Projected the number of untimely determinations in the range of 2 to 179 (0 percent to 3.20 percent) FOIA/Privacy Act 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 for which 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 1.2 percent. As a result, the actual precision factor was ± 1.98 percent.
 - F. Discussed all exception cases with the FOIA Senior Tax Law Specialist.
- II. Determined whether the IRS Disclosure offices adhered to legal requirements when denying written requests received from taxpayers under I.R.C. § 6103.
- A. From the national extract obtained for Step I. A., identified 12,801 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 7.46 percent, and an estimated precision of ± 5 percent. Based on these parameters, the size of the statistically valid sample was 86 cases. 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 for which information was partially or fully denied or for which the IRS replied that responsive records did not exist. We selected a larger sample size to account for the possibility that some case files would be unavailable.
 - C. Selected a random sample of 300 of the 12,801 I.R.C. §§ 6103 (c) and (e) closed cases, requested case files for the 300 cases from the IRS, and received 286 case files. We determined that 84 (29.37 percent) of the 286 cases included instances in which information was partially or fully denied or in which the IRS replied that responsive records did not exist.
 - D. Reviewed the 84 cases and determined whether the decision to withhold the information based on I.R.C. § 6103 was appropriate.
 - E. Discussed all exception cases with the FOIA Senior Tax Law Specialist.
- III. Determined whether IRS management has implemented an effective quality review program to 1) evaluate IRS employees' understanding of disclosure and privacy rules,



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- principles, and procedures and 2) assess employees' compliance with these requirements when performing daily tasks.
- IV. Determined what actions IRS management has initiated to ensure accurate implementation and compliance with the initiative introduced by Executive Order 13392, Improving Agency Disclosure of Information (dated December 14, 2005).
- A. Obtained and reviewed the monthly FOIA Performance Measures Reports.
 - B. Reviewed and evaluated the efforts IRS management has made since the adoption of the Department of the Treasury FOIA Improvement Plan.
 - C. Interviewed IRS management about the initiatives they are taking to automate and streamline the processing of FOIA requests.
- V. Evaluated controls over the receipt, processing, and disposition of FOIA requests.
- A. Discussed procedures with management.
 - B. Obtained and analyzed established policies and procedures for the receipt, processing, and disposition of FOIA requests.
 - C. Determined whether managers performed operational reviews.



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Appendix II

Major Contributors to This Report

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Debra Mason, 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
Deputy Commissioner, Small Business/Self-Employed Division SE:S
Director, Communications, Liaison, and Disclosure, Small Business/Self-Employed Division
SE:S:CLD
Director, Governmental Liaison and Disclosure, Small Business/Self-Employed Division
SE:S:CLD:GLD
Chief, Disclosure Branch, Small Business/Self-Employed Division SE:S:CLD:GLD:D
Freedom of Information Act Senior Tax Law Specialist SE:S:CLD:GLD: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 Internal Control OS:CFO:CPIC:IC
Audit Liaison: Commissioner, Small Business/Self-Employed Division SE:S



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 – Potential; 207 responses to FOIA¹ or Privacy Act of 1974² requests for which information was improperly withheld during the 12-month period October 1, 2006, through September 30, 2007 (see page 7).

Methodology Used to Measure the Reported Benefit:

The attribute sample of 82 cases was randomly selected from the universe of 5,589 FOIA/Privacy Act requests closed nationally during the period October 1, 2006, through September 20, 2007, as 1) a full or partial denial with either FOIA exemption (b)(3), in conjunction with I.R.C. Section (§) 6103,³ and/or FOIA exemption (b)(7) cited as one of the reasons for withholding information, or 2) a request for which the IRS replied that responsive records did not exist.

We found 3 (3.7 percent) cases in which the IRS improperly withheld information requested by the taxpayers. We arrived at the estimate by multiplying the number of requests closed as 1) or 2) above by the error rate of cases identified in our sample ($5,589 * 3.7$ percent error rate = 207 cases). 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/or the Privacy Act.

Type and Value of Outcome Measure:

- Taxpayer Rights – Potential; 67 FOIA or Privacy Act requests that were not processed in a timely manner during the 12-month period October 1, 2006, through September 30, 2007 (see page 9).

Methodology Used to Measure the Reported Benefit:

The attribute sample of 82 cases was randomly selected from the universe of 5,589 FOIA/Privacy Act requests closed nationally during the period October 1, 2006, through

¹ 5 U.S.C.A. Section (§) 552 (West Supp. 2007).

² 5 U.S.C. § 552a (2000).

³ I.R.C. § 6103 (2004).



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September 20, 2007, 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) a request for which the IRS replied that responsive records did not exist.

We identified only 1 (1.2 percent) of 82 cases reviewed as having a response issued after the due date. We arrived at the estimate by multiplying the number of requests closed as 1) or 2) above by the percentage of untimely responses identified in our sample (5,589 * 1.2 percent error rate = 67 cases).



Appendix V

Balanced Measures Review Process

The Balanced Measures Review Process is conducted bi-annually for compliance with established standards of accuracy, completeness, and timeliness. The Balanced Measures Review Team reviews a sample of FOIA/Privacy Act¹ requests to collectively improve the quality standards of the responses to those requests.

Accuracy Standard statistics for the last three reviews are as follows:

	January 2007	July 2007	January 2008
OVERALL RATING	89%	91%	91%
The request was properly controlled on the inventory system	94%	94%	96%
The caseworker recognized that the request met or did not meet the FOIA/Privacy Act validity requirements	95%	96%	98%
The caseworker recognized that any authorization/Power of Attorney was valid	96%	95%	87%
Proper determination made on releasability	84%	90%	91%
The appropriate closing code was used	89%	92%	94%
All correspondence, including the response, was clearly and professionally written and technically accurate	81%	83%	82%

Source: IRS Office of Disclosure.

¹ 5 U.S.C.A. Section (§) 552 (West Supp. 2007) and U.S.C. § 552a (2000).



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Completeness Standard statistics for the last three reviews are as follows:

	January 2007	July 2007	January 2008
OVERALL RATING	95%	96%	96%
The case file documents all case activities	95%	94%	95%
The response included the total number of pages responsive, denied in full, denied in part, and granted in full	99%	97%	97%
The response addressed all requested items	97%	97%	99%
Provided Notice 393 ² when documents have been partially or fully withheld, or no responsive records located	91%	96%	93%
The requestor was kept apprised of the status of the request throughout the process	88%	99%	100%
Explained assertion or waiver of fees when needed	86%	96%	87%

Source: IRS Office of Disclosure.

Timeliness Standard statistics for the last three reviews are as follows:

	January 2007	July 2007	January 2008
OVERALL RATING	91%	97%	96%
Significant activity on the request began within a reasonable time period	93%	94%	92%
Days in process are appropriate based on the complexity of the request	84%	97%	94%
Time charged performing case activities was commensurate with case difficulty	91%	98%	98%
The response or Letter 1522 ³ was sent within the statutory 20-business-day time limit	97%	99%	99%
A response or additional extension letter was sent within the time stipulated in Letter 1522 or any additional extension	98%	93%	98%
Case notes were updated at least every 30 days, unless the case was closed within the initial 30-day time period	88%	91%	97%

Source: IRS Office of Disclosure.

² Information on an IRS Determination to Withhold Records Exempt From The Freedom of Information Act – 5 U.S.C. 552 (Notice 393).

³ Letter to taxpayer requesting voluntary extension of time to locate and consider releasing requested IRS records (Letter 1522).