



*Fiscal Year 2013 Statutory Review
of Compliance With the
Freedom of Information Act*

September 20, 2013

Reference Number: 2013-30-109

This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.

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HIGHLIGHTS

FISCAL YEAR 2013 STATUTORY REVIEW OF COMPLIANCE WITH THE FREEDOM OF INFORMATION ACT

Highlights

**Final Report issued on
September 20, 2013**

Highlights of Reference Number: 2013-30-109
to the Internal Revenue Service Director,
Privacy, Governmental Liaison and Disclosure.

IMPACT ON TAXPAYERS

The IRS must ensure that the provisions of the Freedom of Information Act (FOIA), the Privacy Act of 1974 (Privacy Act), and Internal Revenue Code (I.R.C.) Section (§) 6103 are followed. Errors can violate taxpayer rights and result in improper disclosures of tax information.

WHY TIGTA DID THE AUDIT

TIGTA is required to conduct periodic audits to determine if the IRS properly denied written requests for tax account information. TIGTA is also required to include the results in one of its Semiannual Reports to Congress. This is TIGTA's fourteenth review of denials of FOIA, Privacy Act, and I.R.C. § 6103 information requests.

The overall objective of this review was to determine whether the IRS improperly withheld information requested in writing based on FOIA exemption (b)(3), in conjunction with I.R.C. § 6103, and/or FOIA exemption (b)(7) or by replying that responsive records were not available or did not exist.

WHAT TIGTA FOUND

TIGTA reviewed a statistically valid sample of 55 FOIA/Privacy Act information requests from a population of 3,415 FOIA/Privacy Act requests and found nine (16.4 percent) in which taxpayer rights may have been violated because the IRS improperly withheld or failed to adequately search for and provide information to requestors. In addition, the IRS may have violated taxpayer rights by failing to adequately search for and provide information in three (5.6 percent) of

54 sampled I.R.C. § 6103 information requests. When the sample results are projected to their respective populations, approximately 559 FOIA/Privacy Act and 13 I.R.C. § 6103 information requests may have had information erroneously withheld.

All FOIA/Privacy Act information requests sampled were responded to timely. There are no statutory time frames within which the IRS must respond to I.R.C. § 6103 information requests. However, for 15 (27.8 percent) of the 54 I.R.C. § 6103 information requests, the IRS took more than 30 calendar days to provide a response.

Additionally, sensitive taxpayer information was inadvertently disclosed in response to nine (16.4 percent) of the FOIA/Privacy Act and four (7.4 percent) of the I.R.C. § 6103 information requests reviewed.

WHAT TIGTA RECOMMENDED

TIGTA recommended that the IRS: 1) require disclosure specialists to adhere to the general correspondence guidelines when processing I.R.C. § 6103 requests by specifying these time frames in the Disclosure section of the Internal Revenue Manual; and 2) emphasize the importance of disclosure laws and regulations with disclosure specialists and their managers.

The IRS agreed with both recommendations and plans to include time frames for processing I.R.C. § 6103 requests in the Internal Revenue Manual. The IRS plans to issue an interim guidance memorandum addressing this requirement before the end of the fiscal year. In addition, the IRS plans to develop a mandatory Disclosure Technical Update training session for all disclosure specialists. The IRS plans to include in the training the types of inadvertent disclosures found during this audit and also stress the need for a careful review of documents prior to their release to avoid unauthorized disclosures. The IRS plans to require the disclosure specialists to review this training annually.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

September 20, 2013

MEMORANDUM FOR DIRECTOR, PRIVACY, GOVERNMENTAL LIAISON AND
DISCLOSURE

A handwritten signature in black ink, appearing to read "Michael E. McKenney".

FROM: Michael E. McKenney
Acting Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Fiscal Year 2013 Statutory Review of Compliance
With the Freedom of Information Act (Audit # 201330006)

This report presents the results of our review to determine whether the Internal Revenue Service (IRS) improperly withheld information requested in writing based on the Freedom of Information Act (FOIA)¹ 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 responsive records were not available or did not exist.

The Treasury Inspector General for Tax Administration (TIGTA) is required to conduct periodic audits to determine if the IRS properly denied written requests for tax account information. We are also required to include the results in one of our Semiannual Reports to Congress. This is our fourteenth review of denials of FOIA, Privacy Act of 1974,³ and I.R.C. § 6103 requests. The review is included in our Fiscal Year 2013 annual audit plan and addresses the major management challenge of Taxpayer Protection and Rights.

Management's complete response to the draft report is included as Appendix VI. Although the IRS agreed to all of TIGTA's recommendations, IRS management's response noted that many of the inadvertent disclosures did not include information that could be misused by the recipient. TIGTA's position is that any unauthorized disclosure of information has the potential to be harmful to the taxpayer or the Government.

¹ 5 U.S.C.A. § 552 (2010).

² I.R.C. § 6103 (2009).

³ 5 U.S.C. § 552a (2010).



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Copies of this report are also being sent to the IRS managers affected by the report recommendations. If you have any questions, please contact me or Nancy Nakamura, Assistant Inspector General for Audit (Compliance and Enforcement Operations).



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Abbreviations

AFOIA	Automated Freedom of Information Act
DQMS	Disclosure Quality Measurement System
FOIA	Freedom of Information Act
I.R.C.	Internal Revenue Code
IRS	Internal Revenue Service
TIGTA	Treasury Inspector General for Tax Administration



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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 (TIGTA) to:

conduct periodic audits of a statistically valid sample of the total number of determinations made by the Internal Revenue Service to deny written requests to disclose information to taxpayers on the basis of section 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. Records or information compiled for law enforcement purposes are also exempt from disclosure under the FOIA.

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

The Privacy Act of 1974 (Privacy Act)⁵ states that no Federal Government agency shall disclose any record that is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains. The Privacy Act mandates that each agency have in place an administrative and physical security system to prevent the unauthorized release of personal records.

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.). The requirements for this audit are in § 1102 (d)(3)(A) of the statute.

² I.R.C. § 6103 (2009).

³ 26 U.S.C. (2009).

⁴ 5 U.S.C.A. § 552 (2010).

⁵ 5 U.S.C. § 552a (2010).



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

IRS processing and reporting of FOIA requests

Effective June 2011, the Office of the Deputy Commissioner for Operations Support (through its Office of Privacy, Governmental Liaison and Disclosure) became responsible for ensuring the IRS's timely compliance with the FOIA, the Privacy Act, and I.R.C. § 6103. The Headquarters Disclosure Office within the Office of Privacy, Governmental Liaison and Disclosure, sets IRS policy and issues instructions, guidelines, and procedures to the various IRS functions to ensure compliance with the disclosure statutes.

The Office of Disclosure processes FOIA/Privacy Act and I.R.C. § 6103 information requests received by the IRS. In the *U.S. Department of the Treasury Freedom of Information Act Annual Report to the Attorney General for Fiscal Year 2012*, the IRS reported that a total of 12,198 FOIA/Privacy Act information requests were processed. This is consistent with the 12,196 FOIA/Privacy Act information requests processed on the Automated Freedom of Information Act (AFOIA) system during Fiscal Year 2012.

In addition, the report stated that the IRS denied or partially denied information to requestors in 2,986 (24 percent) of the 12,198 FOIA/Privacy Act information requests processed in Fiscal Year 2012. This is an increase from the 20 percent reported in Fiscal Year 2011. The report further stated that the IRS advised requestors that there were no records responsive to requests in 793 (6.5 percent) of the 12,198 FOIA/Privacy Act information requests. This is a decrease from the 8.5 percent reported in the prior fiscal year. The remaining information requests were either granted in full or closed for miscellaneous reasons, such as the request was improper or had been previously granted.

Audit limitations and standards

Individual IRS disclosure offices or other IRS offices having custody of taxpayer records also processed written requests for information made under I.R.C. § 6103. While the IRS is not required to track all information requests made under I.R.C. § 6103, it has elected to do so for requests received by its Headquarters Disclosure Office. In addition, the Headquarters Disclosure Office used the AFOIA system to track information requests made under the FOIA/Privacy Act for Fiscal Year 2012. Requests made under I.R.C. § 6103 that were received and processed by IRS offices other than the Headquarters Disclosure Office are not controlled on the AFOIA system or otherwise inventoried. Consequently, the volume of these requests is not known. As a result, we can statistically sample only the I.R.C. § 6103 information requests processed directly by the IRS Headquarters Disclosure Office and tracked on the AFOIA system.

Beginning in February 2006, the responsibility for processing some information requests for I.R.C. § 6103 tax compliance checks and transcripts was transferred from the Small



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Business/Self-Employed Division's Office of Disclosure to the Wage and Investment Division's Return and Income Verification Services Units. The Wage and Investment Division does not record the I.R.C. § 6103 information requests on the AFOIA system. We reviewed only those requests processed by the Office of Disclosure that were denied, partially denied, or had no responsive records during the period of October 1, 2011, through September 30, 2012.

This review was performed with information obtained from the Headquarters Disclosure Office within the Office of Privacy, Governmental Liaison and Disclosure, in Washington, D.C., during the period December 2012 through June 2013. 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.



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Results of Review

The Internal Revenue Service Needs to Continue Its Efforts to Reduce Its Freedom of Information Act Backlog

The IRS relies on its disclosure personnel to ensure that information requests received under the FOIA are handled timely and in accordance with laws and regulations. The IRS supports the FOIA program with a broad policy statement and the Internal Revenue Manual⁶ that provides guidance nationwide to disclosure personnel. The policy statement, among other things, affirms the IRS's commitment to full compliance with the FOIA and administering it in a manner consistent with "the fundamental values held by our society, including public accountability, safeguarding national security, enhancing the effectiveness of law enforcement agencies and the decision-making processes, protecting sensitive business information, and protecting personal privacy."

Besides providing assurances that FOIA information requests are handled timely and in accordance with laws and regulations, the IRS needs to continue its efforts to reduce inventory backlog under the Governmentwide *Improving Agency Disclosure of Information* initiative. The IRS has taken positive steps to effectively manage its FOIA backlog. For example, the Headquarters and field office managers review weekly over-age reports and monthly inventory monitoring reports, both of which include FOIA/Privacy Act and I.R.C. § 6103 information request inventory and backlog information. Disclosure management uses these reports to make informed decisions to better manage their information request inventory.

National Disclosure Office statistics show that the IRS has continued to reduce its backlog of FOIA information requests in Fiscal Years 2008 through 2012. In Fiscal Year 2012, the IRS hired 21 new disclosure specialists in addition to the 24 new hires in Fiscal Year 2011. As a result, there was a 19 percent decrease in the number of information requests that were backlogged at the end of Fiscal Year 2012 (118 requests) compared to the number of backlogged requests at the end of Fiscal Year 2011 (146 requests). Reducing the number of backlogged cases is particularly important because it addresses the primary reason response time periods are not being met under the FOIA.

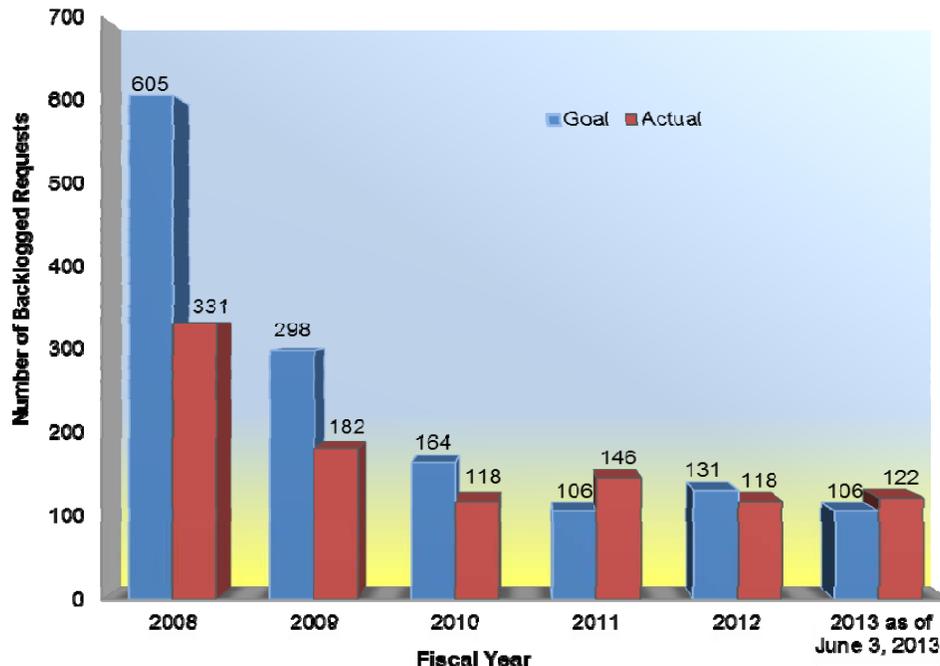
Figure 1 shows the inventory of backlogged FOIA information requests from Fiscal Year 2008 to Fiscal Year 2013, through June 3, 2013.

⁶ Contains the policies, procedures, instructions, guidelines, and delegations of authority which direct the operation and administration of the IRS. Topics include tax administration, personnel and office management, and others.



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Figure 1: Inventory of Backlogged FOIA Information Requests



Source: Unaudited data provided by the IRS Headquarters Disclosure Office, U.S. Department of the Treasury Freedom of Information Act Annual Report to the Attorney General for Fiscal Year 2012, and TIGTA audit reports issued in Fiscal Years 2008–2012.

The IRS’s Fiscal Year 2013 backlog goal⁷ is to reduce its September 30, 2012, backlog of 118 information requests by 10 percent to 106 requests. As of June 3, 2013, there were 122 backlogged information requests. This represents a 3 percent increase in backlogged requests since the beginning of Fiscal Year 2013. Currently, the backlog is 16 information requests (15 percent) over the Fiscal Year 2013 goal of 106. The IRS is striving to meet its reduction in backlog goal by the end of this fiscal year.

Managerial Controls Need to Ensure That Disclosure Specialists Properly Respond to Freedom of Information Act, Privacy Act, and Internal Revenue Code Section 6103 Information Requests

The IRS was not consistent in its service to individuals who requested information under the FOIA/Privacy Act based on the statistically valid sample of information requests reviewed. Specifically, disclosure specialists improperly withheld or failed to adequately search for and

⁷ The Governmentwide backlog goal for the IRS is determined by the Department of Justice target of a 10 percent reduction in the past fiscal year’s backlog.

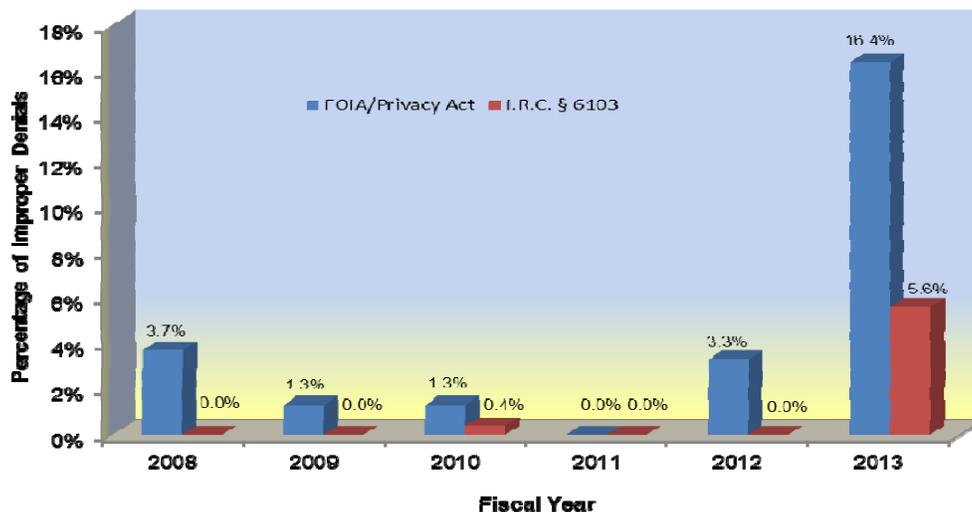


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provide information on nine (16.4 percent)⁸ of the 55 FOIA/Privacy Act information requests reviewed. When the sample results are projected to the population of 3,415 FOIA/Privacy Act information requests closed during the period October 1, 2011, through September 30, 2012, the results indicate that approximately 559 FOIA/Privacy Act requests may have had information erroneously withheld.⁹ We expect the number of requests that had information erroneously withheld to range from 265 to 984 requests.

In addition, disclosure specialists failed to adequately search for and provide information on three (5.6 percent) of the 54 I.R.C. § 6103 information requests reviewed. When the sample results are projected to our population of 2,615 I.R.C. § 6103 information requests closed during the period October 1, 2011, through September 30, 2012, the results indicate that approximately 13 I.R.C. § 6103 requests may have had information erroneously withheld.¹⁰ We expect the number of requests that had information erroneously withheld to range from three to 38 requests.¹¹ Figure 2 shows the audit results for Fiscal Years 2008 through 2012.

**Figure 2: Improper FOIA/Privacy Act and
I.R.C. § 6103 Information Request Withholdings**



Source: TIGTA audit reports issued in Fiscal Years 2008–2012 and audit tests conducted during this review. Percentages were rounded to the closest tenth.

⁸ For purposes of reporting, we rounded the actual error rate used in the outcome measure calculations in Appendix IV from 16.36 percent to 16.4 percent.

⁹ The projection is based on a 95 percent confidence level, a precision rate of ± 5 percent, and an error rate of 16.4 percent.

¹⁰ The projection is based on a 95 percent confidence level, precision rate of ± 5 percent, and an error rate of 0.5 percent.

¹¹ See Appendix IV for an explanation of the projections.



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The IRS relies on its disclosure personnel to ensure that information requests under the FOIA/Privacy Act and I.R.C. § 6103 are handled in accordance with laws and regulations. The Internal Revenue Manual provides guidance to disclosure personnel nationwide. Throughout the Internal Revenue Manual, personnel are instructed to properly document in case files all aspects of their work during the receipt, control, research, response, and closing phases of the requests. This documentation is important because it provides the principal evidence that procedures were followed, as well as the foundation for other control processes such as management reviews.

During Fiscal Year 2009, the Office of Disclosure implemented a Disclosure Quality Measurement System (DQMS) which was designed to institutionalize a real-time national process for monitoring the quality of all Office of Disclosure work. According to IRS management, the DQMS was staffed by temporarily promoting Senior Disclosure Specialists into the review positions on a rotational basis. During Fiscal Years 2010 through 2012, the implementation of the AFOIA system took a significant investment of staff time for training and related administrative support. This resulted in sporadic operation of the DQMS program and an insufficient number of reviews to provide a valid analysis of statistical information. As a result, Office of Disclosure management made the decision to temporarily discontinue the DQMS as a quality review for casework.

Office of Disclosure managers are responsible for the quality of work done locally by the personnel they manage. By reviewing ongoing work, managers attempted to identify and correct potential problems before they may have an adverse effect on taxpayers. Though a managerial review of selected casework is still required, this is not a sufficient substitute for the DQMS. We were advised that the DQMS process was resumed in Fiscal Year 2013.

The influx of new employees may be a contributing factor to the increased instances of taxpayer information being either erroneously withheld or not provided in error. The Office of Disclosure stated that it hired 21 disclosure specialists in Fiscal Year 2011 and an additional 24 disclosure specialists in Fiscal Year 2012. During Fiscal Year 2012, the 45 new employees were either in formal training or going through On-The-Job-Training. The new employees account for approximately 45 percent of the current staff of 101 disclosure specialists. In addition, the more experienced disclosure specialists had collateral duties, such as coaching, and were not processing information requests full time.

Freedom of Information Act and Privacy Act Information Requests Were Responded to Timely by the Internal Revenue Service

None of the 55 Fiscal Year 2012 FOIA/Privacy Act information requests in our sample had an untimely response. The FOIA requires Federal Government agencies to respond within 20 business days of the receipt of an information request or, if the 20 business days are not sufficient, to notify the requestor of the reason why the request cannot or will not be filled. If they are unable to respond to an information request within the time limit, Federal Government



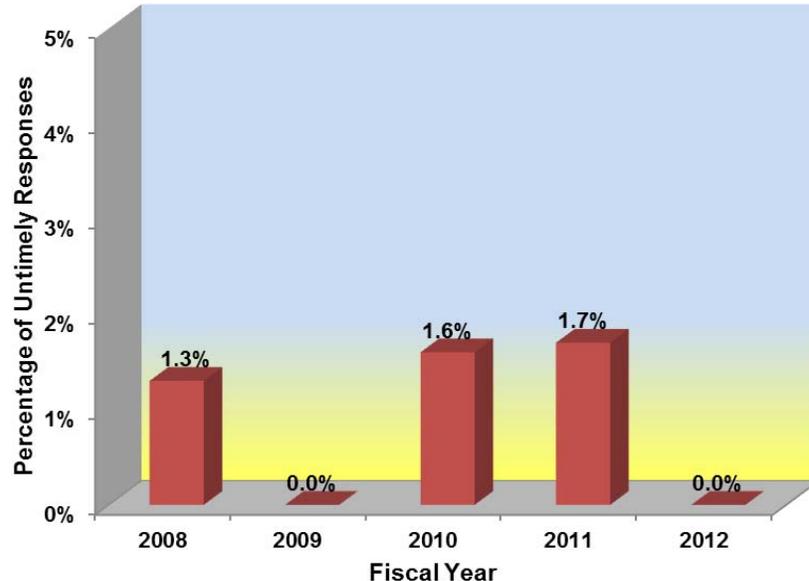
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agencies are required to immediately notify the requestor of this fact, of the reasons why they are unable to respond, and of the requestor's right to appeal.

The due date for a FOIA information request is revised when the IRS sends a letter to the requestor exercising its right for an automatic 10-day extension and/or requesting a voluntary extension in excess of the initial statutory 20-day period. The requestor must agree to the voluntary extension, and the IRS must notify the requestor of its ability to respond by the end of the extension period. A FOIA information request is considered untimely when the IRS responds to the requestor after the due date. For Privacy Act information requests, the IRS must respond within 30 calendar days of the taxpayer's request.

Since Fiscal Year 2001, the IRS has made significant improvement in the timeliness of responses to FOIA/Privacy Act information requests. Our audits, including this review, indicate that the percentages of untimely responses ranged from zero to 43.5 percent. The results of our last three audits found that the IRS has remained relatively consistent in providing responses to requestors within the statutory time periods. Figure 3 shows the percentages of untimely information requests we have reported since Fiscal Year 2008.

Figure 3: Comparison of Untimely FOIA/Privacy Act Responses



Source: TIGTA audit reports issued in Fiscal Years 2009–2012 and audit tests conducted during this review. Percentages were rounded to the closest tenth.



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The Disclosure Office Does Not Have Timeliness Requirements for Responding to Internal Revenue Code Section 6103 Information Requests

Although there are statutory time frames in which the IRS must respond to FOIA information requests, there are no such requirements for responding to I.R.C. § 6103 information requests. From a review of a sample of 54 I.R.C. § 6103 information requests, we identified 15 (27.8 percent) with response dates that were more than 30 calendar days. These information requests included, for example, requests for personnel records, copies of tax notices and tax returns, account transcripts, and copies of the examination files of audited tax returns. Of the 54 information requests sampled:

- Thirty-nine (72.2 percent) had responses within 30 calendar days.
- Nine (16.7 percent) had responses within 31 to 60 calendar days.
- Six (11.1 percent) had responses more than 60 calendar days.

Privacy Act information requests fall under the IRS's general correspondence guidelines of responding within 30 calendar days of the request. If 30 calendar days are not sufficient, the IRS guidelines require that the requestor be notified that the processing of the request will be delayed and provide a revised response date. I.R.C. § 6103 information requests should also fall under the same general correspondence guidelines.

Although the Disclosure section of the Internal Revenue Manual does not specifically address timeliness for processing I.R.C. § 6103 information requests, all IRS divisions and functions that respond to taxpayer correspondence are subject to the guidance published in the Taxpayer Contact section of Internal Revenue Manual. Office of Disclosure officials stated that disclosure specialists do not currently follow these guidelines for I.R.C. § 6103 information requests in order to maintain flexibility when working other higher priority work, such as FOIA and Privacy Act information requests. However, disclosure specialists are instructed to notify the requestor if the response is going to be delayed.

Only one request case file of the 15 untimely responses in our sample contained sufficient evidence to indicate that the requestor was advised of any delay in the processing of the I.R.C. § 6103 request. To ensure that requestors are responded to in a timely manner or notified of any processing delays, the Office of Disclosure should adhere to the general correspondence guidelines when processing I.R.C. § 6103 information requests.

Recommendation

Recommendation 1: The Director, Office of Privacy, Governmental Liaison and Disclosure should require disclosure specialists to adhere to the general correspondence guidelines when



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processing I.R.C. § 6103 requests by specifying these time frames in the Disclosure section of the Internal Revenue Manual.

Management's Response: The IRS agreed with this recommendation. The Internal Revenue Manual will be revised to include a specific time frame for processing I.R.C. § 6103 requests. An interim guidance memorandum that addresses this requirement will be issued before the end of the fiscal year.

Disclosure Specialists May Be Inadvertently Disclosing Taxpayer Information

A review of a sample of 55 FOIA/Privacy Act and 54 I.R.C. § 6103 information requests identified nine (16.4 percent) FOIA/Privacy Act and four (7.4 percent) I.R.C. § 6103 requests where disclosure specialists inadvertently disclosed sensitive taxpayer information or other information deemed “official use only” in their responses. These disclosures are summarized as follows with some requests having more than one issue.

- Six occurrences which released Personally Identifiable Information that was outside the scope of what the requestor’s Power of Attorney or designated representative was authorized to receive.
- Five occurrences which released Personally Identifiable Information of third-party taxpayers.
- Four occurrences which released the taxpayer’s Discriminant Function Score. This is a numerical score given to tax returns based upon a computerized classification process that by IRS policy is for “official use only” and not to be disclosed.
- Three occurrences which treated taxpayer-related information (such as revenue agent reports, bank records, *etc.*) inconsistently by redacting information on some pages, and then releasing it on others.
- One occurrence which released IRS transcripts for an incorrect Social Security Number.

Office of Disclosure officials stated that these inadvertent disclosures could have resulted from several contributing factors, such as:

- A lack of independent review through the implementation of the DQMS quality review process.
- An oversight by the caseworker when completing the review of responsive records.
- An oversight by management in the review of the case files.

The timely identification and reporting of all inadvertent unauthorized disclosures of sensitive information is critical to quickly initiate any needed investigation or recovery of information. A



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prompt report decreases the possibility that the information may be compromised and used to perpetuate identity theft or other forms of harm to taxpayers or the Government. Disclosure officials addressed the disclosures with the disclosure specialists and their managers who processed and reviewed the requests we identified. Disclosure officials responded that the appropriate actions were taken to report all of the inadvertent disclosures once we notified them of our concerns.

Recommendation

Recommendation 2: The Director, Office of Privacy, Governmental Liaison and Disclosure, should emphasize the importance of the disclosure laws and regulations with all disclosure specialists and their managers, and ensure that the procedures for reporting inadvertent disclosures are periodically reviewed.

Management's Response: The IRS agreed with this recommendation. A mandatory Disclosure Technical Update training session will be developed for all disclosure specialists. The training will include the types of inadvertent disclosures found during this audit and stress the need for a careful review of documents prior to their release to avoid unauthorized disclosures. The training will also include a review of the procedures for reporting any such disclosures. In addition, the training session will be recorded and Disclosure managers will be required to certify on an annual basis that their employees have reviewed the training. The training will also be made a permanent part of the orientation training for new Disclosure employees.



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Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of this review was to determine whether the IRS improperly withheld information requested in writing based on FOIA¹ exemption (b)(3), in conjunction with I.R.C. § 6103,² and/or FOIA exemption (b)(7) or by replying that responsive records were not available or did not exist. To accomplish this objective, we:

- I. Determined the applicable policies, procedures, and controls that were in place to ensure compliance with the FOIA when denying information, such as:
 - A. Policies, operating procedures, systems, documents/files, risks, laws, and regulations related to the receipt, disposition, and resolution or denials of requests for information under the FOIA.
 - B. Specific management controls and systems that were in place to ensure the timely and proper receipt, disposition, and resolution or denials of requests for information under the FOIA.
- II. Determined whether the IRS properly adhered to statutory FOIA and Privacy Act³ requirements, as well as procedural requirements.
 - A. Obtained an extract from the AFOIA system for the period October 1, 2011, through September 30, 2012, and identified 3,415 FOIA/Privacy Act information requests closed as denied or partially denied based on FOIA exemption (b)(3), in conjunction with I.R.C. § 6103, or on FOIA exemption (b)(7), or where the IRS replied that responsive records were not available or did not exist. We validated the data extract by performing specialized queries. We determined that the data were sufficiently reliable for the purposes of this report.
 - B. Designed a statistically valid sample based on a confidence level of 90 percent, an expected error rate of 5.33 percent for FOIA/Privacy Act information requests, with an estimated precision of ± 5 percent. Based on these parameters, a statistically valid sample size was 55 information requests. This sampling methodology was chosen so that we could project the number of requests with improper withholdings to the universe of information requests that were partially or fully denied based on FOIA

¹ 5 U.S.C.A. § 552 (2010).

² I.R.C. § 6103 (2009).

³ 5 U.S.C. § 552a (2010).



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- 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.
- C. Reviewed the 55 sampled FOIA/Privacy Act information requests and determined whether the decision to withhold information was appropriate, the record search was adequate, and the determination was made in a timely manner.
 - D. Projected the number of requests where information was withheld from the requestor in the range of 265 to 984 (7.76 percent to 28.8 percent) for FOIA/Privacy Act information requests 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 the Exact Binomial method for attribute sampling, with a 95 percent confidence level and an actual error rate of 16.36 percent. The accuracy of our projection was reviewed and confirmed by our contracted statistician.
 - E. Discussed all exceptions with Office of Disclosure officials.
 - F. Reviewed the *U.S. Department of the Treasury Freedom of Information Act Annual Report to the Attorney General for Fiscal 2012* showing various statistics for FOIA/Privacy Act information requests, including appeals and closures. This information was not independently verified because the accuracy of these statistics did not affect the accomplishment of our audit objective.
- III. Determined whether the IRS Headquarters Disclosure Office is adhering to legal requirements when denying written information requests received under I.R.C. § 6103.
- A. Obtained an extract from the AFOIA system for the period October 1, 2011, through September 30, 2012, and identified 2,615 I.R.C. §§ 6103(c) and (e) information requests that were denied, partially denied, or had no disposition code.
 - B. Designed a statistically valid sample based on a confidence level of 90 percent, an expected error rate of 5.36 percent, and an estimated precision of ± 5 percent. Based on these parameters, the size of the statistically valid sample was 55 information requests. This sampling methodology was chosen because it would allow us to project the number of requests with improper withholdings to the universe of closed I.R.C. §§ 6103(c) and (e) information requests that were partially or fully denied or for which the IRS replied that responsive records were not available or did not exist. One information request in our sample was misclassified as an I.R.C. §§ 6103(c) and (e) request when it actually was an I.R.C. § 6103(d) request, which did not meet our criteria. As a result, removing the misclassified request reduced our sample to 54 information requests.
 - C. Selected a statistically valid sample of 600 of the 2,615 I.R.C. §§ 6103(c) and (e) closed information requests. We selected a larger sample size to account for the



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- possibility that some requests would not meet our objective criteria. We reviewed each request received to identify the necessary 54 information requests for our sample that included instances in which information was partially or fully denied or in which the IRS replied that responsive records were not available or did not exist.
- D. Reviewed the 54 information requests identified and determined whether the decision to withhold the information based on I.R.C. § 6103 was appropriate, and if the determination was made in a timely manner.
 - E. Discussed all exceptions with Office of Disclosure officials.
 - F. Projected the number of requests where information was withheld from the requestor in the range of three to 38 (0.103 percent to 1.454 percent) for information requests that were partially or fully denied information or told that records were not available. The projection was made using the Exact Binomial method for attribute sampling, with a 95 percent confidence level and an actual error rate of 0.5 percent. To project the number of taxpayers affected, we projected the number of errors to the original 600 requests sampled from the population of 2,615 I.R.C. § 6103 information requests. The accuracy of our projection was reviewed and confirmed by our contracted statistician.

Internal controls methodology

Internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined the following internal controls were relevant to our audit objective: the IRS policies, operating procedures, systems, laws, and regulations related to the receipt, disposition, and resolution or denials of requests for information under the FOIA to evaluate whether the IRS improperly withheld tax account information requested in writing. We evaluated these controls by reviewing source materials, interviewing management, and reviewing statistically valid samples of closed FOIA/Privacy Act and I.R.C. § 6103 information requests.



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Appendix II

Major Contributors to This Report

Augusta R. Cook, Acting Assistant Inspector General for Audit (Compliance and Enforcement Operations)
Bryce Kisler, Director
Tina M. Parmer, Audit Manager
Gail C. Schuljan, Senior Auditor
Michele Jahn, Auditor



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Appendix III

Report Distribution List

Principal Deputy Commissioner
Office of the Commissioner – Attn: Chief of Staff C
Deputy Commissioner for Operations Support OS
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: Deputy Commissioner, Operations Support OS



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Appendix IV

Outcome Measures

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

Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential; 559 responses to FOIA¹/Privacy Act² information requests for which information may have been improperly withheld or the IRS failed to adequately search for and provide during the 12-month period October 1, 2011, through September 30, 2012 (see page 5).

Methodology Used to Measure the Reported Benefit:

- We reviewed a statistically valid sample of 55 requests from a population 3,415 FOIA/Privacy Act information requests closed nationally during the period October 1, 2011, through September 30, 2012, as either a:
 - 1) 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.
 - 2) Request for which the IRS replied that responsive records were not available or did not exist.
- We identified nine requests where disclosure specialists improperly withheld or failed to adequately search for and provide the requested information.

Based on our sample error rate of 16.36 percent (9/55) and a confidence level of 95 percent, we estimated the number of requestors erroneously denied information to be 559 [3,415 x 16.36 percent], with a range of 265 to 984. We arrived at the estimate by multiplying the number of requests closed as either condition 1) or 2) listed in the prior paragraph by the percentage of erroneously denied responses identified in our sample. The projection was made using the Exact Binomial method for attribute sampling, with a confidence level of 95 percent and an actual error rate of 16.36 percent. As a result, the actual precision factors were 7.76 percent and 28.80 percent.

¹ 5 U.S.C.A. § 552 (2010).

² 5 U.S.C. § 552a (2010).



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Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential; 13 responses to I.R.C. § 6103³ information requests for which the IRS failed to adequately search for and provide information during the 12-month period October 1, 2011, through September 30, 2012 (see page 5).

Methodology Used to Measure the Reported Benefit:

- We reviewed a statistically valid sample of 600 requests, of which 54 satisfied our criteria and were not misclassified, from a population 2,615 I.R.C. § 6103 information requests closed nationally during the period October 1, 2011, through September 30, 2012, as either a full or partial denial, or a request for which the IRS replied that responsive records were not available or did not exist.
- We identified three requests out of the 54 where disclosure specialists failed to adequately search for and provide the requested information.

We used our sample error rate of 5.6 percent (3/54) and a confidence level of 95 percent to calculate our projections. The error rate for the original statistically valid sample of 600 requests is 0.5 percent (3/600). We then applied that error rate to the entire population and estimated the number of requestors erroneously denied information to be 13 [2,615 x 0.5 percent], with a range of three to 38. We arrived at the estimate by multiplying the number of requests closed as listed in the prior paragraph by the percentage of improperly denied responses identified in our sample. The projection was made using the Exact Binomial method for attribute sampling, with a confidence level of 95 percent and an actual error rate of 0.5 percent. As a result, the upper and lower precision factors were 0.103 percent and 1.454 percent.

Type and Value of Outcome Measure:

- Taxpayer Privacy and Security – Potential; 13 responses had sensitive taxpayer information inadvertently disclosed in response to either a FOIA/Privacy Act or I.R.C. § 6103 information request (see page 10).

Methodology Used to Measure the Reported Benefit:

While conducting our review, we observed⁴ that disclosure specialists inadvertently disclosed sensitive taxpayer information in response to nine (16.36 percent) of the FOIA/Privacy Act and four (7.4 percent) of the I.R.C. § 6103 information requests in our samples. These disclosures

³ I.R.C. § 6103 (2009).

⁴ The scope of this audit focused on information being withheld, not on the information that was inadvertently released to the taxpayer. Therefore, due to the nature of the sample selected, the results of this finding cannot be projected to the population.



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included Personally Identifiable Information such as Social Security Numbers, names, tax account transcripts, and tax return information.



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Appendix V

*Prior Treasury Inspector General for Tax
Administration Freedom of Information Act Reports*

TIGTA, Ref. No. 2000-10-116, *Taxpayers Should Be Provided Timely Service When Appealing Denied Requests Under the Freedom of Information Act* (Aug. 2000).

TIGTA, Ref. No. 2001-10-112, *The Internal Revenue Service Should Continue Taking Action to Improve Compliance With the Freedom of Information Act and Related Procedures* (Jul. 2001).

TIGTA, Ref. No. 2002-10-093, *Actions Should Continue to Be Taken to Improve Compliance With the Freedom of Information Act and Related Procedures* (May 2002).

TIGTA, Ref. No. 2003-10-164, *Opportunity for Improvement Exists for Compliance With the Freedom of Information Act and Related Procedures* (Aug. 2003).

TIGTA, Ref. No. 2004-40-064, *Improvements Are Needed to Ensure Compliance With the Freedom of Information Act* (Mar. 2004).

TIGTA, Ref. No. 2005-10-089, *Some Improvements Have Been Made to Better Comply With Freedom of Information Act Requirements* (May 2005).

TIGTA, Ref. No. 2006-10-129, *Compliance With Freedom of Information Act Requirements Has Increased* (Aug. 2006).

TIGTA, Ref. No. 2007-10-133, *The Office of Disclosure Can Improve Compliance With the Freedom of Information Act Requirements* (Aug. 2007).

TIGTA, Ref. No. 2008-30-164, *The Office of Disclosure Continued to Improve Compliance With the Freedom of Information Act Requirements* (Aug. 2008).

TIGTA, Ref. No. 2009-30-115, *The Office of Disclosure Continues to Improve Upon Its Responses to Taxpayers' Requests Under the Freedom of Information Act* (Sept. 2009).

TIGTA, Ref. No. 2010-30-090, *The Office of Disclosure Continues to Improve Compliance With the Freedom of Information Act Requirements* (Aug. 2010).

TIGTA, Ref. No. 2011-30-093, *The Office of Disclosure Continues to Improve Compliance With the Freedom of Information Act Requirements* (Sept. 2011).

TIGTA, Ref. No. 2012-30-098, *Fiscal Year 2012 Statutory Review of Compliance With the Freedom of Information Act* (Aug. 2012).



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Appendix VI

Management's Response to the Draft Report



PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

AUG 27 2013

MEMORANDUM FOR DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM:

Rebecca Chiamida *Rebecca Chiamida*
Director, Privacy, Governmental Liaison and Disclosure

SUBJECT:

Draft Audit Report - Fiscal Year 2013 Statutory Review of
Compliance With the Freedom of Information Act
(Audit #201330006)

Thank you for the opportunity to respond to the above referenced draft audit report. As stated in a memorandum issued by our Deputy Commissioners, "the IRS is committed to implementing openness in Government to ensure the public trust and establish a system of transparency, public participation, and collaboration." We appreciate your recognition that we have taken positive steps to effectively manage our Freedom of Information Act (FOIA) backlog and we will continue to work towards processing our information requests in a timely and quality manner.

We take our responsibility to maintain confidential information seriously and instruct our employees to vigilantly protect the privacy interests of those seeking information through the FOIA and the various other Internal Revenue Code (IRC) Section 6103 provisions we administer. We developed various reports and implemented additional safeguards to determine how long cases are in process and we will continue to emphasize the use of those reports to ensure timely and accurate actions are taken.

We agree with the proposed outcome measures cited in the report but would like to provide clarification on one of the key findings. Although the unauthorized disclosures identified in the report were in fact unfortunate and inadvertent, the information released in many of these instances did not include any sensitive internal information that could be misused by the recipient. Therefore, the impact on the Service and the taxpayers in question was minimal based upon what was released and to whom. Regardless, we recognize the importance of providing accurate responses and thus intend to further strengthen our management and quality controls to avoid any future disclosures of this kind.



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We will continue to ensure that the provisions of the Freedom of Information Act, the Privacy Act of 1974 and the IRC Section 6103 are followed. If you have any questions, please contact me at (202) 622-2988, or a member of your staff may contact Joyce Peneau, Associate Director, Disclosure at (510) 637-3024.

Attachment



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Draft Audit Report – Fiscal Year 2013 Statutory Review of Compliance With the
Freedom of Information Act
(Audit #201330006)

RECOMMENDATION 1: The Director, Office of Privacy, Governmental Liaison and Disclosure should require disclosure specialists to adhere to the general correspondence guidelines when processing Internal Revenue Code (IRC) § 6103 requests by specifying these time frames in the Disclosure section of the Internal Revenue Manual.

CORRECTIVE ACTION: The IRS agrees that a specific time frame is needed for processing IRC § 6103 requests and to this end, Internal Revenue Manuals 11.3.2, *Disclosure to Persons with a Material Interest*, and 11.3.3, *Disclosure to Designees and Practitioners*, will be revised to include such language. We will issue an Interim Guidance memorandum before the end of the fiscal year that addresses this requirement.

IMPLEMENTATION DATE: October 15, 2013

RESPONSIBLE OFFICIAL: Director, Privacy, Governmental Liaison and Disclosure

CORRECTIVE ACTION MONITORING PLAN: Establish a timeline of necessary actions that incorporates expected outcomes and dates to successfully accomplish stated tasks.

RECOMMENDATION 2: The Director, Office of Privacy, Governmental Liaison and Disclosure, should emphasize the importance of the disclosure laws and regulations with all disclosure specialists and their managers, and ensure that the procedures for reporting inadvertent disclosures are periodically reviewed.

CORRECTIVE ACTION: The IRS agrees with this recommendation. We will develop a mandatory Disclosure Technical Update (DTU) training session for all Disclosure Specialists to review the types of inadvertent disclosures found in the audit and stress the need for a careful review of documents prior to release to avoid unauthorized disclosures. The DTU will also include a review of the procedures for reporting any such disclosures. The training session will be recorded and Disclosure Managers will be required to certify on an annual basis that their employees have reviewed the DTU. We will also make this training session a permanent part of our Orientation training for new Disclosure



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employees. In addition, we will ensure that during operational and regular managerial reviews, casework is reviewed for any inadvertent disclosures. We have already ensured that our Disclosure Quality Measurement System has procedures in place to review casework for inadvertent disclosures and to report those disclosures when discovered.

IMPLEMENTATION DATE: Complete DTU and record it for future delivery by December 15, 2013

RESPONSIBLE OFFICIAL: Director, Privacy, Governmental Liaison and Disclosure

CORRECTIVE ACTION MONITORING PLAN: Establish a timeline of necessary actions that incorporates expected outcomes and dates to successfully accomplish stated tasks.