

**Taxpayers Should Be Provided Timely
Service When Appealing Denied
Requests Under the Freedom of
Information Act**

August 2000

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



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

INSPECTOR GENERAL
for TAX
ADMINISTRATION

August 15, 2000

MEMORANDUM FOR COMMISSIONER ROSSOTTI

A handwritten signature in cursive script that reads "Pamela J. Gardiner".

FROM: Pamela J. Gardiner
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Taxpayers Should Be Provided Timely
Service When Appealing Denied Requests Under the Freedom
of Information Act

This report presents the results of our review of the Internal Revenue Service's (IRS) efforts to provide prompt and appropriate service to taxpayers who appeal a denial of a Freedom of Information Act (FOIA) request for information or a delay in providing that information.

In summary, we found that although taxpayers' appeals had been correctly processed, improvements could be made by timely responding to appeals and trending case information. We recommended that the Office of the Chief Counsel work with the Chief, Appeals to expedite the transfer of responsibility for resolution of FOIA appeals from the Chief Counsel organization to the Appeals organization, as called for in the IRS' Modernization Plan. As part of this transfer of responsibility, the Chief, Appeals should determine the staffing necessary to timely process FOIA appeals and should subsequently capture case information in order to periodically trend FOIA appeals data.

IRS management agreed with our recommendations and will use them to improve the FOIA administrative appeals process. However, the response did not address specific corrective actions regarding the report recommendation to periodically trend FOIA appeals data. As a result, we could not determine whether adequate corrective action was planned for that recommendation. Management's comments have been incorporated into the report where appropriate, and the full text of their comments is included as an appendix.

Copies of this report are also being sent to the IRS managers who are affected by the report recommendations. Please contact me at (202) 622-6510 if you have questions, or your staff may call Maurice S. Moody, Associate Inspector General for Audit (Headquarters Operations and Exempt Organizations Programs), at (202) 622-8500.

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Executive Summary

The Freedom of Information Act (FOIA)¹ established an effective legal right of access to government information by requiring agencies to make various information available to the public. Taxpayers who file FOIA requests can administratively appeal to the Commissioner when the Internal Revenue Service (IRS) Disclosure Offices deny requests or when the IRS does not respond timely and asks for an extension of time to process the requests. Taxpayers who do not agree to voluntarily extend the time frame can consider the delay a denial of their request for information and, therefore, may appeal.

The Assistant Chief Counsel (Disclosure Litigation) in the IRS Office of the Chief Counsel was responsible for processing the administrative appeals; this Office closed almost 1,700 appeals cases in Fiscal Year 1999. The IRS' Modernization Plan transfers responsibility for reviewing appeals to the Chief, Appeals because it more appropriately falls within that Office's jurisdiction.

The objective of the audit was to evaluate the IRS' efforts to provide prompt and appropriate service to taxpayers who appeal a denial of a FOIA request for information or a delay in providing information.

Results

The Assistant Chief Counsel (Disclosure Litigation) staff made appropriate determinations in the 50 cases we sampled. Attorneys and paralegals generally worked cases when taxpayers appealed because the IRS denied their requests for information. Attorneys and paralegals properly determined whether the IRS' decisions to not provide information were appropriate. Clerical employees generally worked cases timely and appropriately when taxpayers appealed because of IRS delays in providing information.

Although the IRS correctly processed taxpayers' appeals, improvements to the service can be made by:

- Responding timely when taxpayers appeal because the IRS denied their requests for information.
- Analyzing FOIA appeals case information to identify potential trends in resource or case resolution issues in Disclosure Offices.

¹ Freedom of Information Act (FOIA), 5 U.S.C. § 552 (1994 and Supp. II 1996)

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The Internal Revenue Service Should Timely Respond to Appeals of Denied Requests

At the end of Calendar Year 1999, the Office of the Chief Counsel inventory records indicated that 918 appeals had been open an average of 420 workdays. These appeals had been filed by taxpayers when the IRS denied their requests for information. The 420 workdays extend significantly beyond the 20 workday requirement in the law. These cases were assigned, based on complexity, to attorneys or to paralegals to make determinations as to the appropriateness of the IRS' initial denial of the requests.

Although the Office of the Chief Counsel records indicated that, on average, attorneys expended 19 hours and paralegals expended 6 hours working an appeal, the appeals were often in inventory several months and sometimes for years before decisions were made and provided to the taxpayers. Management from the Assistant Chief Counsel (Disclosure Litigation) cited two main reasons for these extensive time frames: the loss of paralegal staff who principally handled FOIA appeals, and the subsequent distribution of appeals to attorneys who had higher priority work.

The Chief, Appeals has been implementing its Modernization Plan, including the transfer of responsibility for FOIA appeals. That Office, however, has not set a specific target date for transferring the FOIA appeals responsibilities or conducted an analysis to determine the staffing necessary to timely process the appeals.

The Internal Revenue Service Should Analyze Freedom of Information Act Appeals Case Information to Identify Potential Trends in Disclosure Offices

FOIA appeals information was not analyzed to identify trends that Disclosure Offices could address. For example, data may indicate an inordinate number of appeals due to delays in a few Disclosure Offices or common characteristics among cases decided in favor of taxpayers. Identifying these characteristics and resolving any associated problems could reduce the need for taxpayers to appeal.

Summary of Recommendations

The Office of the Chief Counsel should work with the Chief, Appeals to expedite the transfer of responsibility for resolution of FOIA appeals. The Chief, Appeals should determine the staffing necessary to timely process FOIA appeals and should capture case information and periodically trend FOIA appeals data.

Management's Response: IRS management agrees that expediting the transfer of responsibility for processing FOIA appeals and ensuring an appropriate level of staffing

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necessary to process FOIA appeals quickly are critical steps towards the IRS' renewed commitment to the FOIA. The Chief, Appeals is considering staffing needs required to process FOIA appeals more quickly and effectively and will work with the Office of the Chief Counsel to ensure that workload transition issues and training needs are addressed.

Management's response did not address specific corrective actions for the report recommendation to periodically trend FOIA appeals data. As a result, we could not determine whether adequate corrective action was planned to capture case information and periodically trend the data. [As part of our follow-up activities, we are asking management to provide us more specific information on its planned corrective action.](#) Management's complete response to a draft of this report is included as Appendix IV.

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Objective and Scope

We evaluated the IRS' responsiveness to appeals of denials for information requested under the FOIA.

The objective of the audit was to evaluate the Internal Revenue Service's (IRS) efforts to provide prompt and appropriate service to taxpayers who appeal a denial of a Freedom of Information Act (FOIA)¹ request for information or a delay in providing that information. Taxpayers who do not agree to voluntarily extend the time frame can consider the delay a denial of their request for information and, therefore, may appeal.

We reviewed 50 appeals closed during FY 1999.

Our audit included a review of 50 FOIA appeals closed during Fiscal Year (FY) 1999. These cases were randomly selected from FOIA appeals information obtained from the Office of the Chief Counsel's automated case control system. We also analyzed the overall timeliness of resolving appeals cases closed during FY 1999 and the overall age of the pending appeal inventory at the end of Calendar Year (CY) 1999.

This audit was performed in accordance with *Government Auditing Standards* between December 1999 and May 2000. We conducted our audit in the Office of the Chief Counsel.

Details of our audit objective, scope, and methodology are presented in Appendix I. Major contributors to this report are listed in Appendix II.

Background

The FOIA established an effective legal right of access to government information by requiring agencies to make various information available to the public. Federal agencies are required to determine within 20 workdays if the requested information can be

¹ Freedom of Information Act (FOIA), 5 U.S.C. § 552 (1994 and Supp. II 1996)

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Taxpayers can appeal denials or delays in processing requests for information under the FOIA.

released or to notify the requestor of the need for additional time to process the request.

The Code of Federal Regulations² provides for an administrative appeal to the IRS Commissioner when requests are denied, records are not found, or requests are not completed within the time limits. Taxpayers who do not agree to voluntarily extend the time frame can consider the delay a denial of their request for information and, therefore, may appeal.

These administrative appeals were directed to the Assistant Chief Counsel (Disclosure Litigation) in the Office of the Chief Counsel.

The IRS has 20 workdays to respond to FOIA appeals.

Within 20 workdays after the receipt of an appeal, Office of the Chief Counsel employees were to notify the taxpayer whether the initial denial was affirmed (in whole or in part) or the request should be granted. In unusual circumstances, this period may be extended for 10 workdays. If the IRS cannot make a determination within the required 20 or 30 workdays, it can ask the taxpayer to voluntarily extend the time. If the IRS fails to comply with the required time limits or if the appeal is denied in whole or in part, the taxpayer can file suit in a United States district court to obtain the requested records.

At the time of our review, the Assistant Chief Counsel (Disclosure Litigation) was responsible for processing the administrative appeals. The IRS' Modernization Plan transfers responsibility for reviewing appeals to the Chief, Appeals because it more appropriately falls within that Office's jurisdiction.

The Assistant Chief Counsel (Disclosure Litigation) staff provided figures for the IRS' Annual FOIA Report to the Congress that showed they closed 1,685 FOIA appeals in FY 1999, while receiving 1,526 new appeals. Office of the Chief Counsel records also indicate that the

² The Code of Federal Regulations, 26 C.F.R. § 601.702

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ending appeals inventory was 1,211 at the end of FY 1999 and 1,123 at the end of CY 1999.

Results

The IRS correctly processed cases, but not within a reasonable time frame, in the sampled cases.

The Assistant Chief Counsel (Disclosure Litigation) staff made appropriate determinations in the 50 cases we sampled. Attorneys and paralegals generally worked cases when taxpayers appealed because the IRS denied their requests for information. Attorneys and paralegals worked 31 of the 50 cases and properly determined whether the IRS' decisions to not provide information were appropriate. Clerical employees generally worked cases when taxpayers appealed because of the IRS' delays in providing information. In the remaining 19 cases sampled, clerical employees generally worked cases timely and appropriately, usually documented that they had contacted IRS Disclosure Offices, and had corresponded with taxpayers outlining the status of the taxpayers' FOIA requests.

Although taxpayers' appeals had been correctly processed, improvements could be made by:

- Responding timely when taxpayers appeal because the IRS denied their requests for information.
- Analyzing FOIA appeals case information to identify potential trends in resource or case resolution issues in Disclosure Offices.

The Internal Revenue Service Should Timely Respond to Appeals of Denied Requests

Taxpayers' appeals filed when the IRS denied requests for information had been open an average of 420 workdays.

At the end of CY 1999, Office of the Chief Counsel inventory records indicated that 918 appeals had been open an average of 420 workdays. These appeals had been filed by taxpayers when the IRS denied their initial requests for information. The 420 workdays extends significantly beyond the 20 workday requirement in the

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law. These cases were assigned, based on complexity, to attorneys or to paralegals to make determinations as to the appropriateness of the IRS' initial denial of the requests. These delays do not support the IRS' efforts to provide taxpayers with top quality service.

At the end of CY 1999, Office of the Chief Counsel inventory records indicated that there were also 205 open appeals filed by taxpayers because of the IRS' delays in providing information. These cases would remain open until Disclosure Offices provided a response to the taxpayers.

Office of the Chief Counsel CY 1999 closed records indicated that, on average, IRS attorneys expended 19 hours and paralegals 6 hours to work an appeal. The appeals, however, were often in inventory several months and sometimes for years before decisions were made and provided to the taxpayers. At the end of CY 1999, 77 percent of the appeals assigned to attorneys were received in 1998 or prior and 30 percent were received in 1995 or prior. Also, at the end of CY 1999, 31 percent of the appeals assigned to paralegals were received in CY 1998 or prior.

Management cited the loss of paralegal staff and higher priority work for attorneys as reasons for the extensive time frames.

Management from the Assistant Chief Counsel (Disclosure Litigation) cited two main reasons for these extensive time frames: the loss in 1997 of paralegal staff who principally handled FOIA appeals and the subsequent distribution of appeals to attorneys who had other higher priority litigation and advisory work. In FY 1999, attorneys spent about 23 percent of their direct time on FOIA appeals cases.

The outcome of an appeal adds further importance to the timeliness of the decision. In the more complex appeals worked by Office of the Chief Counsel attorneys, the attorneys granted almost 37 percent of the taxpayer appeals of denials for information either fully (6 percent) or in part (31 percent). Paralegals fully granted 4 percent and partially granted 8 percent of the appeals assigned to them.

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The IRS did not inform taxpayers as delays were encountered.

When attorneys and paralegals experienced delays, they did not inform taxpayers of the status of their appeals and of expected response dates. In 21 of the 31 cases sampled, there were delays in making determinations and there was no evidence that taxpayers were kept informed.

The Code of Federal Regulations and Office of the Chief Counsel procedures require prompt notification that the determination will be made as soon as practicable if it cannot be made within the 20 workday period. Even though the taxpayers are entitled to commence an action in a district court, they may agree to voluntarily extend the time long enough for the IRS to complete the appeal response.

Management from the Assistant Chief Counsel (Disclosure Litigation) told us that it was impractical to project a reasonable, reliable date by which the appeal would be completed, given the backlog of cases. Rather than set tentative expectations and further tax their resources by monitoring and revising those dates, they decided not to contact the taxpayer again. However, taxpayers had been informed in the acknowledgement letters of the specific employees to contact if there were any questions concerning the status of their appeals.

The Chief, Appeals has been implementing its Modernization Plan, including the transfer of responsibility for FOIA appeals. But that Office has not set a specific target date for transferring responsibilities or conducted an analysis to determine the staffing necessary to timely process FOIA appeals.

Recommendation

1. The Office of the Chief Counsel should work with the Chief, Appeals to expedite the transfer of responsibility for resolution of FOIA appeals. As part of this transfer planning, the Chief, Appeals should determine the staffing necessary to timely process FOIA appeals.

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Management's Response: IRS management agrees that expediting the transfer of responsibility for processing FOIA appeals and ensuring an appropriate level of staffing necessary to process FOIA appeals quickly are critical steps towards the IRS' renewed commitment to the FOIA. The Chief, Appeals is considering staffing needs required to process FOIA appeals more quickly and effectively and will work with the Office of the Chief Counsel to ensure that workload transition issues and training needs are addressed.

The Internal Revenue Service Should Analyze Freedom of Information Act Appeals Case Information to Identify Potential Trends in Disclosure Offices

Analysis of information about FOIA appeals may identify trends that can be addressed.

FOIA appeals information was not analyzed to identify trends that Disclosure Offices could address. Such data may indicate an inordinate number of appeals due to delays in a few Disclosure Offices. For example, an analysis of Office of the Chief Counsel data on appeals received from October 1, 1999, through March 31, 2000, showed that 4 of the 26 Disclosure Offices accounted for 43 percent of the 112 appeals from taxpayers because they received no response.

Analysis could also be done of cases decided in favor of or partly in favor of taxpayers to identify any common characteristics that may be causing taxpayers to appeal denials. Identifying trends could ultimately increase the number of FOIA requests that are correctly and timely responded to upon initial contact with the IRS and thereby reduce the number of appeals.

Management from the Assistant Chief Counsel (Disclosure Litigation) informed us that, although they did not analyze case information for trends, they did notify the Director, Governmental Liaison and Disclosure, if issues came to their attention. In our opinion, resources were not available to conduct periodic analysis of case information.

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Recommendation

2. When the transfer of responsibility for FOIA appeals is complete, the Chief, Appeals should capture case information and periodically analyze FOIA appeals data to identify common characteristics and case processing delays.

Management's Response: IRS management agrees with this recommendation and will use it to improve the FOIA administrative appeal process. However, management did not elaborate on the corrective actions for this recommendation. Therefore, we could not determine whether adequate corrective action was planned. [As part of our follow-up activities, we are asking management to provide us more specific information on its planned corrective action.](#)

Conclusion

The IRS needs to improve customer service by ensuring that the appropriate staffing is provided to respond timely to taxpayers' appeals. This would support the IRS' efforts to provide America's taxpayers with top quality service. It would also bring the IRS closer to complying with a Presidential and United States Attorney General policy calling on agencies to "renew their commitment to the FOIA, to its underlying principles of government openness, and to its sound administration."

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Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of the audit was to evaluate the Internal Revenue Service's (IRS) efforts to provide prompt and appropriate service to taxpayers who appeal a denial of a Freedom of Information Act (FOIA)¹ request for information or a delay in providing that information. Taxpayers who do not agree to voluntarily extend the time frame can consider the delay a denial of their request for information and, therefore, may appeal. Specifically, we:

- I. Determined the procedures for controlling and responding to appeals of denials of FOIA requests by the Assistant Chief Counsel (Disclosure Litigation).
 - A. Interviewed the Assistant Chief Counsel (Disclosure Litigation), the Deputy Assistant Chief Counsel (Disclosure Litigation), and the Branch Chiefs (Disclosure Litigation) to determine procedures and obtain supporting documentation.
 - B. As of April 3, 2000, analyzed the IRS office location information for trends for the 112 Fiscal Year (FY) 2000 appeals filed by taxpayers because of the IRS' delays in providing information from the Chief Counsel's Automated Systems Environment (CASE).
- II. Determined if the Assistant Chief Counsel (Disclosure Litigation) was adhering to FOIA requirements.
 - A. Obtained an extract from the CASE of all appeals of denied FOIA requests closed during the period of October 1, 1998, to September 30, 1999 (FY 1999).
 - B. For a judgmental sample of 50 of the 1,685 closed appeals cases, reviewed the appropriateness of the Assistant Chief Counsel (Disclosure Litigation) determinations on those appeals where the local IRS Disclosure Offices had not provided the requested information.
- III. Determined if appeals were processed timely.
 - A. Reviewed the extract from the CASE obtained for Objective II.A for timeliness of the processing of the appeals.

¹ Freedom of Information Act (FOIA), 5 U.S.C. § 552 (1994 and Supp. II 1996)

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- B. Reviewed the initial sample of 50 appeals cases used for Objective II.B to determine whether factors were present that affected the timeliness of the processing of the appeals.
- C. Obtained a CASE listing of 1,123 FOIA appeals open as of the end of Calendar Year 1999 and reviewed the data for the timeliness of the processing of the appeals.

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Appendix II

Major Contributors to This Report

Maurice S. Moody, Associate Inspector General for Audit (Headquarters Operations and Exempt Organizations Programs)

Mary V. Baker, Director

Ronald F. Koperniak, Audit Manager

Timothy A. Chriest, Senior Auditor

James D. Dorrell, Senior Auditor

Donald L. McDonald, Senior Auditor

Matthew W. Miller, Auditor

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Appendix III

Report Distribution List

Office of the Chief Counsel CC
Chief, Appeals C:AP
Deputy Commissioner Operations C:DO
Chief Communications and Liaison CL
National Taxpayer Advocate C:TA
Associate Chief Counsel (Procedure and Administration) CC:P&A
Assistant Chief Counsel (Disclosure & Privacy Law) CC:P&A:DPL
Director, Governmental Liaison and Disclosure CL:GLD
Director, Office of Program Evaluation and Risk Analysis M:O
Director, Legislative Affairs CL:LA
Office of Management Controls M:CFO:A:M
 Audit Liaison: Office of the Chief Counsel CC
 Audit Liaison: Chief, Appeals C:AP

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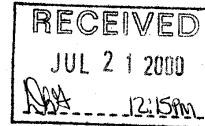
Appendix IV

Management's Response to the Draft Report



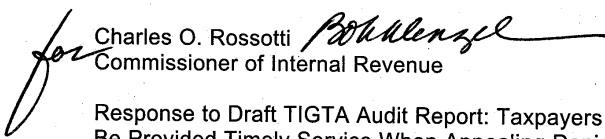
COMMISSIONER

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



July 21, 2000

MEMORANDUM FOR PAMELA J. GARDINER
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM:  Charles O. Rossotti
Commissioner of Internal Revenue

SUBJECT: Response to Draft TIGTA Audit Report: Taxpayers Should Be Provided Timely Service When Appealing Denied Requests Under the Freedom of Information Act (Audit No. 2000100006)

We appreciate the opportunity to respond to your draft report entitled "Taxpayers Should Be Provided Timely Service When Appealing Denied Requests Under the Freedom of Information Act." The report reviews the IRS's efforts to provide prompt and appropriate service to taxpayers who appeal a denial of a Freedom of Information Act (FOIA) request for information or a delay in providing information.

The Assistant Chief Counsel (Disclosure & Privacy Law), (formerly Disclosure Litigation) in the IRS Office of Chief Counsel is responsible for processing FOIA administrative appeals. This audit involved a review of the records maintained in the office of the Assistant Chief Counsel (Disclosure & Privacy Law). In general, the audit concluded that although the IRS correctly processed the taxpayers' appeals, improvements to the service can be made by responding timely when taxpayers appeal the IRS's actual or constructive denial of their requests for information and by analyzing FOIA appeal case information to identify potential trends in resource or case resolutions among IRS disclosure offices.

We agree with these recommendations and will use them to improve the FOIA administrative appeal process. Your report comes at an opportune time. As you know, the new IRS organizational structure includes the transfer of responsibility for processing FOIA administrative appeals from the Office of Chief Counsel to the Office of the National Chief of Appeals. We believe this transfer of FOIA appeal responsibility will ultimately improve the speed and quality of service to taxpayers who appeal denials of their FOIA requests. We agree that expediting the transfer of responsibility for processing FOIA appeals from the Office of Chief Counsel to the Office of the National Chief of Appeals and ensuring an appropriate level of staffing necessary to process FOIA appeals quickly are critical steps towards the IRS's "renewed commitment to the FOIA, to its underlying principles of government

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openness, and to its sound administration." The Office of the National Chief of Appeals is considering staffing needs required to process FOIA appeals more quickly and effectively and will work with the office of the Assistant Chief Counsel (Disclosure & Privacy Law) to ensure that we address workload transition issues and training needs.