

**Responses to Taxpayers' Requests for
Information Did Not Always Comply With the
Freedom of Information Act or Internal
Revenue Service Procedures**

September 2000

Reference Number: 2000-10-147

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

September 27, 2000

MEMORANDUM FOR COMMISSIONER ROSSOTTI

Handwritten signature of Pamela J. Gardiner in cursive.

FROM: Pamela J. Gardiner
Deputy Inspector General for Audit

SUBJECT: Final Audit Report - Responses to Taxpayers' Requests for Information Did Not Always Comply With the Freedom of Information Act or Internal Revenue Service Procedures

This report presents the results of our Fiscal Year (FY) 2000 review of denials of written requests to disclose information to taxpayers. In summary, we found that Internal Revenue Service (IRS) disclosure offices could improve efforts to provide requesters with all the information they are entitled to in response to their written requests under the Freedom of Information Act (FOIA) (1988)¹ § 552, the Privacy Act (PA) of 1974,² and Internal Revenue Code (I.R.C.) § 6103 (1999). The IRS improperly withheld information that requesters were entitled to receive in 8.8 percent of the denied FOIA and PA requests and 6.3 percent of the denied I.R.C. § 6103 requests in our statistical samples. The types of requests that were improperly withheld by the IRS were similar to those included in our FY 1999 report.³

Because the IRS did not respond to our FY 1999 report before the draft of this report was issued, we repeated recommendations made in our FY 1999 report regarding the IRS meeting the legal and procedural guidelines for responding to written requests for information under the FOIA. With regard to our findings related to I.R.C. § 6103 requests, we recommended that the Office of Governmental Liaison and Disclosure

¹ 5 U.S.C. § 552 (1996).

² 5 U.S.C. § 552a (1994).

³ *The Internal Revenue Service Needs to Improve its Compliance with Procedures When Processing Requests for Information Under the Freedom of Information Act*, (Reference Number 2000-10-058, dated March 2000).

ensure that personnel responding to I.R.C. § 6103 requests are adequately trained in the use of Integrated Data Retrieval System research tools; verbal agreements are documented between local disclosure offices and other government agencies regarding the scope of information requested; and management reviews of completed work are performed.

Management's response to our FY 2000 report was due on September 21, 2000. As of September 26, 2000, management had not responded to the draft report.

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

Section 1102 (d)(3)(a) of the Internal Revenue Service (IRS) Restructuring and Reform Act of 1998 (RRA 98)¹ 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 IRS to deny written requests to disclose information to taxpayers on the basis of Internal Revenue Code (I.R.C.) § 6103 (1999) or the Freedom of Information Act (FOIA) (1988)² exemption (b)(7).

This is our second review under this RRA 98 provision. We took a broad approach in our Fiscal Year (FY) 1999 review³ by reviewing three separate statistical samples of denied FOIA requests, denied Privacy Act (PA) of 1974⁴ requests, and imperfect requests closed during the period July 22 through December 31, 1998. In our FY 2000 review, we narrowed our approach by reviewing two separate statistical samples of: 1) FOIA and PA requests that were denied based on I.R.C. § 6103 or FOIA exemption (b)(7) or where the IRS replied that responsive records were not available, and 2) closed I.R.C. § 6103 (c) and (e) requests where information was denied or requesters were told that records were not available. We selected our samples from requests for information that were closed during the period January 1 through September 30, 1999.

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

- The IRS properly adhered to statutory requirements contained in the FOIA and PA, as well as internal procedural requirements.
- Disclosure offices adhered to statutory requirements when denying written requests received from taxpayers under I.R.C. § 6103 (as opposed to the FOIA or the PA).

¹ Pub. L. No. 105-206, 112 Stat. 703 § 1102 (d)(3)(A).

² 5 U.S.C. § 552 (1996).

³ *The Internal Revenue Service Needs to Improve its Compliance with Procedures When Processing Requests for Information Under the Freedom of Information Act*, (Reference Number 2000-10-058, dated March 2000).

⁴ 5 U.S.C. § 552a (1994).

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Results

Disclosure offices could improve efforts to provide FOIA, PA, and I.R.C. § 6103 requesters with all the information they are entitled to when responding to their written requests. Further, disclosure offices can improve the timeliness of responses to FOIA and PA requests. Based upon our statistical samples, we determined that disclosure offices:

- Improperly withheld information from requesters in 8.8 percent of the denied, partially denied, and no responsive record FOIA and PA requests and 6.3 percent of the I.R.C. § 6103 requests where information was denied or requesters were told that records could not be located.
- Did not respond timely to FOIA and PA requesters in 33.8 percent of the cases in our sample where information was denied or responsive records were not available.

Taxpayers' rights were potentially violated in cases where the IRS improperly withheld information requesters were entitled to receive under the FOIA and when requests were not responded to within the timeframes required by law. As a result, the IRS is at risk of incurring unnecessary costs associated with administrative appeals and civil litigation.

While we cannot compare these results with the prior review because of the different samples selected, we did notice a significant decrease in the number of cases where information releasable under RRA 98 § 6019(c) was improperly withheld. Under this provision, the IRS must provide authorized representatives with the names of individuals who, along with the requester, are assessed the same Trust Fund Recovery Penalty.⁵ In the prior review, we identified 13 such improper withholdings. In this review, we identified only 2 such cases. Disclosure management responded that the majority of the errors in the prior review occurred before employees were trained on this law change.

The Internal Revenue Service Can Better Ensure That Requesters Are Provided With All Information They Are Entitled to Receive

The IRS improperly withheld information that requesters were entitled to receive in response to their written inquiries under the FOIA, PA, and I.R.C. § 6103. Table 1 shows the results of our review of two statistical samples. These samples were based on a 90 percent confidence level and include cases closed during the period January 1 through September 30, 1999.

⁵ The Trust Fund Recovery Penalty is imposed on persons who are responsible for collecting and paying employment taxes to the IRS, but fail to do so. The penalty equals 100 percent of the taxes that were not paid. The taxpayer is personally liable for the penalty even if a corporation, other business entity, or another individual was also responsible for paying the taxes.

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Table 1 - Sample Results for Denied Requests

Type of Request	Actual Error Rate	Population of Denied Requests (1/1/99 – 9/30/99)	Estimated Nationwide Error Rate	Projected Number of Improperly Withheld Requests
FOIA/PA	8.8%	6,335	6.2% - 11.4%	393 – 722
I.R.C. § 6103	6.3%	8,830 ⁶	3.4% - 9.2%	300 – 812

(Note: in one of the FOIA/PA error cases in the chart, disclosure management disagreed with our conclusion that an improper withholding occurred because although the requested transcript was not provided, the response addressed the requester's specific question and provided additional customer service.)

Information requested by taxpayers in FOIA and PA requests processed under the FOIA was improperly withheld because the IRS did not correctly apply the FOIA when denying requests for information or did not always follow the Internal Revenue Manual. Information requested by taxpayers under I.R.C. § 6103 was improperly withheld primarily because the IRS did not fully respond to taxpayers' requests, even though the information was readily available.

We also identified three I.R.C. § 6103 cases where it did not appear that the local disclosure office provided all requested information in response to requests to disclose information to designees of the taxpayers. Disclosure management informed us that local disclosure offices make verbal agreements with federal and state government offices to provide only specific information (e.g., fact of filing) in response to these requests, even if the authorization signed by the taxpayer allows the release of more detailed information. These verbal agreements were not documented; therefore, we could not determine whether the IRS improperly withheld information in response to the requests.

The Internal Revenue Service Can Improve the Timeliness of Responses to Freedom of Information Act and Privacy Act Requests When Information Is Not Provided

The IRS did not always respond to FOIA and PA requesters within the time frames allowed by law. Responses should be provided within 20 days for FOIA requests and 30 days for PA requests (both time frames exclude Saturdays, Sundays, and legal public holidays) after the request is received by the responsible disclosure office. We determined that in 107 of the 317 (33.8 percent) cases in our sample, responses were not

⁶ The population of denied I.R.C. § 6103 requests are not specifically tracked by IRS disclosure offices. It represents an estimated amount based on our review of 500 closed I.R.C. § 6103 cases.

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sent to requesters timely. However, as shown in Table 2, slightly more than half of the cases were less than or equal to 30 workdays late.

Table 2 - Aging Schedule for Untimely Cases

Less Than or Equal to 30 Work Days Untimely	31 to 60 Work Days Untimely	61 to 90 Work Days Untimely	More Than 90 Work Days Untimely	Total Untimely Cases
56	14	11	26	107

Several factors contributed to the delays in responding to requests. Our review of 107 untimely cases showed that: 1) disclosure personnel were waiting for the requested documents from functional areas, and 2) case files did not always contain any indication of supervisory review. Ongoing supervisory review would better ensure that responses to FOIA and PA requesters are timely.

Summary of Recommendations

Because the IRS did not respond to our FY 1999 report before the draft of this report was issued, we are repeating recommendations made in our FY 1999 report regarding the IRS meeting the legal and procedural guidelines for responding to written requests for information under the FOIA. With regard to our findings related to I.R.C. § 6103 requests, we recommend that the Office of Governmental Liaison and Disclosure ensure that personnel responding to I.R.C. § 6103 requests are adequately trained in the use of Integrated Data Retrieval System research tools; verbal agreements are documented between local disclosure offices and other government agencies regarding the scope of information requested; and management reviews of completed work are performed.

Management's Response: Management's response to our FY 2000 report was due on September 21, 2000. As of September 26, 2000, management had not responded to the draft report.

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Objective and Scope

The audit was performed to determine if the IRS improperly withheld information requested in writing by taxpayers.

The overall objective of this review was to determine if the Internal Revenue Service (IRS) improperly withheld information requested by taxpayers in writing, based on Internal Revenue Code (I.R.C.) § 6103 (1999) and/or the Freedom of Information Act (FOIA) (1988)¹ exemption (b)(7), or by replying that responsive records did not exist. To accomplish this objective, we determined whether:

- The IRS properly adhered to statutory requirements contained in the FOIA and the Privacy Act (PA) of 1974,² as well as internal procedural requirements.
- Disclosure offices adhered to statutory requirements when denying written requests received from taxpayers under I.R.C. § 6103 (as opposed to the FOIA or the PA).

This is our second review under this RRA 98 provision. We took a broad approach in our Fiscal Year (FY) 1999 review³ by reviewing three separate statistical samples of denied FOIA requests, denied PA requests, and imperfect requests closed during the period July 22 through December 31, 1998. As shown in Table 1, we narrowed our approach in this review by selecting two separate statistical samples consisting of: 1) FOIA and PA requests that were denied based on I.R.C. § 6103 or FOIA exemption (b)(7) or where the IRS replied that responsive records did not exist, and 2) closed I.R.C. § 6103 (c) and (e) requests where information was denied or requesters were told that information was not

¹ 5 U.S.C. § 552 (1996).

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³ *The Internal Revenue Service Needs to Improve its Compliance with Procedures When Processing Requests for Information Under the Freedom of Information Act*, (Reference Number 2000-10-058, dated March 2000).

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available. These samples were based on a 90 percent confidence level and included cases closed during the period January 1 through September 30, 1999.

Table 1 - Statistical Samples

We sampled cases closed from January 1 through September 30, 1999.

Sample	Size of Universe	Size of Sample
FOIA/PA	6,335	317 ⁴
Closed I.R.C. § 6103	8,830 ⁵	190 ⁶

In addition, we interviewed selected disclosure personnel to obtain information regarding how I.R.C. § 6103 requests from taxpayers or their designees are processed.

The IRS does not account for I.R.C. § 6103 (c) and (e) requests received by functions outside the Office of Governmental Liaison and Disclosure.

We did not assess the effectiveness of internal controls over taxpayers' written requests for information, nor did we evaluate whether the inventory system used to control these requests was complete and accurate. Further, we could not evaluate responses to taxpayers' I.R.C. § 6103 (c) and (e) requests received by functions outside the Office of Governmental Liaison and Disclosure because these requests are not required to be centrally tracked. As a result, we could not determine the universe of the I.R.C. § 6103 (c) and (e) requests

⁴ We initially selected 362 cases for review. However, 45 cases could not be reviewed because: 1) the case was miscoded and did not fall under the scope of our review, 2) the case file did not contain adequate documentation, or 3) we did not receive the case file. Therefore, our final sample size was 317 cases.

⁵ The population of denied I.R.C. § 6103 requests are not specifically tracked by disclosure offices. This represents an estimated amount based on our review of 500 closed I.R.C. § 6103 cases.

⁶ The sample includes those cases from our review of 500 cases where we determined that the requester was denied information or told that records were not available.

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received by other IRS functions or statistically sample the closed requests.

This audit was performed from September 1999 through May 2000 in accordance with *Government Auditing Standards*. We conducted our audit by interviewing disclosure officials at the IRS Office of Governmental Liaison and Disclosure; the Arkansas-Oklahoma, Illinois, Kentucky-Tennessee, Midwest, North Florida, North-South Carolina, and South Florida district disclosure offices; and the Kansas City Service Center disclosure office; and by reviewing samples of closed FOIA, PA, and I.R.C. § 6103 cases.

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

Background

TIGTA is required by the RRA 98 to audit IRS determinations to deny taxpayers' written requests for information under I.R.C. § 6103 or FOIA exemption (b)(7).

Section 1102 (d)(3)(a) of the IRS Restructuring and Reform Act of 1998 (RRA 98)⁷ 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 IRS to deny written requests to disclose information to taxpayers on the basis of I.R.C. § 6103 (1999) or the FOIA (1988) exemption (b)(7).

The FOIA, PA, and I.R.C. § 6103 are used by taxpayers to request information from the IRS. The FOIA requires that records of the federal government generally be available to the public upon request, unless specifically exempted. FOIA exemption (b)(3) regulates the release of records specifically exempt from disclosure by statute (e.g., I.R.C. § 6103). FOIA exemption (b)(7) regulates the release of records or information compiled for law enforcement purposes.

⁷ Pub. L. No. 105-206, 112 Stat. 703 § 1102 (d)(3)(A).

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The PA contains a provision that prevents government agencies from relying on any exemption in the PA to withhold from an individual any record which is otherwise available to that individual under the FOIA.

I.R.C. § 6103 regulates the release of tax returns and tax return information and provides a mechanism for taxpayers to request tax returns and return information or request for it to be disclosed to a designee.

Within the IRS, the Office of Governmental Liaison and Disclosure is responsible for the disclosure program. This office is responsible for: ensuring that the IRS complies with the FOIA, PA, and I.R.C. § 6103 requirements; providing national oversight and guidance on procedural and policy matters to field offices; and providing related training.

Disclosure offices process almost all FOIA and PA requests for information. Written requests for information under I.R.C. § 6103 may be processed either by disclosure offices in the National Headquarters, service centers, and district offices or by the IRS function that has custody of the requested records.

FOIA, PA, and I.R.C. § 6103 requests received by disclosure offices are controlled on the Disclosure Information Management System (DIMS). A small number of FOIA requests received by the Director of Practice are controlled on a manual system. We included these cases in the population of cases we selected our statistical samples from. However, none of the cases were randomly selected. I.R.C. § 6103 requests received by other IRS functions are not controlled on the DIMS.

When a FOIA or PA case is closed, the controlling disclosure office enters the appropriate code on the DIMS showing how the case was closed. Taxpayer requests ultimately fall under five categories: granted, partially denied, denied, no responsive records (responsive records could not be located), or imperfect (the request did not meet the criteria set forth in 26 C.F.R. § 601.702 (1998)). If the request is denied or partially denied, the specific

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exemptions used to justify withholding the information are also recorded on the DIMS.

The IRS reported that it denied or partially denied approximately 3,915 of the 30,225 requests closed under the FOIA during FY 1999 and replied that responsive records did not exist for another 4,331 of the 30,225 requests.

Results

Requesters did not receive all the information they were entitled to receive.

Disclosure offices could improve efforts to provide FOIA, PA, and I.R.C. § 6103 requesters with all the information they are entitled to when responding to their written requests. Further, disclosure offices can improve the timeliness of responses to FOIA and PA requests.

Based upon our statistical samples, we determined that disclosure offices:

- Improperly withheld information from requesters in 8.8 percent of the denied, partially denied, and no responsive record FOIA and PA requests and 6.3 percent of the I.R.C. § 6103 requests where information was denied or requesters were told that records could not be located.
- Did not respond timely to FOIA and PA requesters in 33.8 percent of the cases in our sample where information was denied or responsive records were not available.

Taxpayers' rights were potentially violated in cases where the IRS improperly withheld information requesters were entitled to receive under the FOIA and when requests were not responded to within the time frames required by law. As a result, the IRS is at risk of incurring unnecessary costs associated with administrative appeals and civil litigation. While we cannot compare these results with the FY 1999 review because of the different samples selected, we did notice a significant decrease in the number of cases where information releasable under RRA 98 § 6019(c) was

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improperly withheld. Under this provision, the IRS must provide authorized representatives with the names of individuals who, along with the requester, are assessed the same Trust Fund Recovery Penalty.⁸ In the prior review, we identified 13 such improper withholdings. In this review, we identified only 2 such cases. Disclosure management responded that the majority of the errors in the prior review occurred before employees were trained on this law change.

The Internal Revenue Service Can Better Ensure That Requesters Are Provided With All Information They Are Entitled to Receive

The IRS improperly withheld information that requesters were entitled to receive in response to their written inquiries under the FOIA, PA, and I.R.C. § 6103. As a result, taxpayers' rights were potentially violated and the IRS is at risk of incurring unnecessary costs associated with administrative appeals and civil litigation initiated by requesters who were improperly denied information under the FOIA.

Table 2 shows the results of our two statistical samples. These samples are based on a 90 percent confidence level and include cases closed during the period January 1 through September 30, 1999.

⁸ The Trust Fund Recovery Penalty is imposed on persons who are responsible for collecting and paying employment taxes to the IRS, but fail to do so. The penalty equals 100 percent of the taxes that were not paid. The taxpayer is personally liable for the penalty even if a corporation, other business entity, or another individual was also responsible for paying the taxes.

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Table 2 - Number of Improper Withholdings in Samples

Type of Case	Sample Size	Number of Improper Withholdings	Percentage of Improper Withholdings
FOIA/PA	317	28	8.8%
I.R.C. § 6103	190	12	6.3%

Information requested in FOIA and PA requests

We project that the IRS improperly withheld information from requesters in 393 to 722 FOIA and PA cases.

We project, with 90 percent confidence, that the IRS improperly withheld information in 8.8 percent of the 6,335 denied FOIA and denied PA cases closed between January 1 and September 30, 1999, where information was denied or partially denied based on I.R.C. § 6103 or FOIA exemption (b)(7) or where the IRS replied that responsive records were not available. This equates to an estimate of between 393 and 722 FOIA and PA requests where the IRS improperly withheld information during this period (i.e., 6.2 to 11.4 percent of the 6,335 cases detailed above).

The IRS improperly withheld information in 28 of the 317 (8.8 percent) FOIA and PA cases in our random sample. Disclosure management disagreed with our conclusion that an improper withholding occurred in 1 of the 28 cases because although the requested transcript was not provided, the response addressed the requester's specific question and provided additional customer service. In addition to the 28 cases, we could not reach any determination for 23 FOIA and PA cases because the related case files did not contain adequate documentation. Specifically, the case files did not contain the original version of the redacted documents or the IRS did not properly identify the information that was withheld.

The FOIA requires that records of the federal government generally be available to the public upon request, unless specifically exempted. FOIA exemption (b)(3) regulates the release of records

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specifically exempt from disclosure by statute (e.g., I.R.C. § 6103). I.R.C. § 6103 controls the release of tax returns and tax return information and provides a mechanism for taxpayers to request tax returns and return information or request that it be disclosed to a designee. FOIA exemption (b)(7) regulates the release of records or information compiled for law enforcement purposes.

The PA contains a provision that prevents government agencies from relying on any exemption in the PA to withhold from an individual any record, which is otherwise available to that individual under the FOIA.

Information requested by taxpayers in FOIA and PA requests processed under the FOIA was improperly withheld because the IRS did not correctly apply the FOIA or did not always follow the Internal Revenue Manual (IRM) when denying requests for information. In some cases there was more than one reason for the improper withholding of information. Specifically:

- In 21 instances, information was improperly withheld because the IRS did not correctly apply the FOIA statute and/or I.R.C. § 6103. For example, in one case, the IRS improperly withheld return preparer information based on FOIA exemption (b)(7)(C) and FOIA exemption (b)(3), in conjunction with I.R.C. § 6103. FOIA exemption (b)(7)(C) allows the withholding of law enforcement records that could reasonably be expected to constitute an unwarranted invasion of personal privacy. Our review of the withheld documents showed that the requester, return preparer, and taxpayer were the same individual. Therefore, the requester was entitled to the preparer information associated with these documents.
- In seven instances, the IRS did not conduct a proper search for records. For example, two taxpayers that filed a joint return requested information from a specific IRS computer database. The IRS replied that there were no records responsive to the

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taxpayers' requests. However, our review of that database showed that data were available for 1996 and 1997 for both taxpayers. The taxpayers should have been provided with this information.

- In six instances, the IRS did not follow IRM guidelines. For example, a taxpayer requested a Collection employee's interview notes related to a Trust Fund Recovery Penalty case. The IRS improperly withheld the employee's interview notes related to other individuals who were recommended for assessment of the Trust Fund Recovery Penalty. Some of these notes should have been released to the requester, after personal information related to the other individuals was redacted.
- In four instances, the IRS' response did not fully address the taxpayer's request. For example, the IRS did not provide a document requested by a taxpayer even though it was available. The taxpayer requested a copy of a 1998 tax transcript and also gave the reason for requesting the transcript. The request specifically stated, "The purpose of this request is to learn the whereabouts of my 1998 federal income tax refund of [specific amount]." The response letter from the IRS informed the taxpayer that the 1998 refund (specific amount provided) was held as a credit to offset a liability to another Federal agency, told the taxpayer which agency to contact for further information, but did not include the transcript, which was specifically requested by the taxpayer. Disclosure management acknowledged that the transcript should have been provided to the taxpayer. However, they disagreed that this case was an improper denial because the disclosure office provided a full explanation of what happened to the taxpayer's refund.

Case files did not include any indication of supervisory review in 8 of 28 (29 percent) FOIA and PA cases where information was improperly withheld. Ongoing supervisory review would better ensure that requests for information are properly researched, IRS responses are

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complete, and requesters receive all the information they are entitled to.

Information requested by taxpayers under I.R.C. § 6103

We project that the IRS improperly withheld information from requesters in 300 to 812 I.R.C. § 6103 requests.

We project, with 90 percent confidence, that the IRS improperly withheld information in 6.3 percent of the estimated 8,830 I.R.C. § 6103 requests from taxpayers closed from January 1 through September 30, 1999, where information was denied or requesters were told that records could not be located. This equates to an estimate of between 300 and 812 I.R.C. § 6103 requests from taxpayers where the IRS improperly withheld information during this period (i.e., 3.4 to 9.2 percent of the 6,335 cases detailed above).

I.R.C. § 6103 controls the release of tax returns and tax return information and provides a mechanism for taxpayers to request tax returns and return information or request for it to be disclosed to a designee.

We determined that the IRS improperly withheld information in 12 of 190 (6.3 percent) I.R.C. § 6103 cases that we reviewed. Information requested by taxpayers under I.R.C. § 6103 was improperly withheld primarily because the IRS did not fully respond to taxpayers' requests for information even though the information was readily available. For example:

- In five cases, requesters asked for tax transcripts that covered multiple tax periods. The IRS only provided information for the years that were available from one computer database, but did not provide information from another computer database for other years even though the information was available.
- In another case, adjusted gross income amounts were requested for four tax years. However, the IRS only provided information for three of the years and indicated that records regarding the fourth year were not available, even though the taxpayer filed a joint

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return for the fourth year and this record was available.

Case files did not contain any evidence of supervisory review in 6 out of the 12 exception cases that we identified. Supervisory reviews would better ensure that the IRS fully responds to taxpayers' requests for information. We contacted personnel in each disclosure office where exception cases were processed and determined that three of the five offices did not have a procedure in place to route the responses to the Disclosure Officer for review or signature. Disclosure management informed us that sometimes Disclosure Officers delegate signature authority for I.R.C. § 6103 responses to a senior technician.

We also identified three cases where it did not appear that the local disclosure office provided all requested information in response to requests to disclose information to designees of the taxpayers. Disclosure management informed us that local disclosure offices make verbal agreements with federal and state government offices to provide only specific information (e.g., fact of filing) in response to these requests, even if the authorization signed by the taxpayer allows the release of more detailed information. These verbal agreements were not documented; therefore, we could not determine whether the IRS improperly withheld information in response to these requests.

Recommendations

Because the IRS did not respond to our FY 1999 report before the draft of this report was issued, we are repeating recommendations made in our FY 1999 report regarding the IRS meeting the legal and procedural guidelines for responding to written requests for information under the FOIA. Two recommendations made in our FY 1999 report are still relevant to this finding.

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We recommend that the Office of Governmental Liaison and Disclosure:

1. Improve its case management practices and oversight to ensure compliance with the provisions of the FOIA, the PA, and the IRS' own guidelines and policy when reviewing FOIA and PA requests that are denied. The primary focus of these practices should be to reduce the number of requests where information is improperly withheld.
2. Develop and implement minimum standards for documenting case actions.

With regard to our findings related to I.R.C. § 6103 requests, we recommend that the Office of Governmental Liaison and Disclosure ensure that:

3. Personnel responding to I.R.C. § 6103 requests are adequately trained in the use of Integrated Data Retrieval System research tools.
4. Verbal agreements between local disclosure offices and other government agencies limiting the scope of written requests for information are documented.
5. Management reviews of completed work are performed.

Management's Response: Management's response to our FY 2000 report was due on September 21, 2000. As of September 26, 2000, management had not responded to the draft report.

The Internal Revenue Service Can Improve the Timeliness of Responses to Freedom of Information Act and Privacy Act Requests When Information Is Not Provided

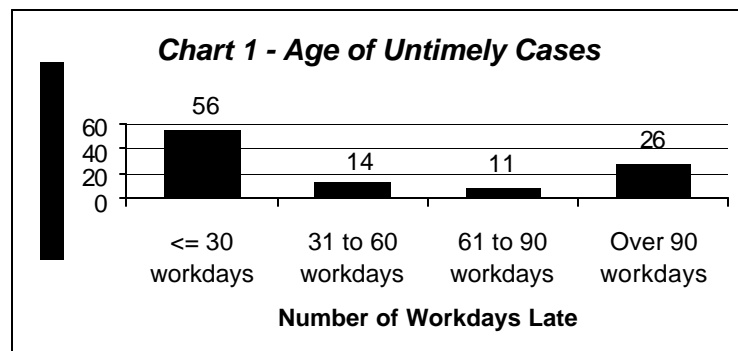
Responses to FOIA and PA requests were not always timely as required by law.

The IRS did not always respond to FOIA and PA requesters within the time frames allowed by law. We estimate that responses for 2,138 FOIA and PA requests denied under the FOIA exemption (b)(3), in conjunction with I.R.C. § 6103 or FOIA exemption (b)(7) or where

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the IRS replied that responsive records did not exist were not processed timely during the period January 1 through September 30, 1999. We did not project these results to the universe because our sample was originally designed to project the number of cases where information was improperly withheld. The error rate for untimely cases was much higher, and would have required a larger sample to project with the same level of precision.

We determined that, in 107 of the 317 (33.8 percent) cases in our sample, responses were not sent to requesters timely. However, as shown in Chart 1, slightly more than half of the cases were less than or equal to 30 workdays late.



The FOIA requires federal agencies to determine within 20 days (excluding Saturdays, Sundays, and legal public holidays) after the receipt of a FOIA request by the disclosure office whether to comply with the request and to immediately notify the person making the request of the determination, the reasons for the determination, and the right to appeal the determination. Requesters should receive responses to their PA requests within 30 days (excluding Saturdays, Sundays, and legal public holidays) after the receipt of the request by the disclosure office. The agency may request one voluntary extension of these time frames, and if the requester agrees, the agency must notify the requester of its determination by the end of the extension period.

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Our analysis of the 107 cases where responses were not provided to requesters timely showed that the IRS:

- Did not respond within the statutory time period and did not request an extension of time from the requester in 41 cases.
- Requested one extension from the requester, but either did not request the extension timely or did not respond by the date provided for in the extension letter in 43 cases.
- Requested multiple extensions from the requester, but either did not request the extension timely or did not respond within the first extension period in 23 cases.

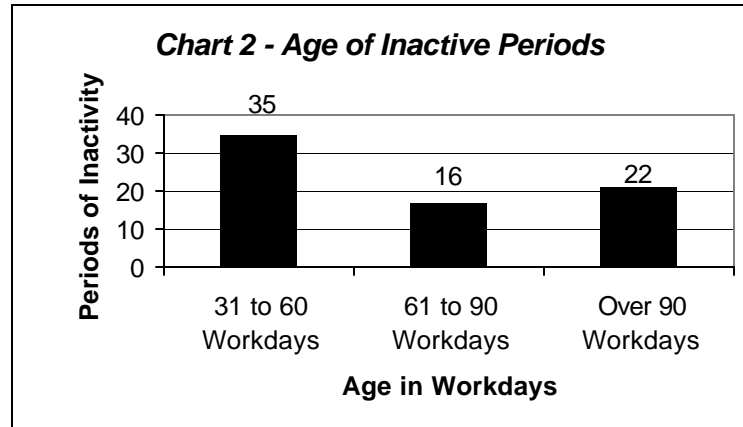
Several factors contributed to the delays in responding to requesters.

In 59 of the 107 untimely cases, there was no explanation for the delay in responding to the requester. However, we identified several factors that generally contributed to the delays in responding to the FOIA and PA requests where information was denied or requesters were told that responsive records could not be located. In 40 cases, there were delays in obtaining search results or documents from functional offices. Case files did not include any indication of supervisory review in 22 cases. Ongoing supervisory review would better ensure that responses to FOIA and PA requests are timely.

In addition, many of the untimely cases had long periods of inactivity. Our analysis showed that 46 of the 107 untimely cases had at least one 30-workday period where no case activity took place. The 46 cases included 73 separate periods of inactivity.

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As shown in Chart 2, the number of workdays of each period of inactivity varied.



As a result, requesters were not provided with responses to their requests within the time required by law. This increases the risk of requesters filing administrative appeals and civil actions against the IRS.

Recommendation

We are repeating a recommendation made in our FY 1999 report regarding the IRS meeting the legal and procedural guidelines for responding to written requests for information under the FOIA.

We recommend that the Office of Governmental Liaison and Disclosure:

6. Establish controls to minimize extended periods of inactivity while processing requests for information.

Conclusion

When responding to taxpayers' written requests for information under the FOIA, PA, or I.R.C. § 6103, the IRS needs to ensure that requesters receive all information they are legally entitled to within the appropriate time frames required by law. There are still instances where requesters do not receive all the information they are entitled to.

Detailed Objective, Scope, and Methodology

The overall objective of this audit was to determine if the Internal Revenue Service (IRS) improperly withheld information requested by taxpayers in writing, based on Internal Revenue Code (I.R.C.) § 6103 (1999) and/or the Freedom of Information Act (FOIA) (1988)¹ exemption (b)(7), or by replying that responsive records did not exist. We conducted the following tests to accomplish this objective:

- I. Determined if the IRS properly adhered to statutory requirements contained in the FOIA and the Privacy Act (PA) of 1974,² as well as internal procedural requirements.
 - A. Identified 6,335 national FOIA and PA cases that were denied based on I.R.C. § 6103 or FOIA exemption (b)(7) or where the IRS replied that responsive records were not available, during the period January 1 through September 30, 1999.
 1. Obtained an extract from the Disclosure Information Management System (DIMS) that included FOIA and PA cases that were closed during the period January 1 through September 30, 1999.
 - a. Identified 6,347 FOIA and PA cases that were closed nationally as denied or partially denied based on I.R.C. § 6103 or FOIA exemption (b)(7) or where the IRS replied that responsive records did not exist, during the period January 1 through September 30, 1999.
 - b. Performed limited validity checks to ensure that the DIMS extract included the time frame and information requirements specified by us and identified 125 cases with incomplete information.
 - c. Reviewed the 125 cases with incomplete information to determine if they met our criteria for review and identified 17 cases that did not fall under the scope of our review.

¹ 5 U.S.C. § 552 (1996).

² 5 U.S.C. § 552a (1994).

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2. Contacted the FOIA analyst assigned to the Director of Practice and identified five FOIA and PA cases that were closed as denied or partially denied based on I.R.C. § 6103 or FOIA exemption (b)(7) or where the IRS replied that responsive records did not exist from January 1 through September 30, 1999. We included these cases in the population of cases we selected our statistical samples from.
- B. Randomly sampled 317³ of 6,335 FOIA and PA cases that were denied based on FOIA exemption (b)(3), in conjunction with I.R.C. § 6103, FOIA exemption (b)(7) or where the IRS replied that responsive records did not exist. The sample was an attribute sample based on a 90 percent confidence level and included cases closed nationally during the period January 1 through September 30, 1999.
 - C. Reviewed 144 of the 317 randomly selected FOIA and PA cases that were closed on the DIMS as denied or partially denied pursuant to FOIA exemption (b)(3), in conjunction with IRC § 6103, and/or FOIA exemption (b)(7) to determine if the decision to withhold information was appropriate, the exemptions claimed were correct, and the determination was made in a timely manner.
 - D. Reviewed 173 of the 317 randomly selected FOIA and PA cases that were closed on the DIMS as no responsive records (i.e., the IRS replied that responsive records were not available) to determine if responsive records existed and if the determination was made in a timely manner.
 - E. Discussed 34 potential exception cases with disclosure management and submitted 12 cases where we could not obtain agreement with management to the Treasury Inspector General for Tax Administration (TIGTA) Counsel for review.
 - F. Projected the attribute sample results to the universe of FOIA and PA denials based on FOIA exemption (b)(3), in conjunction with IRC § 6103, and/or FOIA exemption (b)(7) or where the IRS replied that responsive records did not exist. The projection was made using a 90 percent confidence level, precision factor of 2.6 percent, and an actual error rate of 8.8 percent.

³ We initially selected 362 cases for review. However, 45 cases could not be reviewed because: 1) the case was miscoded and did not fall under the scope of our review, 2) the case file did not contain adequate documentation, or 3) we did not receive the case file. Therefore, our final sample size was 317 cases.

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- II. Determined if disclosure offices adhered to legal requirements when denying non-FOIA and non-PA written requests from taxpayers under I.R.C. § 6103.
- A. Obtained an extract from the DIMS and identified 23,237 I.R.C. § 6103 requests received from taxpayers or their designees that were closed nationally during the period January 1 through September 30, 1999. We selected cases from the DIMS with a blank disposition code field or a disposition of denied, partially denied, or no responsive records. We performed limited validity checks to ensure that the DIMS extract included the time frame and information requirements specified by us.
 - B. Randomly sampled 500 of the 23,237 I.R.C. § 6103 (c) and (e) closed cases identified for sample selection after consulting with a statistician from the Treasury Office of Inspector General about our attribute sampling methodology. The sample was an attribute sample based on a 90 percent confidence level and included cases closed from January 1 through September 30, 1999.
 - 1. Determined that 190 of the 500 randomly sampled cases included instances where information was denied or requesters were told that the records were not available.
 - 2. Based on our initial analysis of the 500 randomly sampled cases, we estimated that the population of 23,237 closed I.R.C. § 6103 (c) and (e) requests contained 8,830 requests where information was denied or requesters were told that records were not available.
 - C. Evaluated the 190 cases where information was denied or requesters were told that records were not available to determine if the decision to withhold the information was appropriate.
 - D. Discussed 17 potential exception cases with disclosure management and submitted 5 cases where we could not obtain agreement with management to TIGTA Counsel for review.
 - E. Projected the attribute sample results to the estimated universe of I.R.C. § 6103 cases where information was not provided to the taxpayer or their designee. The projection was made using a 90 percent confidence level, precision factor of 2.9 percent, and an actual error rate of 6.3 percent.

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Appendix II

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Appendix III

Report Distribution List

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Chief Communications and Liaison CL
National Taxpayer Advocate C:TA
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Director, Governmental Liaison and Disclosure CL:GLD
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Director, Office of Program Evaluation and Risk Assessment M:O

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Appendix IV

Outcome Measures

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

Finding 1, Recommendations 1 and 2, Page 12:

The Internal Revenue Service (IRS) improperly withheld information that requesters were entitled to receive in response to their written inquiries under the Freedom of Information Act (FOIA) (1988)¹ and the Privacy Act (PA) of 1974.² This occurred in 8.8 percent of the FOIA and PA requests in our statistical sample.

The IRS did not respond to our Fiscal Year (FY) 1999 report³ before we issued a draft of this report on August 22, 2000. As a result, we are repeating recommendations made in our FY 1999 report regarding the IRS meeting the legal and procedural guidelines for responding to written requests for information under the FOIA. The recommendations include improving case management practices and oversight to ensure compliance with the provisions of the FOIA, the PA, and the IRS' own guidelines and policy when reviewing FOIA and PA requests that are denied; and developing and implementing minimum standards for documenting case actions.

Type of Outcome Measure:

Taxpayer rights (Potential).

Value of the Benefit:

We estimate that information was improperly withheld from responses to 557 FOIA and PA requests that were denied based on Internal Revenue Code (I.R.C.) § 6103 (1999) or FOIA exemption (b)(7), or where the IRS replied that responsive records did not exist, during the period January 1 through September 30, 1999.

¹ 5 U.S.C. § 552 (1996).

² 5 U.S.C. § 552a (1994).

³ *The Internal Revenue Service Needs to Improve its Compliance with Procedures When Processing Requests for Information Under the Freedom of Information Act*, (Reference Number 2000-10-058, dated March 2000).

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Methodology Used to Measure the Reported Benefit:

This attribute sample was randomly selected from the universe of FOIA and PA requests that were closed nationally during the period January 1 through September 30, 1999, as: 1) a full or partial denial with either FOIA exemption (b)(3), in conjunction with I.R.C. § 6103, or FOIA exemption (b)(7) cited as one of the reasons for withholding information, or 2) a no responsive record case.

To arrive at our estimate, we multiplied the number of denied requests in our universe (6,335) by the error rate of cases we reviewed (8.8 percent). A case was considered an "error" if the IRS did not correctly apply the FOIA when denying requests for information or did not always follow its own internal procedures.

The following calculation was made to arrive at our estimate:

$$6,335 \text{ cases} \times 8.8 \text{ percent} = 557 \text{ cases}$$

Finding 1, Recommendations 3 and 5, Page 12:

The IRS improperly withheld information that taxpayers were entitled to receive in response to their written inquiries under I.R.C. § 6103. This occurred in 6.3 percent of the I.R.C. § 6103 requests in our statistical sample.

We recommend that the Office of Governmental Liaison and Disclosure ensure that:

- Personnel responding to I.R.C. § 6103 requests are adequately trained in the use of Integrated Data Retrieval System research tools.
- Management reviews of completed work are performed.

Type of Outcome Measure:

Taxpayer rights (Potential).

Value of the Benefit:

We estimate that information was improperly withheld from responses to 556 I.R.C. § 6103 requests closed during the period January 1 through September 30, 1999.

Methodology Used to Measure the Reported Benefit:

This attribute sample was randomly selected from the universe of I.R.C. § 6103 (c) and (e) requests that were closed nationally on the Disclosure Information Management System (DIMS) during the period January 1 through September 30, 1999. Disclosure offices are not required to input a disposition code

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showing how I.R.C. § 6103 cases are closed (granted, denied, etc.). Therefore, the majority of these cases did not include a disposition code. We estimated the size of the universe by:

- Identifying 23,237 closed I.R.C. § 6103 requests that were not coded on the DIMS or that were coded as denied, partially denied, or no responsive records.
- Randomly selecting 500 of these cases to estimate the universe of denial, partial denial, and no record cases closed during the period January 1 through September 30, 1999.
- Multiplying the percentage of cases in our sample where information was denied or taxpayers told that records were not available (38 percent) by the total number of closed requests that were not coded on the DIMS or that were coded as denied, partially denied, or no responsive records (23,237).

We then multiplied the estimated universe of cases where information was denied or taxpayers told that records were not available (8,830) by the error rate of cases we reviewed (6.3 percent). A case was considered an “error” if the IRS did not fully respond to the taxpayer’s request.

The following calculations were made to arrive at our estimate:

23,237 cases X 38 percent = 8,830 cases

8,830 cases X 6.3 percent = 556 cases

Finding 2, Recommendation 6, Page 15:

The IRS did not always respond to FOIA and PA requesters within the time frames allowed by law. We determined that, in 107 of the 317 (33.8 percent) cases in our sample, responses were not sent to requesters timely.

The IRS did not respond to our FY 1999 report before we issued a draft of this report on August 22, 2000. As a result, we are repeating recommendations made in our FY 1999 report regarding the IRS meeting the legal and procedural guidelines for responding to written requests for information under the FOIA. We recommended that the Office of Governmental Liaison and Disclosure establish controls to minimize extended periods of inactivity while processing requests for information.

Type of Outcome Measure:

Taxpayer rights (Potential).

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Value of the Benefit:

We estimate that responses for 2,138 FOIA and PA requests denied under FOIA exemption (b)(3), in conjunction with I.R.C. § 6103 or FOIA exemption (b)(7), or where the IRS replied that responsive records did not exist were not processed timely during the period January 1 through September 30, 1999.

Methodology Used to Measure the Reported Benefit:

This attribute sample was randomly selected from the universe of FOIA and PA requests that were closed nationally on the DIMS during the period January 1 through September 30, 1999, as 1) a full or partial denial with either the FOIA exemption (b)(3), in conjunction with I.R.C. § 6103 or FOIA exemption (b)(7) cited as one of the reasons for withholding information, or 2) a no responsive record case. We did not project these results to the universe because our sample was originally designed to project the number of cases where information was improperly withheld. The error rate for untimely cases was much higher, and would have required a larger sample to project with the same level of precision.

To arrive at our estimate, we multiplied the number of denied requests in our universe (6,335) by the percentage of untimely responses (33.8 percent).⁴

⁴ Rounded from 33.75 percent.