
TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION



***Fiscal Year 2019 Statutory Review of Denials
of Freedom of Information Act and Internal
Revenue Code Section 6103 Requests***

September 5, 2019

Reference Number: 2019-10-057

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 2019 STATUTORY REVIEW OF DENIALS OF FREEDOM OF INFORMATION ACT AND INTERNAL REVENUE CODE SECTION 6103 REQUESTS

Highlights

Final Report issued on September 5, 2019

Highlights of Reference Number: 2019-10-057 to the Commissioner of Internal Revenue.

IMPACT ON TAXPAYERS

Taxpayers may request information from the IRS through the Freedom of Information Act (FOIA). However, a section of the FOIA, 5 United States Code (U.S.C.) Section (§) 552(b)(7), allows certain records or information compiled for law enforcement purposes to be withheld.

Taxpayers may also request information from the IRS through Internal Revenue Code (I.R.C.) § 6103 (c) and (e). While I.R.C. § 6103 protects the confidentiality of taxpayer returns and return information, it does allow the taxpayer, or a person designated by the taxpayer, to request and receive tax information. If the IRS does not process requests under these statutes correctly, taxpayers do not receive the information to which they are entitled.

WHY TIGTA DID THE AUDIT

The overall objective of this audit was to determine whether the IRS improperly withheld information requested by taxpayers in writing based on 5 U.S.C. § 552(b)(7) or I.R.C. § 6103. TIGTA is required to conduct periodic audits in this area and report the results to Congress.

WHAT TIGTA FOUND

TIGTA reviewed a statistical sample of 80 of the 3,547 FOIA requests for Fiscal Year 2018 for which the IRS denied the requested information either partially or fully based on the (b)(7) exemption, replied that no responsive records were available, or closed the request as imperfect. In addition, TIGTA reviewed all 74 Fiscal Year 2018 I.R.C. § 6103 (c) and (e)

requests documented in the Automated FOIA system for which the IRS withheld information from the requestor. While TIGTA determined that information was properly withheld in most cases, TIGTA identified seven instances in which information was improperly withheld.

TIGTA identified six (8 percent) of 80 sampled FOIA information requests and one (1 percent) of 74 I.R.C. § 6103 (c) and (e) information requests for which taxpayers did not receive the information to which they were entitled because the IRS improperly withheld information from the requestors.

WHAT TIGTA RECOMMENDED

TIGTA did not make any recommendations because the IRS has already provided training and updated procedures to address the issues identified. Key IRS officials reviewed this report prior to its issuance and agreed with the facts and conclusions presented.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

September 5, 2019

MEMORANDUM FOR COMMISSIONER OF INTERNAL REVENUE

FROM: Michael E. McKenney
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Fiscal Year 2019 Statutory Review of Denials of Freedom of Information Act and Internal Revenue Code Section 6103 Requests (Audit # 201910010)

The overall objective of this review was to determine whether the Internal Revenue Service (IRS) improperly withheld information requested by taxpayers in writing based on 5 United States Code Section 552(b)(7) or Internal Revenue Code Section 6103. We are required to conduct periodic audits in this area and report the results to Congress. This review is included in our Fiscal Year 2019 Annual Audit Plan and addresses the major management challenge of Protecting Taxpayer Rights.

We did not make any recommendations because the IRS has already provided training and updated procedures to address the issues identified. However, key IRS officials reviewed this report prior to its issuance and agreed with the facts and conclusions presented.

If you have any questions, please contact me or Heather Hill, Acting Assistant Inspector General for Audit (Management Services and Exempt Organizations).



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Abbreviations

AFOIA	Automated Freedom of Information Act
FOIA	Freedom of Information Act
FY	Fiscal Year
I.R.C.	Internal Revenue Code
IRS	Internal Revenue Service
TIGTA	Treasury Inspector General for Tax Administration
U.S.C.	United States Code



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Background

Taxpayers may request information from the Internal Revenue Service (IRS) through the Freedom of Information Act (FOIA)¹ and Internal Revenue Code (I.R.C.) Section (§) 6103.

The FOIA

The FOIA requires Federal Government agencies to make records available to the public upon request unless specifically exempted. For example, United States Code (U.S.C.) § 552(b)(7) allows certain records or information compiled for law enforcement purposes to be withheld, but only to the extent that the production of such law enforcement records or information:²

- Could reasonably be expected to interfere with enforcement proceedings.
- Would deprive a person of a right to a fair trial or an impartial adjudication.
- Could reasonably be expected to constitute an unwarranted invasion of personal privacy.
- Could reasonably be expected to disclose the identity of a confidential source or information furnished by a confidential source.
- Would disclose techniques, procedures, or guidelines for law enforcement investigations or prosecutions, if such disclosure could reasonably be expected to risk circumvention of the law.
- Could reasonably be expected to endanger the life or physical safety of any individual.

For Fiscal Year (FY)³ 2018, the IRS's Automated Freedom of Information Act (AFOIA) system shows that the IRS Disclosure Office closed 8,042 information requests as FOIA requests.⁴

¹ 5 United States Code § 552.

² 5 U.S.C. § 552(b)(7).

³ A fiscal year is any yearly accounting period, regardless of its relationship to a calendar year. The Federal Government's fiscal year begins on October 1 and ends on September 30. The IRS Disclosure Office is part of the IRS's Office of Privacy, Governmental Liaison, and Disclosure organization, which is responsible for timely compliance with the FOIA and I.R.C. § 6103.

⁴ The volume of requests cited in this report reflect the FY 2018 information extracted from the AFOIA database at the time of our review. These totals differ from the FY 2018 FOIA Annual Report because the IRS Privacy, Governmental Liaison, and Disclosure Office perfects the AFOIA data for reporting purposes by removing requests improperly coded as FOIA requests.



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I.R.C. § 6103

I.R.C. § 6103 protects the confidentiality of taxpayer returns and return information. However, it does allow the taxpayer, or a person designated by the taxpayer, to request and receive the taxpayer's tax return and return information. The IRS's AFOIA system shows that the IRS Disclosure Office closed 328 I.R.C. § 6103(c) or (e) requests in FY 2018.⁵ However, the IRS does not track I.R.C. § 6103 information requests received and processed by IRS offices other than the IRS Disclosure Office. Therefore, the complete population of I.R.C. § 6103 requests processed by the IRS in FY 2018 is unknown.

Processing FOIA and I.R.C. § 6103 information requests

The IRS Disclosure Office accepts FOIA information requests via FAX or mail. Requestors can also send I.R.C. § 6103 information requests to the IRS Disclosure Office. When a request is received, IRS personnel scan the request into the AFOIA system and a disclosure manager assigns the request to a disclosure caseworker. If the request includes all necessary information, the disclosure caseworker will conduct a search for responsive records. If there are no records that are responsive to the request, the IRS will send a letter notifying the requestor. If responsive records are located, the disclosure caseworker will review to determine if any information should be withheld. The IRS then responds to the requestor via letter providing all requested information or providing partial information and explaining why certain parts of the requested documentation have been redacted.

Although the IRS Disclosure Office is tasked with responding to written requests for IRS information, other IRS offices having custody of taxpayer records may also process written requests for information made under I.R.C. § 6103. The IRS does not track I.R.C. § 6103 information requests received and processed by other offices.

Treasury Inspector General for Tax Administration (TIGTA) requirements and limitations

Section 1102 (d)(3)(a) of the IRS Restructuring and Reform Act of 1998 requires TIGTA to conduct periodic audits of determinations made by the IRS to deny written requests to disclose information to taxpayers on the basis of I.R.C. § 6103 or FOIA exemption (b)(7).⁶ In accordance with this statutory requirement, the scope of our review addressed closed FOIA requests for which the information requested was either denied in full or in part under FOIA exemption (b)(7). In addition to requests denied in full or in part under FOIA exemption (b)(7), we evaluated requests for which no information was provided because the IRS determined that

⁵ I.R.C. § 6103 contains two sections related to taxpayer's Federal returns and return information filed with the IRS, § 6103 (c) and (e).

⁶ Pub. L. No. 105-206, 112 Stat. 685; Pub. L. No. 105-206, 112 Stat. 703 § 1102(d)(3)(A); I.R.C. § 6103 (2009); and 5 U.S.C. § 552 (2010).



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no responsive records existed or the request was imperfect.⁷ For I.R.C. § 6103 requests, we reviewed requests that were tracked on the AFOIA system and denied under sections (c) or (e), which are requests for tax return information made by either the individual taxpayer or by a designee of the taxpayer.⁸

This review was performed with information obtained from the Office of Privacy, Governmental Liaison, and Disclosure in Washington, D.C., during the period December 2018 through June 2019. We conducted this performance audit in accordance with generally accepted government auditing standards. These 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.

⁷ An imperfect request is one for which Disclosure Office personnel deem the request as not specific enough to process, too broad in scope, lacking authorization, or not statutorily compliant. Once determined as imperfect, the request must be closed.

⁸ Because the IRS does not track I.R.C. § 6103 information requests processed by other offices, the scope of our audit was limited to only those I.R.C. § 6103 information requests received and processed by the IRS Disclosure Office.



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Results of Review

We reviewed a statistical sample of 80 of the 3,547 FOIA exemption (b)(7) requests for FY 2018 as well as all 74 FY 2018 I.R.C. § 6103 (c) and (e) requests documented in the AFOIA system for which the IRS withheld information from the requestor.⁹ We determined that information was properly withheld in most cases. However, we identified seven requests for which information was improperly withheld under either FOIA exemption (b)(7) (6 cases) or I.R.C. § 6103(c) and (e) (one case).

Information Was Properly Withheld in Most Cases

We determined that the IRS incorrectly withheld information using FOIA exemption (b)(7) for six (8 percent) of the 80 FOIA information requests we sampled. While FOIA exemption (b)(7) exempts from disclosure information compiled for law enforcement purposes, in one case, the IRS withheld information on IRS examination techniques even though this information is available to the public on the IRS's webpage. IRS management stated that the information was erroneously withheld due to employee error. In the other five cases, the IRS withheld information under exemption (b)(7), but the information did not disclose law enforcement techniques that would risk circumvention of the law. IRS management stated that there was confusion on applying the exemption in this area and has provided additional training to employees who process FOIA requests. We also noted that a manager reviewed all six cases for accuracy and completeness but did not identify that the information was improperly withheld. Based on our sample results, we estimate that the IRS erroneously applied FOIA exemption (b)(7) on approximately 282 FOIA information requests in FY 2018.¹⁰

In addition, case review results showed that the IRS incorrectly withheld information using I.R.C. § 6103 (c) and (e) for one (less than 1 percent) of the 74 § 6103 information requests.¹¹ In this case, the disclosure caseworker responded to the requestor that no responsive records were available because the disclosure caseworker believed that the records were beyond the retention

⁹ See Appendix I for details on our sampling methodology. There were 8,042 FOIA requests closed on the AFOIA system in FY 2018. For 3,547 requests, the requests were denied, either partially or fully, based on the (b)(7) exemption; the IRS replied that no responsive records were available; or the IRS closed the request as imperfect. Denials of information do not include imperfect or no responsive records requests. We included these cases in our universe to determine if specialists erroneously closed cases as imperfect or no responsive records instead of possibly providing available information, if allowed.

¹⁰ See Appendix IV for details. The point estimate projection is based on a two-sided 90 percent confidence interval. We are 90 percent confident that the number of requests for which information was improperly withheld is between 109 and 456 information requests.

¹¹ For FY 2018, there were 328 I.R.C. § 6103 (c) and (e) information requests closed in the AFOIA system. We screened all 328 requests and identified a total of 74 requests for which information was withheld.

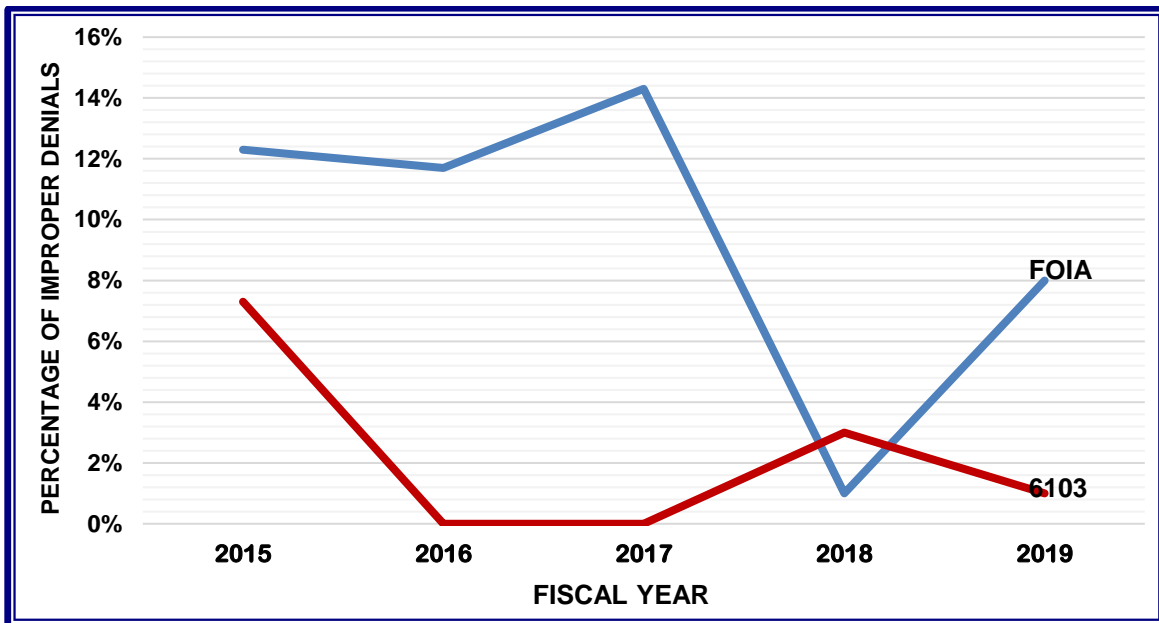


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period for the information requested. However, the information was available due to a change in the retention period that the disclosure caseworker was unaware of at the time. The disclosure caseworker followed procedures that had not yet been updated when processing the case. IRS management stated that the information was erroneously withheld due to employee error. We also noted that a manager reviewed the information request for accuracy and completeness prior to closing the case. If the IRS does not process requests under these statutes correctly, taxpayers do not receive the information to which they are entitled.

Although the IRS properly releases thousands of pages in response to information requests each year, information was improperly withheld in these seven cases. Figure 1 illustrates our audit results for the last five fiscal years and shows that there have been inconsistencies when responding to information requests from year to year.

Figure 1: Number of Improper FOIA and I.R.C. § 6103 Information Request Withholdings Identified in TIGTA Audits (FYs 2015–2019)



Source: TIGTA audit reports issued in FYs 2015 through 2018 and audit tests conducted during this review. See Appendix V for a list of these audit reports.

We are not making any recommendations to correct the improper withholding of information identified in our samples because the IRS has already provided training and updated procedures to address the issues identified.



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Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of this audit was to determine whether the IRS improperly withheld information requested by taxpayers in writing based on 5 U.S.C. § 552(b)(7) or I.R.C. § 6103. To accomplish our objective, we:

- I. Determined the applicable policies, procedures, and controls that are in place to provide reasonable assurance that the IRS complies with the FOIA and I.R.C. § 6103 when denying information.
 - A. Reviewed policies, operating procedures, documents/files, risks, laws, and regulations related to the receipt, disposition, and resolution or denials of requests for information under the FOIA.
 - B. Reviewed specific management controls and systems that are in place to ensure the proper receipt, disposition, and resolution or denials of requests for information under the FOIA.
 - C. Verified that a memorandum was issued to all Disclosure personnel reminding them of the requirement in Internal Revenue Manuals 11.3.2.3(3) and 11.3.3.1.7(10) to respond to I.R.C. § 6103 requestors within 30 days.¹
 - D. Obtained data for the number of FOIA requests that were appealed in FY 2018 (October 1, 2017, through September 30, 2018) and their outcome.
- II. Determined whether IRS disclosure officers are adhering to statutory requirements when denying written requests received from taxpayers under the FOIA.
 - A. Obtained an AFOIA system extract for the period October 1, 2017, through September 30, 2018, and identified all FOIA cases closed as denied or partially denied (based on FOIA exemption (b)(7) or exempted in conjunction with I.R.C. § 6103) or for which the IRS replied that the request was imperfect or responsive records did not exist.²
 - B. Completed validation testing of the AFOIA extract to determine if the data are valid.
 - C. Selected a statistically valid sample of 80 of the 3,547 FOIA information requests closed in FY 2018 for which the IRS fully or partially withheld information,

¹ TIGTA, Ref. No. 2018-10-058, *Fiscal Year 2018 Statutory Review of Denials of Freedom of Information Act and Internal Revenue Code Section 6103 Requests* (Sept. 2018).

² By law, tax records may not be disclosed to any individual unless authorized by I.R.C. § 6103.



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- responded that responsive records did not exist, or closed the request as imperfect. We stratified the FOIA population of 3,547 requests to ensure that each case disposition (denied, partially denied, no responsive records, and imperfect) had an equal chance of being selected. The stratified sample was selected using an estimated error rate of 12 percent, a confidence level of 90 percent, and a precision rate of 6 percent.³
- D. Reviewed the denied, partially denied, no responsive records, and imperfect cases sampled to determine if the decision to withhold information was appropriate and the record search was adequately documented. For cases in which we determined that information was improperly withheld, we identified and documented the potential causes for such.
 - E. Discussed any exception cases with Privacy, Governmental Liaison, and Disclosure management to obtain agreement. In all exception cases for which agreement could not be reached, we requested that TIGTA Counsel review the cases and obtained their opinion.
 - F. Projected the number of exception cases to the FOIA population. We coordinated with TIGTA's contract statistician to ensure the accuracy of the projection.
- III. Determined whether IRS disclosure officers are adhering to legal requirements when denying written requests received from taxpayers under I.R.C. § 6103.
- A. Obtained an AFOIA system extract for the period October 1, 2017, through September 30, 2018, and identified all closed I.R.C. § 6103 (c) and (e) requests tracked in the AFOIA system.⁴
 - B. Completed validation testing of the I.R.C. § 6103 data extract to determine if the data are valid.
 - C. Identified the I.R.C. § 6103 cases in which the request was rejected or the request was closed when the IRS determined that responsive records did not exist.⁵
 - D. Reviewed all 74 I.R.C. § 6103 cases for which the request was rejected or the request was closed when the IRS determined that responsive records did not exist to determine if the decision to withhold information was appropriate and the record search was adequately documented. In cases for which we determined that information was improperly withheld, we identified and documented the potential causes for such.

³ A contract statistician assisted with developing the sampling plan.

⁴ I.R.C. § 6103 (c) and (e) requests are requests for tax return information made by either the individual taxpayer or by a designee of the taxpayer.

⁵ We reviewed 100 percent of the 6103 requests for which the request was rejected or the request was closed when the IRS determined that responsive records did not exist.



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- E. Discussed any exception cases with Privacy, Governmental Liaison, and Disclosure management to obtain agreement. In all exception cases for which agreement could not be reached, we requested that TIGTA Counsel review the cases and obtained their opinion.

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 that the following internal controls were relevant to our audit objective: IRS policies, operating procedures, laws, and regulations related to the receipt, disposition, and resolution or denials of requests for information made under the FOIA or I.R.C. § 6103. We evaluated these controls by reviewing source documents, interviewing management, and reviewing I.R.C. § 6103 (c) and (e) information requests and a statistically valid sample of closed FOIA information requests based on exemption (b)(7).



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Appendix II

Major Contributors to This Report

Deann Baiza, Acting Assistant Inspector General for Audit (Management Services and Exempt Organizations)
Heather Hill, Acting Assistant Inspector General for Audit (Management Services and Exempt Organizations)
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Jennifer Burgess, Lead Auditor
Donald Martineau, Auditor
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Appendix III

Report Distribution List

Deputy Commissioner for Operations Support
Chief Privacy Officer
Director, Office of Audit Coordination



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Appendix IV

Outcome Measure

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

Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlement – Potential; 282 responses to FOIA information requests for which information may have been improperly withheld during FY¹ 2018 (see page 4).²

Methodology Used to Measure the Reported Benefit:

We reviewed a statistically valid sample of 80 information requests from a population of 3,547 FOIA requests closed during FY 2018 as either of the following:

- 1) Denied or partially denied with FOIA exemption (b)(7) cited as one of the reasons for withholding information.
- 2) The IRS replied that responsive records did not exist or the request was imperfect.³

We identified six requests for which a disclosure caseworker improperly withheld the requested information. As shown in Figure 1, we estimate the number of FOIA requests for which information was improperly denied in FY 2018 to be 282.

¹ A fiscal year is any yearly accounting period, regardless of its relationship to a calendar year. The Federal Government's fiscal year begins on October 1 and ends on September 30.

² The point estimate projection is based on a two-sided 90 percent confidence interval. We are 90 percent confident that the number of requests for which information was improperly withheld is between 109 and 456.

³ An imperfect request is one for which Disclosure Office personnel deem the request as not specific enough to process, too broad in scope, lacking authorization, or not statutorily compliant. Once determined as imperfect, the request must be closed.



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**Figure 1: Calculation of Estimated Number of FOIA Requests
for Which Information Was Improperly Withheld**

Strata	Sample Size	Total Population of FOIA Information Requests	Responses for Which the IRS Improperly Withheld Information		
			Total Number in Sample	Percentage in Sample	Estimated Number in Total Population
Denials	5	38	0	0.00%	0
Partial Denials	36	1,693	6	16.67%	282
No Responsive Records	13	614	0	0.00%	0
Imperfect	26	1,202	0	0.00%	0
Totals	80	3,547	6		282

Source: Statistician projections provided based on audit results.



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Appendix V

***Previous Audit Reports Related
to This Statutory Review***

TIGTA, Ref. No. 2015-30-084, *Fiscal Year 2015 Statutory Review of Compliance With the Freedom of Information Act* (Sept. 2015).

TIGTA, Ref. No. 2016-30-072, *Fiscal Year 2016 Statutory Review of Compliance With the Freedom of Information Act* (Sept. 2016).

TIGTA, Ref. No. 2017-30-075, *Fiscal Year 2017 Statutory Review of Compliance With the Freedom of Information Act* (Sept. 2017).

TIGTA, Ref. No. 2018-10-058, *Fiscal Year 2018 Statutory Review of Compliance With the Freedom of Information Act* (Sept. 2018).