

TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION



Fiscal Year 2021 Mandatory Review of Compliance With the Freedom of Information Act

July 8, 2021

Report Number: 2021-10-047

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.

HIGHLIGHTS: Fiscal Year 2021 Mandatory Review of Compliance With the Freedom of Information Act

Final Audit Report issued on July 8, 2021

Report Number 2021-10-047

Why TIGTA Did This Audit

The overall objective of this audit was to determine whether the IRS improperly withheld information requested by taxpayers in writing based on Freedom of Information Act (FOIA) exemption 5 United States Code (U.S.C.) § 552(b)(7) or Internal Revenue Code (I.R.C.) § 6103 or by replying that responsive records were not available or did not exist. TIGTA is required to conduct periodic audits in this area and report the results to Congress.

Impact on Taxpayers

Taxpayers may request information from the IRS through the FOIA. However, a section of the FOIA, 5 U.S.C. § 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 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 return information. If the IRS does not process requests under these statutes correctly, taxpayers do not receive the information to which they are entitled.

What TIGTA Found

TIGTA reviewed a statistical sample of 73 of the 2,768 Fiscal Year 2020 FOIA requests for which the IRS: denied the requested information either partially or fully based on exemption (b)(7), replied that no responsive records were available, or closed the request as imperfect. TIGTA also reviewed all 62 Fiscal Year 2020 I.R.C. § 6103(c) and (e) requests documented in the Automated Freedom of Information Act (AFOIA) and FOIAXpress systems for which the IRS withheld information from the requestor. While TIGTA determined that information was properly withheld in most cases, the Disclosure Office did not follow FOIA requirements when redacting information in 12 (16 percent) cases.

For seven (10 percent) of the sampled cases, disclosure caseworkers improperly redacted Discriminant Information Function (DIF) reason codes and other tax return or examination information that was not protected under exemption (b)(7). Disclosure caseworkers also improperly released DIF score categories and taxpayer information in seven (10 percent) of the sampled cases. TIGTA identified similar issues in the Fiscal Year 2020 audit and recommended that the results of the audit should be communicated to disclosure caseworkers and managers to educate them about the redaction requirements for DIF scores and reason codes. In October 2020, the IRS's Chief Privacy Officer issued a memorandum to all Disclosure Office employees reminding them to properly redact the DIF score and properly release the DIF reason code. The exception cases in our sample were closed prior to this corrective action; therefore, no additional recommendations are being made related to this issue.

FOIA requests may involve the review of thousands of pages of information, and cases in our sample ranged from 10 pages to more than 30,000 pages. Because a disclosure caseworker may make countless decisions when working a case, human error is unavoidable and the IRS has taken steps to mitigate the risks associated with it.

The Disclosure Office properly processed all 62 I.R.C. § 6103(c) and (e) information requests and errors in processing FOIA requests remain consistent.

What TIGTA Recommended

TIGTA made no recommendations in this report. Key IRS officials reviewed this report prior to its issuance and agreed with the facts and conclusions presented.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

U.S. DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

July 8, 2021

MEMORANDUM FOR: COMMISSIONER OF INTERNAL REVENUE

A handwritten signature in blue ink that reads "Michael E. McKenney".

FROM: Michael E. McKenney
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Fiscal Year 2021 Mandatory Review of Compliance
With the Freedom of Information Act (Audit # 202110002)

This report presents the results of our review to determine whether the Internal Revenue Service (IRS) improperly withheld information requested by taxpayers in writing based on the Freedom of Information Act (FOIA) exemption 5 United States Code § 552(b)(7) or Internal Revenue Code § 6103 or by replying that responsive records were not available or did not exist. We are required to conduct periodic audits in this area and report the results to Congress. This review is part of our Fiscal Year 2021 Annual Audit Plan and addresses the major management and performance 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.

Copies of this report are also being sent to the Internal Revenue Service managers affected by the report information. If you have any questions, please contact me or Heather Hill, Assistant Inspector General for Audit (Management Services and Exempt Organizations).

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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.) § 6103.

FOIA requests

The FOIA requires Federal 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.

The IRS's Automated Freedom of Information Act (AFOIA) and FOIAXpress systems show that the IRS Disclosure Office closed 7,776 FOIA requests during Fiscal Year (FY) 2020.³ The IRS Disclosure Office processes all written FOIA requests.

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 and FOIAXpress systems show that the IRS Disclosure Office closed 273 I.R.C. § 6103(c) or (e) requests in FY 2020. 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

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, which is responsible for timely compliance with the FOIA and I.R.C. § 6103. The AFOIA system is a case management system designed to help the IRS comply with the legal requirements for processing public requests for information and store information about program and agency work. The AFOIA system also helps caseworkers efficiently use their subject matter expertise through electronic redaction of documents and workload management. In June 2020, FOIAXpress replaced the AFOIA system and improved functionality.

processed by other offices. Therefore, the complete population of I.R.C. § 6103 requests processed by the IRS in FY 2020 is unknown.

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

The IRS Disclosure Office accepts FOIA and I.R.C. § 6103 information requests via fax or mail. When a request is received, IRS employees scan the request into the AFOIA or FOIAXpress system and a disclosure manager assigns the request to a disclosure caseworker. If the request includes all the 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 them 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.

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 or verbal requests for information made under I.R.C. § 6103. For example, taxpayers or their representatives may request and receive information directly from IRS revenue agents during examinations. The IRS Disclosure Office does not track I.R.C. § 6103 information requests received and processed by other offices. For this audit, we only reviewed written requests to the IRS Disclosure Office.

Treasury Inspector General for Tax Administration (TIGTA) reporting 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).⁴ 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) or the IRS replied that no responsive records were available or the request was imperfect.⁵ For I.R.C. § 6103 subsection (c) or (e) requests, which are requests for tax return information made by either the individual taxpayer or by a designee of the taxpayer, we reviewed requests that were tracked on the AFOIA and FOIAXpress systems that were denied, rejected, or the IRS replied that no responsive records were available.⁶ See Appendix I for additional information about the objective, scope, and methodology.

Results of Review

We reviewed a statistical sample of 73 of the 2,768 FOIA exemption (b)(7) requests for FY 2020 as well as all 62 FY 2020 I.R.C. § 6103(c) and (e) requests documented in the AFOIA and

⁴ For Section 1102(d)(3)(a), see Pub. L. No. 105-206, 112 Stat. 685; Pub. L. No. 105-206, 112 Stat. 703 § 1102(d)(3)(A); for I.R.C. § 6103, see I.R.C. § 6103 (2009); and for FOIA exemption (b)(7), see 5 U.S.C. § 552 (2010).

⁵ An imperfect request is one for which Disclosure Office personnel deemed the request not specific enough to process or too broad in scope. Once determined as imperfect, the request must be closed.

⁶ 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.

FOIAXpress systems for which the IRS withheld information from the requestor.⁷ In most cases, the IRS properly withheld information. However, for 12 (16 percent) of the 73 cases reviewed, the Disclosure Office did not follow FOIA requirements when redacting information. Managers reviewed these cases for accuracy and completeness, but did not identify the mistakes. We did not identify disclosure errors for any of the 62 I.R.C. § 6103(c) and (e) cases.

Freedom of Information Act Requirements Were Not Always Followed When Redacting Information

Analysis showed that the Disclosure Office did not follow FOIA requirements when redacting or withholding information for 12 (16 percent) of the 73 cases reviewed. For seven of the 12 cases, the disclosure caseworkers improperly withheld information using FOIA exemption (b)(7). In addition, disclosure caseworkers improperly released information protected by FOIA exemption (b)(7) in seven cases.⁸

- For the seven cases in which information was incorrectly withheld, disclosure caseworkers improperly redacted [REDACTED] and other tax return or examination information that was not exempt under (b)(7) in six cases.

Although § 1102(d)(3)(a) of the IRS Restructuring and Reform Act of 1998 requires TIGTA to review denials of written requests, we also reviewed sampled cases to determine if the IRS improperly released any information. In seven of the sampled cases, disclosure caseworkers incorrectly released information for miscellaneous reasons. For example, disclosure caseworkers improperly released:

- Tax return information to a Power of Attorney who was not entitled to the information in four cases.
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

⁷ See Appendix I for details on our sampling methodology. There were 7,776 FOIA requests closed on the AFOIA and FOIAXpress systems in FY 2020. For 2,768 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 the “no responsive records” or “imperfect” requests. We included these cases in our universe to determine if specialists erroneously closed cases as no responsive records or imperfect instead of possibly providing available information, if allowed. There were 273 I.R.C. § 6103 requests closed on the AFOIA and FOIAXpress systems in FY 2020. For 62 requests, the requests were denied, rejected, or no records were found.

⁸ Numbers do not reconcile because closed cases may include more than one error.

**Fiscal Year 2021 Mandatory Review of
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We identified [REDACTED] for which the disclosure caseworker did not follow procedures and improperly released [REDACTED] and [REDACTED] was improperly withheld, which is not protected under exemption (b)(7)(E).⁹ In the FY 2020 TIGTA audit, we identified similar issues and recommended that the results of the audit should be communicated to disclosure caseworkers and managers to educate them about the redaction requirements for DIF scores and reason codes. In October 2020, the IRS's Chief Privacy Officer issued a memorandum to all Disclosure Office employees reminding them to properly redact the DIF score and properly release the DIF reason code. The five cases with DIF-related errors that we identified were closed prior to the issuance of the memorandum; therefore, we are not making additional recommendations for this issue.

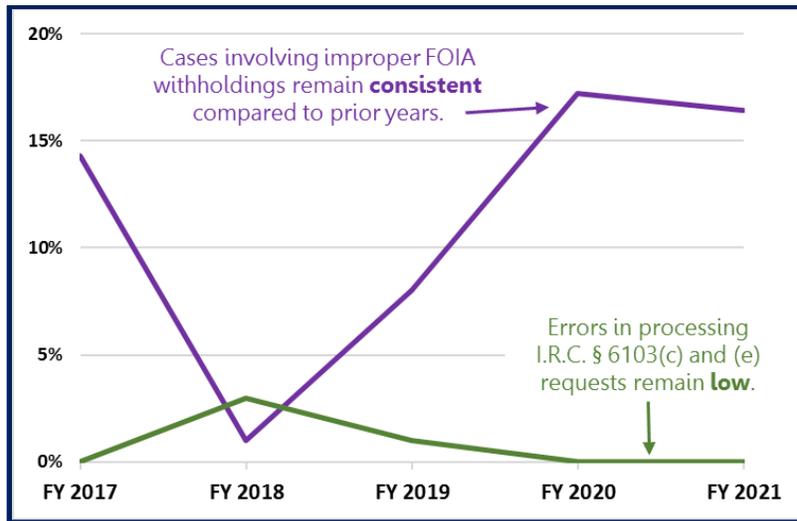
In [REDACTED] we identified other disclosure issues; therefore, if the memorandum resulted in an elimination of the [REDACTED] there would be disclosure issues with nine (12 percent) of the 73 cases. Disclosure Office management stated that in these nine cases, disclosure managers reviewed the cases, but did not correct the redactions due to human error. FOIA requests may involve the review of thousands of pages of information, and cases in our sample ranged from approximately 10 pages to more than 30,000 pages. Because a disclosure caseworker may make countless decisions when working a case, human error is unavoidable. To mitigate the risks of human error, the Disclosure Office conducts monthly quality reviews and management discusses the results, identifies emerging error trends, and develops corrective actions. For example, the quality review process identified grammatical errors in written correspondence and management has corrected the errors.

Based on our sample results, we estimate that the IRS did not follow FOIA requirements for all information in 330 FOIA information requests in FY 2020.¹⁰ Figure 1 shows that, in recent years, cases involving errors in processing I.R.C. § 6103(c) and (e) requests have remained relatively low according to our audit results, and the percentage of cases involving improper FOIA withholdings remained consistent compared with last year.

⁹ The DIF score is a computerized score of tax returns using a mathematical technique to classify returns for their examination potential. In general, the higher the score, the greater the probability exists of significant tax change. After the returns are scored, manual screening is used to identify the issues in need of examination and to eliminate those returns not warranting examination.

¹⁰ See Appendix II for details. Our stratified sample was selected using a 90 percent confidence interval, 6 percent error rate, and 5 percent precision factor. When projecting the results of our statistical sample, we are 90 percent confident that the actual number of requests for which the FOIA requirements were not followed when redacting information is between 202 and 458 information requests (for which the 202 and 458 represent the lower and upper range, respectively).

Figure 1: Percentage of Cases Involving Improper FOIA and I.R.C. § 6103 Information Request Withholdings Identified in TIGTA Audits (FYs 2017 Through 2021)



Source: TIGTA audit reports issued in FYs 2017 through 2021. See Appendix III for a list of the previous reports.

Although the IRS properly releases thousands of pages in response to information requests each year, if it does not process requests under these statutes correctly, taxpayers do not receive the information to which they are entitled. Additionally, the IRS's ability to properly redact information from a FOIA request is essential to maintain the public's trust and ensure transparency in the Federal Government. We are not making any recommendations to correct the improper withholding of information identified in our sample because the IRS has taken steps to mitigate the risks of human errors, provided training, and reminded disclosure caseworkers of DIF procedures.

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 the FOIA exemption 5 U.S.C. § 552(b)(7) or I.R.C. § 6103 or by replying that responsive records were not available or did not exist. To accomplish our objective, we:

- Determined and reviewed 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.
- Determined whether IRS disclosure officers are adhering to statutory requirements when denying written requests received from taxpayers under the FOIA.
 - Obtained AFOIA and FOIAXpress system extracts for October 1, 2019, through September 30, 2020 (FY 2020), and identified 2,768 FOIA cases closed as denied, partially denied, imperfect, or that responsive records did not exist.¹ The extract also included all closed I.R.C. § 6103(c) and (e) requests tracked in the AFOIA and FOIAXpress systems.²
 - Reviewed a statistically valid stratified sample of 73 of the 2,768 cases. Our stratified sample was selected using a 90 percent confidence interval, 6 percent overall error rate, and 5 percent precision factor.³ The contracted statistician assisted with developing the sampling plan.
 - Discussed any exception cases with Office of Privacy, Governmental Liaison, and Disclosure management and obtained agreement. We projected the exception cases to the FOIA population of 2,768 requests. The contracted statistician ensured the accuracy of the projection.
- Determined whether IRS disclosure officers are adhering to legal requirements when denying written requests received from taxpayers under I.R.C. § 6103.
 - From the AFOIA and FOIAXpress system extracts obtained above, identified and reviewed all 62 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.⁴

¹ By law, tax records may not be disclosed to any individual unless authorized by I.R.C. § 6103.

² 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.

³ We used a projected error rate for each strata that averaged 6 percent overall (22 percent projected error rate for partial denials and 1 percent projected error rate for denials, no records, and imperfect strata).

⁴ We reviewed 100 percent of the I.R.C. § 6103 requests for which the request was rejected or the request was closed when the IRS determined that responsive records did not exist.

Performance of This Review

This review was performed with information obtained from the Office of Privacy, Governmental Liaison, and Disclosure in Washington, D.C., during the period January through May 2021. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Major contributors to the report were Heather Hill, Assistant Inspector General for Audit (Management Services and Exempt Organizations); Carl Aley, Director; Brian Foltz, Audit Manager; Sylvia Sloan McPherson, Lead Auditor; and Catherine Sykes, Senior Auditor.

Validity and Reliability of Data From Computer-Based Systems

We received the AFOIA and FOIAXpress system extracts from the IRS Office of Privacy, Governmental Liaison, and Disclosure and performed tests to assess the reliability of the data. We reviewed the data and compared the record numbers in the FY 2020 AFOIA and FOIAXpress system extracts with the extract for the FY 2019 period to determine if the number of records seemed reasonable. We also confirmed that there were no duplicate records. Additionally, we compared a judgmental sample of five FOIA records and five I.R.C. § 6103(c) and (e) records from the FY 2020 AFOIA and FOIAXpress system extracts with the actual systems (source) for reliability of data.⁵ Finally, we interviewed agency officials who are knowledgeable about the data and determined that FOIA and I.R.C. § 6103 data in the FY 2020 AFOIA and FOIAXpress system extracts were sufficiently reliable for the purposes of this report.

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).

⁵ A judgmental sample is a nonprobability sample, the results of which cannot be used to project to the population.

Outcome Measure

This appendix presents detailed information on the measurable impact that our previously recommended corrective action will have on tax administration.¹ This benefit will be incorporated into our Semiannual Report to Congress.

Type and Value of Outcome Measure:

- Taxpayer Rights and Entitlements – Potential; 330 responses to FOIA information requests for which FOIA requirements were not followed when redacting information (see page 3).

Methodology Used to Measure the Reported Benefit:

We reviewed a statistically valid sample of 73 information requests from a population of 2,768 FOIA requests closed during FY 2020 as either of the following:

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

We identified 12 (16 percent) of 73 requests for which FOIA requirements were not followed when redacting information. Figure 1 shows how we estimate that the Disclosure Office improperly followed FOIA requirements in 330 FOIA requests.²

Figure 1: Estimated Number of FOIA Requests With Improperly Withheld Information

Strata	Population of FOIA Requests	Sample Size	Requests With Improperly Withheld Information	Percentage in Sample	Estimated Number in Population
Denials	35	5	0	0%	0
Partial Denials	1,017	37	12	32%	330
No Responsive Records	590	16	0	0%	0
Imperfect	1,126	15	0	0%	0
Total	2,768	73	12	N/A	330

Source: Statistician projections based on audit results.

¹ TIGTA, Report No. 2020-10-038, *Fiscal Year 2020 Mandatory Review of Compliance With the Freedom of Information Act* (July 2020). The exception cases in this year's review occurred before the IRS took corrective action.

² Our stratified sample was selected using a 90 percent confidence interval, 6 percent error rate, and 5 percent precision factor. When projecting the results of our statistical sample, we are 90 percent confident that the actual number of requests for which the FOIA requirements were not followed when redacting information is between 202 and 458 information requests (for which the 202 and 458 represent the lower and upper range, respectively).

Appendix III

Previous Audit Reports Related to This Statutory Review

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

TIGTA, Report 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).

TIGTA, Report No. 2019-10-057, *Fiscal Year 2019 Statutory Review of Denials of Freedom of Information Act and Internal Revenue Code Section 6103 Requests* (Sept. 2019).

TIGTA, Report No. 2020-10-038, *Fiscal Year 2020 Mandatory Review of Compliance With the Freedom of Information Act* (July 2020).

Abbreviations

AFOIA	Automated Freedom of Information Act
DIF	Discriminant Information Function
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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