

TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION



Fiscal Year 2023 Mandatory Review of Compliance With the Freedom of Information Act

September 11, 2023

Report Number: 2023-10-055

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.

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 the Freedom of Information Act (FOIA) exemption 5 United States Code § 552(b)(7) or Internal Revenue Code (I.R.C.) § 6103 or by replying that responsive records were not available or did not exist. This audit was initiated because TIGTA is required to conduct periodic audits in this area and report the results to Congress.

Impact on Tax Administration

Taxpayers may request information from the IRS through the FOIA. However, FOIA exemption (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 and 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 83 from a population of 3,423 FOIA requests closed during Fiscal Year 2022 for which the IRS withheld information from the requester based on FOIA exemption (b)(7). TIGTA also reviewed all 22 Fiscal Year 2022 I.R.C. § 6103(c) and (e) requests received by the Disclosure Office for which the IRS withheld information from the requester. In most cases, the IRS properly withheld information. However, the Disclosure Office did not follow FOIA requirements when redacting or releasing information for 18 (22 percent) of the 83 requests reviewed. Case review results also showed that the IRS incorrectly withheld information for I.R.C. § 6103(c) and (e) requests reviewed. Compared to last year's review, the error rate for FOIA cases increased by 6 percentage points and the error rate for I.R.C. § 6103(c) and (e) cases increased by 9 percentage points.

FOIA requests may involve the review of thousands of pages of information. For example, the partially denied cases in our sample ranged from six to more than 8,000 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.

Five of the 18 exception cases involved the improper redaction or release of third-party information. TIGTA identified similar issues in its Fiscal Year 2022 audit and recommended that the Internal Revenue Manual be updated to clarify when third-party information should be redacted or released. In December 2022, the IRS updated the Internal Revenue Manual with clarifying guidance. The exception cases in our sample related to this issue were closed prior to the implementation of this corrective action; therefore, no additional recommendations are being made related to this issue.

However, TIGTA identified cases involving the improper release of information that could be detrimental to tax administration if disclosed.

What TIGTA Recommended

TIGTA recommended that the Chief Privacy Officer ensure that the Internal Revenue Manual is updated to clarify guidance for redacting form codes. IRS management agreed and will issue interim guidance to Disclosure employees until the Internal Revenue Manual is updated.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

U.S. DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20024

September 11, 2023

MEMORANDUM FOR: COMMISSIONER OF INTERNAL REVENUE

Heather Hill

FROM: Heather M. Hill
Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Fiscal Year 2023 Mandatory Review of Compliance
With the Freedom of Information Act (Audit # 202310002)

This report presents the results of our review to determine whether the Internal Revenue Service improperly withheld information requested by taxpayers in writing based on the Freedom of Information Act 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. This review is part of our Fiscal Year 2023 Annual Audit Plan and addresses the major management and performance challenge of *Improving Taxpayer Service*.

Management's complete response to the draft report is included as Appendix II. If you have any questions, please contact me or Bryce Kisler, 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) and Internal Revenue Code (I.R.C.) § 6103.¹

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 Disclosure Office closed 7,549 FOIA requests during Fiscal Year (FY) 2022.³ The Disclosure Office processes all written FOIA requests.



**The Disclosure Office closed
7,549 FOIA requests in FY 2022.**

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 Disclosure Office closed 281 I.R.C. § 6103(c) or (e) requests in FY 2022. Although the 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 Disclosure Office does not track I.R.C. § 6103 requests received and processed by other offices. Therefore, the complete population of I.R.C. § 6103 requests processed by the IRS in FY 2022 is unknown. For this audit, we reviewed only written requests to the Disclosure Office.

¹ 5 U.S.C. § 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 Disclosure Office is part of the Office of Privacy, Governmental Liaison and Disclosure, which is responsible for timely compliance with FOIA and I.R.C. § 6103 requirements.

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

The Disclosure Office accepts FOIA and I.R.C. § 6103 requests electronically, via fax, or by mail. When a request is received, the Governmental Liaison, Disclosure, and Safeguards' Support Services function creates an electronic case in the Disclosure Office's computer system and electronically forwards the request to a disclosure manager for assignment 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 requester. 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 requester via letter providing all requested information or providing partial information and explaining why certain parts of the requested documentation have been redacted.

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) and report the results to Congress.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), the IRS replied that no responsive records were available, or the request was imperfect.⁵ For I.R.C. § 6103(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 Disclosure Office's computer system that were denied, partially denied, or the IRS replied that no responsive records were available. See Appendix I for additional information about the objective, scope, and methodology.

⁴ For Section 1102(d)(3)(a), see Pub. L. No. 105-206, 112 Stat. 685 and Pub. L. No. 105-206, 112 Stat. 703 § 1102(d)(3)(A).

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

Results of Review

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

We reviewed a stratified, statistical sample of 83 from a population of 3,423 FOIA requests closed during FY 2022 for which the IRS withheld information from the requester based on FOIA exemption (b)(7).⁶ In most cases, the IRS properly withheld the information. However, the Disclosure Office did not follow FOIA requirements when redacting or releasing information for 18 (22 percent) of the 83 requests reviewed. These 18 exception cases included both the improper redaction of information (11 cases) and the improper release of information (13 cases).⁷ For 11 of the 18 exception cases, the disclosure caseworkers improperly redacted third-party and miscellaneous information that was not exempt under (b)(7). For example, disclosure caseworkers incorrectly redacted:

- Information concerning the requesting taxpayers or their businesses that they were authorized to receive.
- Examination workpapers and IRS e-mails.
- Information pertaining to the FOIA requester acquired using external information services.

Although § 1102(d)(3)(a) of the IRS Restructuring and Reform Act of 1998 requires TIGTA to review only denials of written requests, we also reviewed the sampled cases to determine if the IRS improperly released any information. For 13 of the 18 exception cases, disclosure caseworkers improperly released information protected by FOIA exemption (b)(7). For example, disclosure caseworkers improperly released:

- Third-party information acquired using external information services that is not available to the general public.
- Referral information.
- The form code.⁸

Disclosure managers reviewed the cases but did not correct the mistakes due to human error. FOIA requests may involve the review of thousands of pages of information, and cases in our

⁶ There were 7,549 FOIA requests closed by the Disclosure Office in FY 2022. For 3,423 requests, the requests were denied, either partially or fully, based on FOIA exemption (b)(7), the IRS replied that no responsive records were available, or the IRS closed the request as imperfect. The IRS does not consider cases closed as “no responsive records” or “imperfect” as denials of information; however, we included these cases in our population to determine if specialists erroneously closed the cases as no responsive records or imperfect instead of providing available information, if allowed.

⁷ The numbers do not reconcile because some cases had multiple disclosure issues.

⁸ The form code identifies the Discriminant Index Function (DIF) formula used to calculate the DIF score on certain transcripts. 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 DIF score, the greater the probability exists of a 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.

sample ranged from six to more than 8,000 pages.⁹ Because a disclosure caseworker may make countless decisions when working a case, human error is unavoidable. To mitigate the risks of human error, the Data Exchange and Quality Initiatives group conducts monthly quality reviews, and management evaluates the results, identifies emerging error trends, and develops corrective actions.

Five of the 18 exception cases involved the improper redaction or release of third-party information contained in asset locator records. In all five cases, the caseworker improperly released third-party information that should have been redacted. In addition, [REDACTED] of the five cases also involved improper redaction of third-party information using FOIA exemption (b)(7)(C), which protects personal information found in law enforcement records. Third-party information located within asset locator records is available for law enforcement purposes and retrieved by IRS employees using a non-public system. In its FY 2022 audit, TIGTA identified similar issues and recommended that the Internal Revenue Manual (IRM) be updated to clarify when third-party information should be redacted or released.¹⁰ In May 2022, the IRS issued interim corrective guidance and subsequently updated the IRM with the clarifying guidance in December 2022. All five of these cases were processed and closed prior to the IRM update ([REDACTED] closed prior to the interim guidance); therefore, we are not making additional recommendations related to this issue.

Four of the 18 exception cases contain errors in redacting or releasing DIF indicators properly.

[REDACTED]

[REDACTED] the phrasing "DIF Score" and the DIF/DAS [Discriminant Analysis System] reason code, which are not protected under FOIA exemption (b)(7)(E), [REDACTED] improperly withheld.¹² The IRM was updated in August 2021 to include the redaction of the form code along with the other DIF indicators; however, our results show that there may still be some confusion when applying the exemption. DIF formulas and scores contain information about how the IRS selects taxpayers for examination that could be detrimental to tax administration if disclosed. A Disclosure Office specialist stated that the Disclosure Office is in the process of updating the IRM to clarify the guidance.

Recommendation 1: The Chief Privacy Officer, Office of Privacy, Governmental Liaison and Disclosure, should ensure that the IRM is updated to clarify guidance for redacting form codes.

Management's Response: The IRS agreed with this recommendation and will update the IRM to provide clarified guidance of redacting DIF-related information. The Disclosure Office will issue interim guidance to Disclosure employees on this subject while the IRM is awaiting formal publishing.

⁹ We counted the number of pages for only partially denied cases.

¹⁰ TIGTA, Report No. 2022-10-044, *Fiscal Year 2022 Mandatory Review of Compliance With the Freedom of Information Act* p. 6 (July 2022).

¹¹ IRM 11.3.41.13.8.9 (Aug. 26, 2021).

¹² The DIF/DAS reason code identifies the reason for the DIF record, such as a regular or special DIF return.

Errors were not limited to FOIA exemption (b)(7)

While this review focused on the statutory requirement to review closed FOIA requests for which the information requested was either denied in full or in part under FOIA exemption (b)(7), we also reviewed the cases for information improperly redacted or released based on other FOIA exemptions. We identified seven additional cases for which information was improperly redacted or released based on FOIA exemptions other than (b)(7). Most of these errors involved FOIA exemption (b)(3), which provides for the withholding of certain records, such as individual tax return information.

Disclosure caseworkers also inconsistently redacted and released information within the same case file. For 13 cases, we identified information that was withheld in [REDACTED]. Six of these cases involved FOIA exemption (b)(7), and 11 involved FOIA exemption (b)(3).¹³ Disclosure management agreed that the redactions were inconsistent and stated that redactions should have been applied consistently. Because these human errors were not systemic in nature, we did not make a recommendation for this issue.

Errors involving the processing of I.R.C. § 6103 requests increased but remained low

We also reviewed all 22 FY 2022 I.R.C. § 6103(c) and (e) requests received by the Disclosure Office for which the IRS withheld information from the requester.¹⁴ Case review results showed that the IRS incorrectly withheld information for [REDACTED] of the 22 I.R.C. § 6103(c) and (e) requests reviewed. [REDACTED] involved an improper denial due to a caseworker error when analyzing [REDACTED]. Third-party requests seeking tax records protected by I.R.C. § 6103 must include a valid authorization document, *e.g.*, Form 2848. The caseworker believed that [REDACTED]. Furthermore, even though [REDACTED]

In addition, the IRM states that if initial analysis shows that a request is missing any required elements, the caseworker should make sufficient effort to contact the requester and ask for the missing elements.¹⁵ However, the caseworker [REDACTED]

[REDACTED] the caseworker inadvertently released information [REDACTED] did not have authorization. [REDACTED]

Based on our sample results, we estimate that the IRS did not follow FOIA requirements for 506 FOIA requests in FY 2022.¹⁶ Figure 1 shows that the number of cases involving improper

¹³ Some cases involved both scenarios, so the total number of errors is greater than the number of cases.

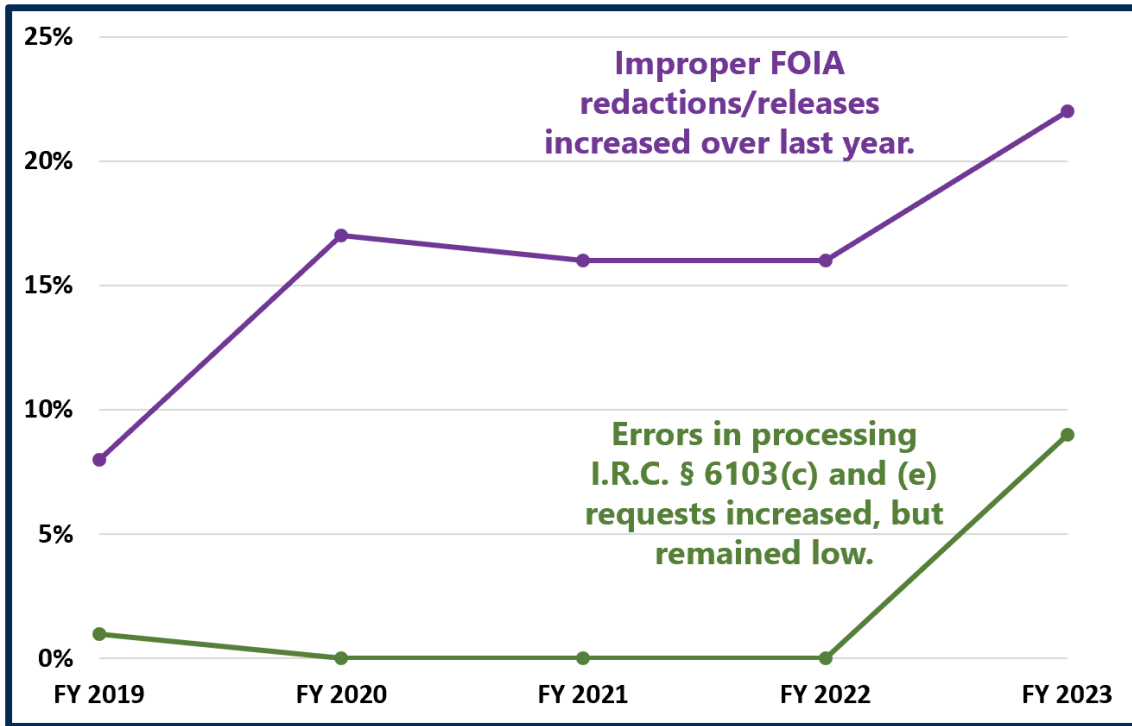
¹⁴ There were 281 I.R.C. § 6103 requests closed by the Disclosure Office in FY 2022. For 22 requests, the requests were denied, rejected, or no records were found.

¹⁵ IRM 11.3.41.3.2(1) (Dec. 8, 2022).

¹⁶ Our stratified sample was selected using a 90 percent confidence interval, an 11 percent overall error rate, and a ± 4 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 366 and 647 requests (for which the 366 and 647 represent the lower and upper range, respectively). We used a statistical sample because we planned to project to the population.

FOIA redactions/releases increased by 6 percentage points compared to last fiscal year, and the number of improper I.R.C. § 6103 redactions/releases increased by 9 percentage points compared to the previous three fiscal years.

Figure 1: Percentage of Cases Involving Improper FOIA and I.R.C. § 6103 Request Redactions/Releases Identified in TIGTA Audits (FYs 2019 Through 2023)



Source: TIGTA audit reports issued in FYs 2019 through 2023.

Although the IRS properly releases thousands of pages in response to FOIA and I.R.C. § 6103(c) and (e) requests each year, if it does not process requests under these statutes correctly, taxpayers will not receive the information to which they are entitled. In addition, the IRS's ability to properly redact information from a FOIA request is essential in maintaining the public's trust in the securing of personal taxpayer information and ensuring transparency in the Federal Government.

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:

- 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 disclosure caseworkers are adhering to statutory requirements when denying written requests received from taxpayers under the FOIA.
 - Obtained a data extract for the period October 1, 2021, through September 30, 2022 (FY 2022), and identified 3,423 FOIA requests closed as denied, partially denied (based on FOIA exemption (b)(7) or exempted in conjunction with I.R.C. § 6103), imperfect, or where responsive records did not exist.¹ The extract also included all closed I.R.C. § 6103(c) and (e) requests tracked on the Disclosure Office's computer system for FY 2022.²
 - Reviewed a statistically valid sample of 83 from a population of 3,423 FOIA requests closed during FY 2022. Our stratified sample was selected using a 90 percent confidence interval, an 11 percent overall error rate, and a ± 4 percent precision factor.³ We used a statistical sample because we planned to project to the population. TIGTA's contracted statistician assisted with developing the sampling plan.
 - Discussed any exception cases with Disclosure Office management to obtain agreement. We projected the number of exception cases to the FOIA population of 3,423 cases. We coordinated with TIGTA's contracted statistician to ensure the accuracy of the projection.
- Determined whether disclosure caseworkers are adhering to legal requirements when denying written requests received from taxpayers under I.R.C. § 6103.
 - Identified and reviewed all 22 I.R.C. § 6103(c) or (e) cases in the data received in the previous audit step for which the request was denied, partially denied, 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

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 stratum that averaged 11 percent overall (a 35 percent projected error rate for partial denials, a 0 percent projected error rate for denials, a 0 percent projected error rate for no records, and a 0 percent projected error rate for imperfect requests).

search was documented adequately. We discussed any exception cases with Disclosure Office management to obtain agreement.

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 December 2022 through June 2023. 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 Bryce Kisler, Assistant Inspector General for Audit (Management Services and Exempt Organizations); Carl Aley, Director; Cheryl Medina, Audit Manager; Jennifer Resmini, Lead Auditor; and Peirce Peace, Auditor.

Validity and Reliability of Data From Computer-Based Systems

We received data extracts of FOIA and I.R.C. § 6103(c) and (e) requests from the 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 2023 data extracts with the extracts from the FY 2022 FOIA audit to determine if the number of records seemed reasonable. We also confirmed that there were no duplicate records. Finally, we interviewed IRS officials who are knowledgeable about the data and determined that the FOIA and I.R.C. § 6103 data 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) requests and a statistically valid sample of closed FOIA requests that were denied, partially denied (based on FOIA exemption (b)(7) or exempted in conjunction with I.R.C. § 6103), imperfect, or for which responsive records did not exist.

Appendix II

Management's Response to the Draft Report



CHIEF PRIVACY OFFICER

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

August 14, 2023

MEMORANDUM FOR HEATHER M. HILL
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Kathleen E. Walters *Kathleen E. Walters*
Chief Privacy Officer

SUBJECT: Draft Audit Report - Fiscal Year 2023 Mandatory Review
of Compliance with the Freedom of Information Act
(Audit # 202310002)

Thank you for the opportunity to respond to the above referenced draft audit report. The IRS remains committed to openness in government to ensure public trust and to support the ideals of transparency, public participation, and collaboration. We appreciate your recognition of the positive steps taken by the IRS to operate an effective Freedom of Information Act program.

We agree with the outcome measure cited in the report and the recommendation. We value the Treasury Inspector General for Tax Administration identifying the need for clarification of Internal Revenue Manual (IRM) section 11.3.41, Disclosure Case Processing and Inventory Management, which contains steps for redacting discriminant function (DIF) related information.

Attached is a detailed response outlining our corrective action.

We will continue to ensure that the provisions of the Freedom of Information Act, the Privacy Act and Internal Revenue Code Section 6103 are followed. If you have any questions, please contact me at 202-317-4082, or a member of your staff may contact Maribel De La Rocha, Associate Director, Disclosure at 213-772-4568.

Attachment

Attachment
TIGTA Audit # 202310002

Recommendation 1: The Chief Privacy Officer should ensure that the Internal Revenue Manual is updated to clarify guidance for redacting form codes.

Corrective Action: The IRS agrees with this recommendation. Internal Revenue Manual (IRM) 11.3.41.13.8.9 will be updated to provide clarified guidance on redacting Discriminant Function (DIF) related information. The Disclosure office will issue interim guidance to Disclosure employees on this subject while IRM 11.3.41 is awaiting formal publishing.

Implementation Date: March 15, 2024

Responsible Official(s): Chief Privacy Officer (Privacy, Governmental Liaison & Disclosure); Governmental Liaison, Disclosure & Safeguards, Director (Disclosure)

Appendix III

Abbreviations

DIF	Discriminant Index Function
FOIA	Freedom of Information Act
FY	Fiscal Year
I.R.C.	Internal Revenue Code
IRM	Internal Revenue Manual
IRS	Internal Revenue Service
TIGTA	Treasury Inspector General for Tax Administration
U.S.C.	United States Code



**To report fraud, waste, or abuse,
contact our hotline on the web at www.tigta.gov or via e-mail at
oi.govreports@tigta.treas.gov.**

**To make suggestions to improve IRS policies, processes, or systems
affecting taxpayers, contact us at www.tigta.gov/form/suggestions.**

Information you provide is confidential, and you may remain anonymous.