



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

May 28, 2014

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This responds to your letter of April 23, 2014, and letter and subpoena of May 20, 2014, which request documents related to 501(c)(4) tax-exempt organizations. Enclosed are 204 pages of documents related to the Criminal Division's contacts with Lois Lerner of the Internal Revenue Service (IRS) in 2010 and 2013 regarding 501(c) groups. These documents bear minimal redactions relating to individual privacy interests, such as phone numbers, email addresses, and agent names.

The Department has conducted a good-faith document review, and we have enclosed here those materials that set forth the basis for the contacts between the Department and Ms. Lerner related to 501(c) organizations in the fall of 2010 and May 2013, despite the fact that these materials reflect some internal deliberations. We have also made Mr. Pilger available and are willing to make Mr. Smith available to provide further context about these contacts in our continuing effort to accommodate the Committee's interests, while protecting our law enforcement equities. We note that the Committee's subpoena is extremely broad, and calls for documents from open case files. It is the Department's longstanding policy and practice to decline to provide such materials in order to protect the independence, integrity, and effectiveness of our law enforcement efforts. We also have not included documents reflecting the Department's internal deliberations about law enforcement matters, in which we have substantial confidentiality interests, because we believe that their disclosure would chill the candid exchange of views that is important to sound decision-making. It also appears that your subpoena may encompass disks containing information regarding 501(c) organizations that were sent to the Federal Bureau of Investigation (FBI) by IRS in 2010. Consistent with established third-agency practice, we will consult with the IRS about those materials, and supplement this response when that process is completed.

The Honorable Darrell E. Issa
Page Two

We hope that this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read "PJKA". The letters are stylized and connected, with a large initial "P" and "J" followed by "K" and "A".

Peter J. Kadzik
Principal Deputy Assistant Attorney General

Enclosures

cc: The Honorable Elijah E. Cummings
Ranking Member

[REDACTED]

From: Pilger, Richard
Sent: Tuesday, October 05, 2010 8:01 PM
To: [REDACTED] (FBI)
Subject: Fw: DATA FORMAT ISSUE -- TIME SENSITIVE

This is incoming data re 501c4 issues. Does FBI have a format preference?

Richard C. Pilger
Director, Election Crimes Branch &
Senior Trial Attorney
Public Integrity Section
Criminal Division
United States Department of Justice
Washington, D.C. 20530
202/[REDACTED]
202/[REDACTED] (f)

IMPORTANT: This e-mail is intended only for the addressee. It may contain information that is privileged or otherwise legally protected. If the reader is not an intended recipient, then distribution, copying, or use is prohibited. If you received this e-mail in error, please notify sender immediately.

From: Lerner Lois G <[REDACTED]>
To: Pilger, Richard
Cc: Lerner Lois G <[REDACTED]>; Whitaker Sherry L <[REDACTED]>
Sent: Tue Oct 05 17:52:04 2010
Subject: DATA FORMAT ISSUE -- TIME SENSITIVE

In checking with my folks on getting you the disks we spoke about, I was asked the following:

Before we can get started do you know if they would like the images in Alchemy or Raw format? The difference is, Alchemy you need to search on one of the 5 index fields where Raw format, you load into your on software and you can do what ever you want to with it.

If you're like me, you don't know the answer. But, if you can check and get back to me Wednesday, we can get started and have these in about 2 weeks. If we don't have the information by tomorrow, it will take longer as there are other priorities in line. Please cc Sherry Whitaker on your response as she is likely to see your response before I do. Thanks

Lois G. Lerner
Director, Exempt Organizations

[REDACTED]

From: Whitaker Sherry L <[REDACTED]>
Sent: Tuesday, October 05, 2010 10:03 PM
To: Pilger, Richard
Cc: Lerner Lois G
Subject: RE: DATA FORMAT ISSUE -- TIME SENSITIVE

Richard

If you would like to discuss the different formats, please give me a call on my cell 435-[REDACTED] or shoot me an e-mail I'll be happy to assist you.

Sherry L. Whitaker, Manager

SE:T:BSP:SPP
Office Phone - 801-[REDACTED]
Fax - 801-[REDACTED]
Cell - 435-[REDACTED]
TOD: Monday - Thursday 6:00 am - 4:30 pm (MT)
[REDACTED]@irs.gov

Life isn't about waiting for the storm to pass It's about learning to dance in the rain

From: Lerner Lois G
Sent: Tuesday, October 05, 2010 3:52 PM
To: Richard Pilger [REDACTED]
Cc: Lerner Lois G; Whitaker Sherry L
Subject: DATA FORMAT ISSUE -- TIME SENSITIVE

In checking with my folks on getting you the disks we spoke about, I was asked the following:

Before we can get started do you know if they would like the images in Alchemy or Raw format? The difference is, Alchemy you need to search on one of the 5 index fields where Raw format, you load into your on software and you can do what ever you want to with it.

If you're like me, you don't know the answer. But, if you can check and get back to me Wednesday, we can get started and have these in about 2 weeks. If we don't have the information by tomorrow, it will take longer as there are other priorities in line. Please cc Sherry Whitaker on your response as she is likely to see your response before I do. Thanks

Lois G. Lerner
Director, Exempt Organizations

[REDACTED]

From: Fitzpatrick, Brian K. <[REDACTED]>
Sent: Thursday, October 07, 2010 10:49 AM
To: Pilger, Richard
Cc: [REDACTED] (FBI)
Subject: Re: DATA FORMAT ISSUE -- TIME SENSITIVE

Rich - [REDACTED] will be attending the IRS meeting with you tomorrow in my absence.

[REDACTED]

From: Pilger, Richard <[REDACTED]>
To: Fitzpatrick, Brian K.
Sent: Thu Oct 07 10:44:23 2010
Subject: RE: DATA FORMAT ISSUE -- TIME SENSITIVE

Got it—20535. See, the prsctrs can investigate too

From: [REDACTED]@ic.fbi.gov]
Sent: Wednesday, October 06, 2010 6:03 PM
To: Pilger, Richard
Subject: Re: DATA FORMAT ISSUE -- TIME SENSITIVE

935 Pennsylvania Ave NW
Room 3973
Washington, DC

I need to get the zip for you

From: Pilger, Richard <[REDACTED]>
To: [REDACTED]
Sent: Wed Oct 06 17:55:41 2010
Subject: FW: DATA FORMAT ISSUE -- TIME SENSITIVE

[REDACTED], can you respond with your address?

From: Lerner Lois G [REDACTED]
Sent: Wednesday, October 06, 2010 4:34 PM
To: Whitaker Sherry L; Pilger, Richard
Cc: Simmons, Nancy; [REDACTED] (FBI)
Subject: RE: DATA FORMAT ISSUE -- TIME SENSITIVE

Thanks guys

Lois G. Lerner
Director, Exempt Organizations

From: Whitaker Sherry L
Sent: Wednesday, October 06, 2010 2:11 PM
To: Pilger, Richard
Cc: Simmons, Nancy; [REDACTED] (FBI); Lerner Lois G
Subject: RE: DATA FORMAT ISSUE -- TIME SENSITIVE

Raw format it will be. Please send me the address that you would like the DVDs sent to.

Thanks

Sherry L. Whitaker, Manager

SE:T:BSP:SPP
Office Phone - 801-[REDACTED]
Fax - 801-[REDACTED]
Cell - 435-[REDACTED]
TOD: Monday - Thursday 6:00 am - 4:30 pm (MT)
[REDACTED]@irs.gov

Life isn't about waiting for the storm to pass It's about learning to dance in the rain

From: Pilger, Richard [REDACTED]
Sent: Wednesday, October 06, 2010 12:05 PM
To: Lerner Lois G
Cc: Whitaker Sherry L; Simmons, Nancy; [REDACTED] (FBI)
Subject: RE: DATA FORMAT ISSUE -- TIME SENSITIVE

Thanks Lois – FBI says Raw format is best because they can put it into their systems like excel.

From: Lerner Lois G [REDACTED]
Sent: Tuesday, October 05, 2010 5:52 PM
To: Pilger, Richard
Cc: Lerner Lois G; Whitaker Sherry L
Subject: DATA FORMAT ISSUE -- TIME SENSITIVE

In checking with my folks on getting you the disks we spoke about, I was asked the following:

Before we can get started do you know if they would like the images in Alchemy or Raw format? The difference is, Alchemy you need to search on one of the 5 index fields where Raw format, you load into your on software and you can do what ever you want to with it.

If you're like me, you don't know the answer. But, if you can check and get back to me Wednesday, we can get started and have these in about 2 weeks. If we don't have the information by tomorrow, it will take longer as there are other priorities in line. Please cc Sherry Whitaker on your response as she is likely to see your response before I do. Thanks

Lois G. Lerner
Director, Exempt Organizations

HOCR IRS 000035

[REDACTED]

From: Whitaker Sherry L <[REDACTED]>
Sent: Thursday, October 07, 2010 10:49 AM
To: Pilger, Richard
Cc: [REDACTED] (FBI); Simmons, Nancy
Subject: RE: Address for 501 data

Thanks

Sherry L. Whitaker, Manager

SE:T:BSP:SPP
Office Phone - 801-[REDACTED]
Fax - 801-[REDACTED]
Cell - 435-[REDACTED]
TOD: Monday - Thursday 6:00 am - 4:30 pm (MT)
[REDACTED]@irs.gov

Life isn't about waiting for the storm to pass It's about learning to dance in the rain

From: Pilger, Richard [REDACTED]
Sent: Thursday, October 07, 2010 8:47 AM
To: Whitaker Sherry L
Cc: [REDACTED] (FBI); Simmons, Nancy
Subject: Address for 501 data

Please forward the properly available IRS 501 filing data to –

SSA [REDACTED]
FBI
935 Pennsylvania Ave NW
Room 3973
Washington, DC 20535

Thanks very much.

From: Lerner Lois G [REDACTED]
Sent: Tuesday, October 05, 2010 5:52 PM
To: Pilger, Richard
Cc: Lerner Lois G; Whitaker Sherry L
Subject: DATA FORMAT ISSUE -- TIME SENSITIVE

In checking with my folks on getting you the disks we spoke about, I was asked the following:

Before we can get started do you know if they would like the images in Alchemy or Raw format? The difference is, Alchemy you need to search on one of the 5 index fields where Raw format, you load into your on software and you can do what ever you want to with it.

If you're like me, you don't know the answer. But, if you can check and get back to me Wednesday, we can get started and have these in about 2 weeks. If we don't have the information by tomorrow, it will take longer as there are other priorities in line. Please cc



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

May 29, 2014

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This responds further to your letter of April 23, 2014, and letter and subpoena of May 20, 2014, which request documents related to 501(c)(4) tax-exempt organizations. We have identified 21 disks provided to the Federal Bureau of Investigation (FBI) by the Internal Revenue Service (IRS) on or around October 6, 2010, which we believe are responsive to your request. As indicated in our letter of May 28, 2014, we are consulting with the IRS, which is reviewing the approximately 1.1 million pages contained on the disks, and we will supplement this response as soon that process is completed.

It is our current understanding that the disks contain all Form 990s received by IRS for the period January 1, 2007 to October 1, 2010, regardless of political affiliation. The FBI has advised that it believes that the content of the disks is the same information provided by the IRS to a non-profit organization, Guidestar.org, which makes the information available to the public through a free account.

Among the emails that the Department provided to the Committee yesterday were emails regarding these disks.¹ In those emails, Richard Pilger of the Criminal Division provided the IRS with the address at the FBI to which the disks could be sent. (HOCR IRS 000019-000033). It appears the disks were then delivered directly to the FBI. (HOCR IRS 000033). Mr. Pilger's email, connecting the IRS with the FBI regarding the "properly available IRS 501 filing data," indicates that it was his understanding that the disks would contain only public information, but Mr. Pilger has advised that he has no independent recollection of the disks or what the FBI may have done with them. FBI advises that upon receipt of the disks, an analyst imported the index, which is set forth in one of the disks, into a spreadsheet, but did nothing further with the disks,

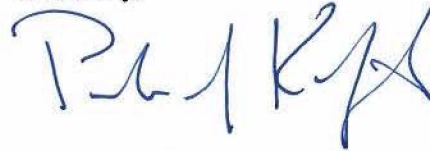
¹ We note that when the Committee sought to schedule the interview with Mr. Pilger less than two weeks after requesting documents on April 23, 2014, we asked Committee staff whether they wanted to wait to interview Mr. Pilger until after the Department was able to search for and produce relevant documents. Committee staff preferred to proceed with the interview on May 6, 2014, before we were able to provide the documents.

The Honorable Darrell E. Issa
Page Two

and to the best of our knowledge, the information contained on the disks was never utilized for any investigative purpose.

We hope that this information is helpful. Please do not hesitate to contact this office if we may be of additional assistance in this or any other matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Peter J. Kadzik". The signature is stylized and cursive.

Peter J. Kadzik
Principal Deputy Assistant Attorney General

cc: The Honorable Elijah E. Cummings
Ranking Member



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 2, 2014

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This responds further to your letter of April 23, 2014, and letter and subpoena of May 20, 2014, which request documents related to 501(c)(4) tax-exempt organizations. Consistent with our letter of May 29, 2014, please find enclosed 21 disks that we believe were provided by the Internal Revenue Service (IRS) to the Federal Bureau of Investigation in the fall of 2010.

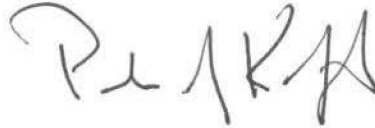
We have completed our consultation with the IRS, which has advised us that it appears the disks contain records that originated with the IRS unit that processes requests for publicly available portions of Forms 990. The IRS has further informed us that the documents on these disks total nearly 1.2 million pages and, therefore, would require extensive time to review in order to confirm their contents. The IRS has not had an opportunity to complete this review and takes no position on the disclosure of these records to the Committee.

We note that the disks are labeled with dates that range from January 1, 2007, to October 1, 2010. Forms 990 are annual information returns that tax exempt organizations, including Section 501(c)(4) entities, file with the IRS. In light of your subpoena and the information currently available to us, which indicates that the disks contain only publicly available information, we are providing them to the Committee with this letter. We recommend that the Committee defer disclosure of these records except to the extent that it can confirm that they are available from public sources.

The Honorable Darrell E. Issa
Page Two

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'P. J. Kadzik', written in a cursive style.

Peter J. Kadzik
Principal Deputy Assistant Attorney General

Enclosures

cc: The Honorable Elijah E. Cummings
Ranking Member



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 4, 2014

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

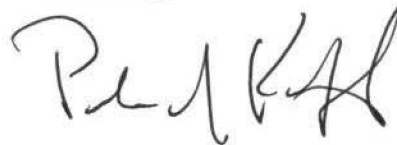
This supplements our letter of June 2, 2014, which provided the Committee with 21 disks responsive to your letter of April 23, 2014, and your letter and subpoena of May 20, 2014, which requested documents related to 501(c)(4) tax-exempt organizations. These are the 21 disks that we believe were provided by the Internal Revenue Service (IRS) to the Federal Bureau of Investigation (FBI) in the fall of 2010, although we understand that the FBI did not review the disks except for the index. To the best of our knowledge, neither the FBI nor the Department used them for any investigative purpose.

As indicated in our June 2nd letter, the IRS advised us that it appears that the disks contain records that originated with the IRS unit that processes requests for publicly available portions of Forms 990. Forms 990 are information returns that tax exempt organizations, including Section 501(c)(4) entities, file with the IRS. The IRS now has informed us that its preliminary review of the disks reveals that a small number of the Form 990s on the disks inadvertently include confidential information protected by I.R.C. § 6103. Accordingly, we are returning our copies of the disks to the IRS, and we recommend that you remove the disks from the Committee's systems and return them to the IRS. We will contact Committee staff today to arrange for retrieval of the disks for delivery directly to the IRS if that would be helpful to you. You may wish to contact the IRS directly if you would like versions of the disks without the 6103 portions because we do not have the ability to create them in that form.

The Honorable Darrell E. Issa
Page Two

We hope that this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter J. Kadzik". The signature is fluid and cursive, with the first name "Peter" and last name "Kadzik" clearly distinguishable.

Peter J. Kadzik
Principal Deputy Assistant Attorney General

cc: The Honorable Elijah E. Cummings
Ranking Member

DARRELL E. ISSA, CALIFORNIA
CHAIRMAN

ONE HUNDRED THIRTEENTH CONGRESS

ELIJAH E. CUMMINGS, MARYLAND
RANKING MINORITY MEMBER

JOHN L. MICA, FLORIDA
MICHAEL R. TURNER, OHIO
JOHN J. DUNCAN, JR., TENNESSEE
PATRICK T. MCHEMRY, NORTH CAROLINA
JIM JORDAN, OHIO
JASON CHAFFETZ, UTAH
TIM WALBERG, MICHIGAN
JAMES LANKFORD, OKLAHOMA
JUSTIN AMASH, MICHIGAN
PAUL A. GOSAR, ARIZONA
PATRICK MEEHAN, PENNSYLVANIA
SCOTT DESJARLAIS, TENNESSEE
TREY GOWDY, SOUTH CAROLINA
BLAKE FARENTHOLD, TEXAS
DOC HASTINGS, WASHINGTON
CYNTHIA M. LUMMIS, WYOMING
ROB WOODALL, GEORGIA
THOMAS MASSIE, KENTUCKY
DOUG COLLINS, GEORGIA
MARK MEADOWS, NORTH CAROLINA
KERRY L. BENTIVOLIO, MICHIGAN
RON DESANTIS, FLORIDA

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
FACSIMILE (202) 225-3974
MINORITY (202) 225-5051

<http://oversight.house.gov>

CAROLYN B. MALONEY, NEW YORK
ELEANOR HOLMES NORTON,
DISTRICT OF COLUMBIA
JOHN F. TIERNEY, MASSACHUSETTS
WM. LACY CLAY, MISSOURI
STEPHEN F. LYNCH, MASSACHUSETTS
JIM COOPER, TENNESSEE
GERALD E. CONNOLLY, VIRGINIA
JACKIE SPEIER, CALIFORNIA
MATTHEW A. CARTWRIGHT, PENNSYLVANIA
L. TAMMY DUCKWORTH, ILLINOIS
ROBIN L. KELLY, ILLINOIS
DANNY K. DAVIS, ILLINOIS
PETER WELCH, VERMONT
TONY CARDENAS, CALIFORNIA
STEVEN A. HORSFORD, NEVADA
MICHELLE LUJAN GRISHAM, NEW MEXICO
VACANCY

LAWRENCE J. BRADY
STAFF DIRECTOR

June 10, 2014

The Honorable Eric H. Holder, Jr.
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Attorney General:

The Committee on Oversight and Government Reform continues to examine the Internal Revenue Service's targeting of conservative tax-exempt applicants. We were shocked to learn through documents obtained pursuant to the Committee's subpoena of you that the IRS transmitted 21 disks containing over 1.1 million pages of nonprofit tax-return information – including confidential taxpayer information protected by federal law – to the Federal Bureau of Investigation in October 2010. The IRS transmitted this material in advance of the Public Integrity Section's meeting with Lois Lerner to discuss potential criminality of nonprofit groups engaged in political speech. The startling revelation that the Justice Department received evidentiary material in 2010 for the potential prosecution of nonprofits is further indication that a special prosecutor is needed for a truly independent criminal investigation of the IRS targeting.

On October 5, 2010, former Exempt Organizations Director Lois Lerner e-mailed Richard Pilger, the Director of the Justice Department's Election Crimes Branch, that the IRS was "getting you the disks we spoke about" and asking whether the Department had a formatting preference.¹ Mr. Pilger forwarded the e-mail to an FBI agent, writing: "This is incoming data re 501c4 issues. Does FBI have a format preference?"² Mr. Pilger later responded to Ms. Lerner, writing: "Thanks Lois – FBI says Raw format is best because they can put it into their systems

¹ E-mail from Lois Lerner, Internal Revenue Serv., to Richard Pilger, U.S. Dep't of Justice (Oct. 5, 2010). [HOGR IRS 19]

² E-mail from Richard Pilger, U.S. Dep't of Justice, to unnamed FBI agent, Fed. Bureau of Investigation (Oct. 5, 2010). [HOGR IRS 20]

The Honorable Eric H. Holder, Jr.

June 10, 2014

Page 2

like excel.”³ The FBI received the disks, which included confidential taxpayer information, on or around October 6, 2010.⁴

Figure 1: E-mail exchange between Lois Lerner and Richard Pilger, Oct. 5-6, 2010

From: Pilger, Richard
Sent: Wednesday, October 06, 2010 2:05 PM
To: Lerner Lois G
Cc: Whitaker Sherry L; Simmons, Nancy; [REDACTED] (FBI)
Subject: RE: DATA FORMAT ISSUE – TIME SENSITIVE

Thanks Lois – FBI says Raw format is best because they can put it into their systems like excel.

From: Lerner Lois G [REDACTED]
Sent: Tuesday, October 05, 2010 5:52 PM
To: Pilger, Richard
Cc: Lerner Lois G; Whitaker Sherry L
Subject: DATA FORMAT ISSUE -- TIME SENSITIVE

In checking with my folks on getting you the disks we spoke about, I was asked the following:

Before we can get started do you know if they would like the images in Alchemy or Raw format? The difference is, Alchemy you need to search on one of the 5 index fields where Raw format, you load into your on software and you can do what ever you want to with it.

If you're like me, you don't know the answer. But, if you can check and get back to me Wednesday, we can get started and have these in about 2 weeks. If we don't have the information by tomorrow, it will take longer as there are other priorities in line. Please cc Sherry Whitaker on your response as she is likely to see your response before I do. Thanks

³ E-mail from Richard Pilger, U.S. Dep't of Justice, to Lois Lerner, Internal Revenue Serv. (Oct. 6, 2010). [HOCR IRS 22]

⁴ Letter from Peter Kadzik, U.S. Dep't of Justice, to Darrell E. Issa, H. Comm. on Oversight & Gov't Reform (May 29, 2014); Letter from Peter Kadzik, U.S. Dep't of Justice, to Darrell E. Issa, H. Comm. on Oversight & Gov't Reform (June 4, 2014).

Figure 2: E-mail from Richard Pilger to Unnamed FBI Agent, Oct. 5, 2010

From:	Pilger, Richard
Sent:	Tuesday, October 05, 2010 8:01 PM
To:	[REDACTED] (FBI)
Subject:	Fw: DATAFORMAT ISSUE – TIME SENSITIVE

This is incoming data re 501c4 issues. Does FBI have a format preference?
Richard C. Pilger
Director, Election Crimes Branch &
Senior Trial Attorney
Public Integrity Section
Criminal Division
United States Department of Justice
Washington, D.C. 20530
202 [REDACTED]
202 [REDACTED] (f)

On October 8, 2010, the Department’s Public Integrity Section hosted a meeting with Ms. Lerner, other IRS officials, and an FBI agent to discuss possible criminal enforcement relating to nonprofit groups engaged in political speech following *Citizens United v. Federal Election Commission*.⁵ The Department’s agenda for the meeting was to engage with Ms. Lerner about being “more vigilant to the opportunities from more crime in the . . . 501(c)(4) area.”⁶ In particular, the Department was interested in the “practicalities” of criminal enforcement relating to nonprofit political speech, such as whether the IRS could review donor lists of 501(c)(4) organizations for potential violations of campaign-finance law.⁷

The Committee has learned that the meeting with Ms. Lerner occurred as a result of national media attention surrounding nonprofit political speech. Jack Smith, the chief of the Public Integrity Section, requested the meeting after reading a *New York Times* article in late September 2010 about 501(c)(4) organizations engaged in political speech.⁸ The IRS, interestingly, assisted in drafting the *Times* article, with Ms. Lerner even speaking to the reporter on background.⁹ After the article was published, one senior IRS official wrote to her colleagues: “I do think it came out pretty well. The ‘secret donor’ theme will continue – see Obama salvo and today’s Diane Reehm [*sic*]. At least [the article’s author] started the idea that we don’t have the law to do something”¹⁰

⁵ Transcribed interview of Richard Pilger, U.S. Dep’t of Justice, in Wash., D.C., at 8 (May 6, 2014); Transcribed interview of Jack Smith, U.S. Dep’t of Justice, in Wash., D.C., at 74 (May 29, 2014).

⁶ Transcribed interview of Richard Pilger, U.S. Dep’t of Justice, in Wash., D.C., at 101 (May 6, 2014)

⁷ *Id.* at 159-60.

⁸ E-mail from Jack Smith, U.S. Dep’t of Justice, to Raymond Hulser et al., U.S. Dep’t of Justice (Sept. 21, 2010). [OGR IRS 1]

⁹ See E-mail from Michelle Eldridge, Internal Revenue Serv., to Doug Shulman et al., Internal Revenue Serv. (Sept. 20, 2010). [IRSR 250053]

¹⁰ E-mail from Sarah Hall Ingram, Internal Revenue Serv., to Terry Lemons et al., Internal Revenue Serv. (Sept. 21, 2010). [IRSR 508974]

Figure 3: E-mail from Sarah Hall Ingram to Terry Lemons et al., Sept. 21, 2010

From: Ingram Sarah H
Sent: Tuesday, September 21, 2010 7:52 AM
To: Lemons Terry L; Pyrek Steve J; Lerner Lois G; Kindell Judith E; Grant Joseph H; Eldridge Michelle L
Subject: RE: NY Times: As Rules Shift, Donor Names Stay Secret

Thanks, as always, for the excellent support from Media. I do think it came out pretty well. The "secret donor" theme will continue – see Obama salvo and today's Diane Reehm (sp). At least SS started the idea that we don't have the law to do something, although Marcus had a flavor that we just don't care because we are a tax agency. He should know better even if he is unhappy with the environment and the tax laws.

From: Lemons Terry L
Sent: Tuesday, September 21, 2010 8:28 AM
To: Pyrek Steve J; Lerner Lois G; Kindell Judith E; Ingram Sarah H; Grant Joseph H; Eldridge Michelle L
Subject: RE: NY Times: As Rules Shift, Donor Names Stay Secret

Not that bad overall. Glad you guys talked to her -- think it helped.

In fact, the article's suggestion that the IRS lacked the ability to "do something" relating to nonprofit political speech contributed to Department's engagement. Mr. Smith testified that the IRS's apparent lack of "appropriate enforcement" influenced his decision to engage with the IRS about 501(c) organizations.¹¹ After reading the *Times* article, Mr. Smith convened a meeting with his staff to discuss a "possible 501/campaign finance investigation."¹² Following the meeting with Ms. Lerner, the Public Integrity Section engaged in a "dialogue" with the FBI about 501(c) organizations. Mr. Smith testified:

Q Mr. Smith, in the time period of October 8th, 2010, up until May 10th, 2013, did you have any dialogue with the FBI about 501(c)s?

A Yes.

Q And what did you discuss with [the FBI]?

A Well, I – so I don't want to get into specific cases or even talks that we had about considering specific investigations even if those investigations were never opened. . . . So I can tell you that we had a dialogue with the FBI. Never opened any investigations, Public Integrity did not. But we

¹¹ Transcribed interview of Jack Smith, U.S. Dep't of Justice, in Wash., D.C., at 39 (May 29, 2014)

¹² Meeting among Jack Smith, Justin Shur, Nancy Simmons, Richard Pilger, & Raymond Hulser, U.S. Dep't of Justice, "Possible 501/Campaign Finance Investigation" (Sept. 30, 2010). [OGR IRS 16]

did have a dialogue with them over time following this [October 8, 2010, meeting with Ms. Lerner].

Q So, just to be clear, your conversations with [the FBI] in the timeframe October 8th, 2010 to May 10th, 2013, were about potential investigations of 501(c)s?

A Well, I mean, it would be more – I want to be clear – it would be more about looking at the issue, looking at whether it made sense to open investigations. If we did, you know, how would you go about doing this? Is there predication, a basis to open an investigation? Things like that. I can't say as I sit here now specifically, you know, the back-and-forth of that discussion. I can just tell you that – because I know one of your concerns is that organizations were targeted. And I can tell you that we, Public Integrity, did not open any investigations as a result of those discussions and that we certainly, as you know, have not brought any cases as a result of that.¹³

We now know that this “dialogue” with the FBI occurred while the Justice Department possessed confidential taxpayer information about nonprofits.

Additional information obtained during the Committee’s transcribed interview of Mr. Pilger suggests that the Justice Department’s receipt of confidential taxpayer information in October 2010 may have violated federal law. Although the Department withheld information about the 21 disks and the fact that the disks contained confidential taxpayer information until well after the Committee’s interview of Mr. Pilger, Mr. Pilger did explain that the Justice Department may only receive confidential taxpayer information through a court order. He testified:

Q And, sir, the Department has tools available to it to obtain information about donors from the IRS. Is that right?

A If I understand your question right, you’re asking about the Department’s ability to obtain the names of donors to 501(c)(4)s?

Q Yes, sir.

¹³ Transcribed interview of Jack Smith, U.S. Dep’t of Justice, in Wash., D.C., at 100-02 (May 29, 2014).

- A So through a court order that we refer to as an (i) order that is an order by a Federal District Court, the Executive Branch can, under certain circumstances, by meeting certain criteria reviewed by a Federal judge, obtain information otherwise protected by tax law and [§] 6103 from any disclosure to the Department of Justice. As a general matter, can we go to the IRS and simply get information about donors to 501(c)(4)s? No. Absolutely not.¹⁴

We are aghast to learn that the Justice Department worked with the IRS to assemble a massive database of nonprofit groups, and that this database included confidential taxpayer information that the Department is not authorized to possess. The creation of such an illicit and comprehensive registry by federal law-enforcement officials is concerning in and of itself. Yet, the creation of a registry at the same time that the Department considered possible investigatory steps against nonprofit groups engaged in political speech is alarming. This evidence is a clear indication that the Justice Department took affirmative steps to examine nonprofit groups engaged in otherwise lawful political speech.

We are also concerned by the manner in which this information was transmitted from the IRS to the Justice Department. Section 6103 of the federal tax code protects confidential taxpayer information from unauthorized disclosure.¹⁵ Thus, the IRS's transmittal of confidential information to the FBI in October 2010 apparently violated federal law. In addition, the Department's disclosure that information on the disks was protected by section 6103 occurred subsequent to a letter from Principal Deputy Assistant Attorney General Peter Kadzik in which he expressed the Department's "understanding" that the 21 disks contained publicly available information.¹⁶ For these reasons, we ask that you produce the following information immediately:

1. All documents and communications between or among employees of the Department of Justice and employees of the Internal Revenue Service referring or relating to the 21 disks of nonprofit information transmitted from the Internal Revenue Service to the Justice Department on or around October 6, 2010;
2. All documents and communications between or among employees of the Department of Justice and employees of the Internal Revenue Service referring or relating to the production of the 21 disks of nonprofit information to the Committee on June 2, 2014; and
3. All documents and communications between or among employees of the Department of Justice and employees of the Internal Revenue Service referring or relating to the

¹⁴ Transcribed interview of Richard Pilger, U.S. Dep't of Justice, in Wash., D.C., at 147 (May 6, 2014)

¹⁵ See I.R.C. § 6103.

¹⁶ Letter from Peter Kadzik, U.S. Dep't of Justice, to Darrell E. Issa, H. Comm. on Oversight & Gov't Reform (May 29, 2014).

The Honorable Eric H. Holder, Jr.

June 10, 2014

Page 7

discovery of confidential taxpayer information protection by I.R.C. § 6103 on the 21 disks of nonprofit information produced to the Committee on June 2, 2014.

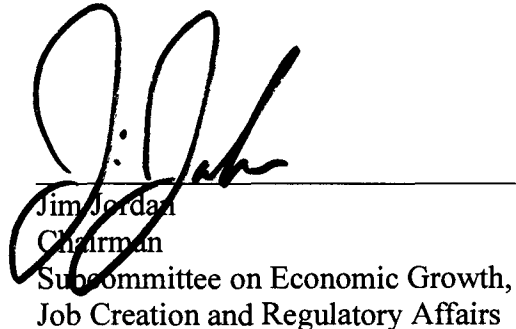
Additionally, the revelation that the Justice Department worked with the IRS to compile a massive database of nonprofit information, including confidential taxpayer information, further undermines the integrity of the Department's investigation of the IRS targeting. The Committee has already obtained information that the Civil Rights Division attorney leading the investigation has an apparent conflict of interest.¹⁷ Now we know that the other two Justice Department components involved in the investigation – the Public Integrity Section and the FBI – also have serious conflicts of interest stemming from their interaction with Lois Lerner in October 2010. For these reasons, we reiterate the overwhelmingly bipartisan position of the House of Representatives that the appointment of a special counsel is warranted to investigate potential criminal wrongdoing. We trust that you will recognize the serious deficiencies in the Department's investigation and accept the House's demand that you appoint a special counsel to investigate the IRS's targeting of tax-exempt applicants.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X. An attachment to this letter provides additional information about responding to the Committee's request. If you have any questions about this request, please contact David Brewer or Tyler Grimm of the Committee Staff at (202) 225-5074. Thank you for your prompt attention to this matter.

Sincerely,



Darrell Issa
Chairman



Jim Jordan
Chairman
Subcommittee on Economic Growth,
Job Creation and Regulatory Affairs

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

The Honorable Matthew A. Cartwright, Ranking Minority Member, Subcommittee on
Economic Growth, Job Creation and Regulatory Affairs

¹⁷ See Letter from Darrell Issa, H. Comm. on Oversight & Gov't Reform, to Eric H. Holder, Jr., to U.S. Dep't of Justice (Jan. 8, 2014).

ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6143

Majority (202) 225-5074
Minority (202) 225-5051

Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document;

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH,
PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE,
SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM,

CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been

located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Schedule Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term “employee” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 26, 2014

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, DC 20515

The Honorable Jim Jordan
Chairman
Committee on Oversight and Government Reform
Subcommittee on Economic Growth,
Job Creation and Regulatory Affairs
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Issa and Chairman Jordan:

This responds to your letter of June 10, 2014, regarding disks that the Department of Justice (the Department) provided the Committee that we believe the Internal Revenue Service (IRS) provided to the Federal Bureau of Investigation (FBI) in 2010.

Through our letters to you, communications with your staff, and our production of documents, we believe that we have already provided you with the best information available to us regarding these disks. In particular, we provided you with emails from October 2010 that we located regarding the disks. *See* HOCR IRS 000019-000037. We explained that upon receipt of the disks, an FBI analyst imported the index of materials into a spreadsheet but did nothing further with the disks, and that to the best of our knowledge, the information contained on the disks was never used for any investigative purpose. *See* Letter from Peter J. Kadzik, Department of Justice, to Chairman Darrell E. Issa, May 29, 2014. We further informed you when we provided the disks to the Committee on June 2, 2014, that it was our understanding that the disks contained only publicly available information. However, we explicitly stated at that time that the IRS had not completed its review of all the records, and we recommended “that the Committee defer disclosure of these records except to the extent that it can confirm that they are available from public sources.” *See* Letter from Peter J. Kadzik, Department of Justice, to Chairman Darrell E. Issa, June 2, 2014. Thereafter, the IRS notified the Department that the disks appear to have inadvertently included a small amount of confidential information protected by I.R.C. § 6103, and we promptly notified the Committee of this fact and recommended that it return the

disks to the IRS. *See* Letter from Peter J. Kadzik, Department of Justice, to Chairman Darrell E. Issa, June 4, 2014.

Despite the Department's efforts to provide you with prompt and accurate information regarding these disks, your letter appears to draw conclusions that are not supported by the facts. Your letter claims that "the Justice Department worked with the IRS to assemble a massive database of nonprofit groups," and was involved in the creation of "an illicit and comprehensive registry" of such groups. There is no basis for these claims, and these characterizations are neither fair nor accurate. Moreover, as previously stated, to the best of our knowledge the FBI did not review the material on the disks beyond the index, and did not use the disks for any investigative purpose. In testimony before the House Judiciary Committee on June 11, 2014, FBI Director Comey said, "My understanding is an analyst in our Criminal Investigation Division looked at an index of it to see what it was and then parked it to see if DOJ was going to ask us to do anything with it, and they never did. So it sat in her—I don't know whether desk or her file, the last four years."

Your letter also alleges that the Department "withheld information about the 21 disks and the fact that the disks contained confidential taxpayer information until well after the Committee's interview of Mr. Pilger..." but this incorrectly suggests that the Department had information about the content of the disks on the date of Mr. Pilger's interview, May 6, 2014; as we have previously made clear, we did not know that the disks contained confidential taxpayer information until after our June 2, 2014 letter to you, and when the IRS informed us that they did, we then promptly relayed that information to the Committee. Indeed, our letter of June 2, 2014, noted that the IRS had not completed its review of the disks.

In addition, your letter asks for documents and communications between the Department and the IRS relating to the production of the disks to the Committee on June 2, 2014, and the discovery shortly thereafter that the disks contained confidential taxpayer information. As we explained in our letters of May 28 and May 29, 2014, consistent with established third-agency practice, we consulted with the IRS regarding the disks. On June 2, we provided the Committee with copies of the disks because, based on the information available to us at that time, we believed that the disks contained only publicly available material. After we had provided the Committee with those copies, the IRS notified us that its preliminary review of the material on the disks revealed that a small number of the Form 990s on the disks inadvertently included confidential information protected by I.R.C. § 6103. As you know, it is longstanding Executive Branch practice generally not to disclose internal communications generated in the course of our efforts to respond to congressional inquiries because such disclosure would implicate substantial Executive Branch confidentiality interests and separation of powers principles. Disclosure would have a chilling effect on communications by agency employees about how to respond to congressional inquiries and, hence, would interfere with our ability to respond as effectively and efficiently as possible to congressional oversight requests.

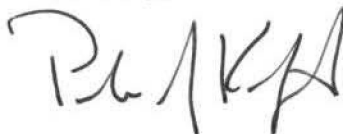
Your letter also reiterates the request that a special counsel be appointed to handle the pending investigation of this matter. The Special Counsel regulations, 28 C.F.R. § 6001, which were issued as a replacement for the former Independent Counsel Act, provide that, in the

discretion of the Attorney General, a Special Counsel may be appointed when an investigation or prosecution by the Department of Justice would create a potential conflict of interest, or in other extraordinary circumstances such that the public interest would be served by such an appointment. This authority has rarely been exercised.

After consideration of your request, we have concluded that such an appointment is not warranted. This investigation has been and will continue to be conducted by career prosecutors and law enforcement professionals in accordance with established Department policies and procedures, which are designed to ensure the integrity of an ongoing criminal investigation. The Department is committed to integrity and fairness in all of its law enforcement efforts, without regard to politics. As the Attorney General and his predecessor have stated in memoranda directed to all Department employees during election years, “[s]implify put, politics must play no role in the decisions of federal investigators or prosecutors regarding any investigations or criminal charges.” *See* Memorandum of The Attorney General to All Department Employees Regarding Election Year Sensitivities (March 9, 2012 and March 5, 2008). Any other approach would be inconsistent with the fundamental principles to which this Department is dedicated.

As we have explained to your staff, we are continuing our search for any additional responsive documents and will supplement this response when our efforts are completed. We hope that this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read "P. Kadzik". The signature is stylized and cursive.

Peter J. Kadzik
Assistant Attorney General

cc: The Honorable Elijah E. Cummings
Ranking Member

The Honorable Matt Cartwright
Ranking Member
Subcommittee on Economic Growth, Job Creation
and Regulatory Affairs

DARRELL E. ISSA, CALIFORNIA
CHAIRMAN

JOHN L. MICA, FLORIDA
MICHAEL R. TURNER, OHIO
JOHN J. DUNCAN, JR., TENNESSEE
PATRICK T. McHENRY, NORTH CAROLINA
JIM JORDAN, OHIO
JASON CHAFFETZ, UTAH
TIM WALBERG, MICHIGAN
JAMES LANKFORD, OKLAHOMA
JUSTIN AMASH, MICHIGAN
PAUL A. GOSAR, ARIZONA
PATRICK MEEHAN, PENNSYLVANIA
SCOTT DesJARLAIS, TENNESSEE
TREY GOWDY, SOUTH CAROLINA
BLAKE FARENTHOLD, TEXAS
DOC HASTINGS, WASHINGTON
CYNTHIA M. LUMMIS, WYOMING
ROB WOODALL, GEORGIA
THOMAS MASSIE, KENTUCKY
DOUG COLLINS, GEORGIA
MARK MEADOWS, NORTH CAROLINA
KERRY L. BENTIVOLIO, MICHIGAN
RON DeSANTIS, FLORIDA

ONE HUNDRED THIRTEENTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-6074
FACSIMILE (202) 225-3974
MINORITY (202) 225-6051
<http://oversight.house.gov>

ELIJAH E. CUMMINGS, MARYLAND
RANKING MINORITY MEMBER

CAROLYN B. MALONEY, NEW YORK
ELEANOR HOLMES NORTON,
DISTRICT OF COLUMBIA
JOHN F. TIERNEY, MASSACHUSETTS
WM. LACY CLAY, MISSOURI
STEPHEN F. LYNCH, MASSACHUSETTS
JIM COOPER, TENNESSEE
GERALD E. CONNOLLY, VIRGINIA
JACKIE SPEIER, CALIFORNIA
MATTHEW A. CARTWRIGHT, PENNSYLVANIA
L. TAMMY DUCKWORTH, ILLINOIS
ROBIN L. KELLY, ILLINOIS
DANNY K. DAVIS, ILLINOIS
PETER WELCH, VERMONT
TONY CARDENAS, CALIFORNIA
STEVEN A. HORSFORD, NEVADA
MICHELLE LUJAN GRISHAM, NEW MEXICO
VACANCY

LAWRENCE J. BRADY
STAFF DIRECTOR

August 19, 2014

The Honorable James M. Cole
Deputy Attorney General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Cole:

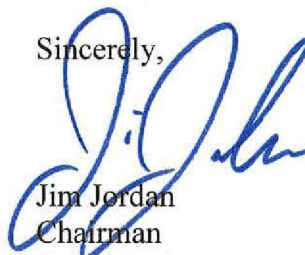
Thank you for appearing before the Subcommittee on Economic Growth, Job Creation and Regulatory Affairs on July 17, 2014, at the hearing titled, "Examining the Justice Department's Response to the IRS Targeting Scandal." We appreciate the time and effort you gave as a witness before the Committee.

Pursuant to the direction of the Chairman, the hearing record remains open to permit Members to submit additional questions to the witnesses. Attached are questions directed to you. In preparing your answers to these questions, please address your response to the Member who has submitted the questions and include the text of the Member's questions along with your response.

Please provide your response by Tuesday, September 2, 2014. Your response should be addressed to the Committee office at 2157 Rayburn House Office Building, Washington, DC 20515. Please also send an electronic version of your response by e-mail to Sarah Vance, Assistant Clerk, at Sarah.Vance@mail.house.gov in a single Word formatted document.

Thank you for your prompt attention to this request. If you need additional information or have other questions, please contact Sarah Vance at (202) 225-5074.

Sincerely,



Jim Jordan
Chairman

Subcommittee on Economic Growth,
Job Creation and Regulatory Affairs

Enclosure

cc: The Honorable Matt Cartwright, Ranking Minority Member, Subcommittee on Economic Growth, Job Creation and Regulatory Affairs

Questions for Mr. Cole
Deputy Attorney General
United States Department of Justice

Questions from Chairman Jordan
Subcommittee on Economic Growth, Job Creation and Regulatory Affairs

Subcommittee hearing on:
“Examining the Justice Department’s Response to the IRS Targeting Scandal”

1. On May 20, 2014, the Committee issued a subpoena to Attorney General Eric Holder for material related to the Justice Department’s interactions with Lois Lerner and the Internal Revenue Service. This subpoena remains outstanding. On May 28, 2014, the Department produced a subset of documents responsive to the Committee’s subpoena. What custodians and search terms did the Department utilize to identify the documents produced to the Committee on May 28, 2014?
2. On May 20, 2014, the Committee issued a subpoena to Attorney General Eric Holder for material related to the Justice Department’s interactions with Lois Lerner and the Internal Revenue Service. This subpoena remains outstanding. On July 25, 2014, the Department produced a subset of documents responsive to the Committee’s subpoena. What custodians and search terms did the Department utilize to identify the documents produced to the Committee on July 25, 2014?
3. On May 20, 2014, the Committee issued a subpoena to Attorney General Eric Holder for material related to the Justice Department’s interactions with Lois Lerner and the Internal Revenue Service. This subpoena remains outstanding. On August 15, 2014, the Department produced a subset of documents responsive to the Committee’s subpoena. What custodians and search terms did the Department utilize to identify the documents produced to the Committee on August 15, 2014?
4. On May 20, 2014, the Committee issued a subpoena to Attorney General Eric Holder for material related to the Justice Department’s interactions with Lois Lerner and the Internal Revenue Service. This subpoena remains outstanding. On July 25, 2014, the Department informed the Committee that it is continuing to search for material responsive to the Committee’s subpoena. What custodians and search terms is the Department currently utilizing to identify material responsive to the Committee’s subpoena dated May 20, 2014?
5. On May 20, 2014, the Committee issued a subpoena to Attorney General Eric Holder for material related to the Justice Department’s interactions with Lois Lerner and the Internal Revenue Service. This subpoena remains outstanding. On May 28, 2014, the Department notified the Committee that it is withholding documents responsive to the subpoena, but refused to provide a privilege log with information about the withheld documents. Department staff has informed Committee staff that the Department has not provided a privilege log because it continues to search for responsive material. When does the Department anticipate completing its searches for material responsive to the Committee’s subpoena dated May 20, 2014?

6. Is the Department asserting any privilege on material responsive to the Committee's subpoena of May 20, 2014?
7. By letter dated June 10, 2014, the Committee requested the following three categories of material:
 - a. All documents and communications between or among employees of the Department of Justice and employees of the Internal Revenue Service referring or relating to the 21 disks of nonprofit information transmitted from the Internal Revenue Service to the Justice Department on or around October 6, 2010;
 - b. All documents and communications between or among employees of the Department of Justice and employees of the Internal Revenue Service referring or relating to the production of the 21 disks of nonprofit information to the Committee on June 2, 2014; and
 - c. All documents and communications between or among employees of the Department of Justice and employees of the Internal Revenue Service referring or relating to the discovery of confidential taxpayer information protected by I.R.C. § 6103 on the 21 disks of nonprofit information produced to the Committee on June 2, 2014.

On June 26, 2014, the Department informed the Committee that these requests implicate "Executive Branch confidentiality interests." It is unclear whether the Department has identified responsive material or whether it is asserting a blanket confidentiality interest without identifying the material. Has the Department identified material responsive to the Committee's requests of June 10, 2014?

8. By letter dated June 10, 2014, the Committee requested the following three categories of material:
 - a. All documents and communications between or among employees of the Department of Justice and employees of the Internal Revenue Service referring or relating to the 21 disks of nonprofit information transmitted from the Internal Revenue Service to the Justice Department on or around October 6, 2010;
 - b. All documents and communications between or among employees of the Department of Justice and employees of the Internal Revenue Service referring or relating to the production of the 21 disks of nonprofit information to the Committee on June 2, 2014; and
 - c. All documents and communications between or among employees of the Department of Justice and employees of the Internal Revenue Service referring or relating to the discovery of confidential taxpayer information protected by I.R.C. § 6103 on the 21 disks of nonprofit information produced to the Committee on June 2, 2014.

On June 26, 2014, the Department informed the Committee that these requests implicate "Executive Branch confidentiality interests." Is it the Department's position that every

document responsive to the Committee's three requests for material in its June 10, 2014, letter implicates "Executive Branch confidentiality interests"?

9. Is the Department asserting any privilege on material responsive to the Committee's requests of June 10, 2014?



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

DEC 23 2014

2014 DEC 24 AM 11:16

FEDERAL
DEPT. OF JUSTICE
EXECUTIVE SECRETARIAT

The Honorable James D. Jordan
Chairman
Subcommittee on Economic Growth, Job Creation and Regulatory Affairs
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Enclosed please find responses to questions for the record arising from the appearance of James M. Cole, Deputy Attorney General before the Committee on July 17, 2014, at a hearing entitled "Examining the Justice Department's Response to the IRS Targeting Scandal." We hope that this information is of assistance to the Committee.

The Office of Management and Budget has advised us that there is no objection to submission of this letter from the perspective of the Administration's program. Please do not hesitate to contact this office if we may be of additional assistance regarding this or any other matter.

Sincerely,

Peter J. Kadzik
Assistant Attorney General

Enclosure

cc: The Honorable Matt Cartwright
Ranking Member

**Questions for James M. Cole
Deputy Attorney General
United States Department of Justice**

**Questions from Chairman Jordan
Committee on Oversight and Government Reform
Subcommittee on Economic Growth, Job Creation and Regulatory Affairs**

**Subcommittee hearing on:
“Examining the Justice Department’s Response to the IRS Targeting Scandal”**

- 1. On May 20, 2014, the Committee issued a subpoena to Attorney General Eric Holder for material related to the Justice Department’s interactions with Lois Lerner and the Internal Revenue Service. This subpoena remains outstanding. On May 28, 2014, the Department produced a subset of documents responsive to the Committee’s subpoena. What custodians and search terms did the Department utilize to identify the documents produced to the Committee on May 28, 2014?**

After the Department of Justice (the Department) received a letter from the Committee on April 23, 2014, requesting documents and information regarding contacts between attorneys in the Criminal Division and Ms. Lois Lerner of the Internal Revenue Service (IRS), we began a good-faith search for responsive material in the possession of the Criminal Division. Given the Department’s efforts, we were surprised when we received the Committee’s subpoena on May 20, 2014.

The Committee’s April 23, 2014, letter and its May 20, 2014, subpoena requested all communications “between or among Lois Lerner and employees of the Department of Justice” for a time period of approximately five years. Because it is not practicable for the Department to search the email accounts of every single Department employee, no matter how unlikely it is that he or she communicated with Ms. Lerner, we searched the accounts of individuals who reasonably may have communicated with Ms. Lerner.

We also received requests from other congressional committees for Department communications with additional IRS employees whose email may have been lost by the IRS because of technological problems. To ensure the completeness of our response to the Committee, the Department monitored the results of those searches to determine whether any additional custodians should be searched. The Department has now completed its document productions to those other congressional committees and has determined that there are no additional custodians who are likely to have communicated with Ms. Lerner.

The Department has now provided to the Committee all emails between Ms. Lerner and Department employees that were identified as a result of the extensive search detailed above.

- 2. On May 20, 2014, the Committee issued a subpoena to Attorney General Eric Holder for material related to the Justice Department’s interactions with Lois Lerner and the Internal Revenue Service. This subpoena remains outstanding. On July 25, 2014, the Department produced a subset of documents responsive to the Committee’s subpoena. What custodians and search terms did the Department utilize to identify the documents produced to the Committee on July 25, 2014?**

Please see answer to #1.

3. **On May 20, 2014, the Committee issued a subpoena to Attorney General Eric Holder for material related to the Justice Department's interactions with Lois Lerner and the Internal Revenue Service. This subpoena remains outstanding. On August 15, 2014, the Department produced a subset of documents responsive to the Committee's subpoena. What custodians and search terms did the Department utilize to identify the documents produced to the Committee on August 15, 2014?**

Please see answer to #1.

4. **On May 20, 2014, the Committee issued a subpoena to Attorney General Eric Holder for material related to the Justice Department's interactions with Lois Lerner and the Internal Revenue Service. This subpoena remains outstanding. On July 25, 2014, the Department informed the Committee that it is continuing to search for material responsive to the Committee's subpoena. What custodians and search terms is the Department currently utilizing to identify material responsive to the Committee's subpoena dated May 20, 2014?**

Please see answer to #1.

5. **On May 20, 2014, the Committee issued a subpoena to Attorney General Eric Holder for material related to the Justice Department's interactions with Lois Lerner and the Internal Revenue Service. This subpoena remains outstanding. On May 28, 2014, the Department notified the Committee that it is withholding documents responsive to the subpoena, but refused to provide a privilege log with information about the withheld documents. Department staff has informed Committee staff that the Department has not provided a privilege log because it continues to search for responsive material. When does the Department anticipate completing its searches for material responsive to the Committee's subpoena dated May 20, 2014?**

The Committee's subpoena of May 20, 2014, requested four specific categories of documents: (1) all documents and communications referring or relating to 501(c)(4) tax-exempt organizations; (2) all documents and communications referring or relating to applicants for 501(c)(4) tax-exempt status; (3) all documents and communications between and among Lois G. Lerner and employees of the Department of Justice; and (4) all documents and communications referring or relating to the potential prosecution of tax-exempt applicants for statements made on Internal Revenue Service forms. The Department has now provided to the Committee all emails between Ms. Lerner and Department employees that were identified as a result of the extensive search detailed above in response to Question 1. Throughout this process we have endeavored to accommodate the Committee's oversight needs, consistent with Executive Branch confidentiality interests. As we have previously explained, it is longstanding Executive Branch practice not to disclose material from open case files or internal deliberations about our law enforcement efforts. This practice is vital to protecting the independence, integrity, and effectiveness of the Department's law enforcement efforts and the candid exchange of views that is essential to decision-making in the course of those efforts.

To the extent that we identify additional documents responsive to your requests that the Department can produce without undermining the interests described above, we will produce such documents to the Committee at that time.

6. **Is the Department asserting any privilege on material responsive to the Committee's subpoena of May 20, 2014?**

Please see answer to #5.

7. **By letter dated June 10, 2014, the Committee requested the following three categories of material:**
- a. **All documents and communications between or among employees of the Department of Justice and employees of the Internal Revenue Service referring or relating to the 21 disks of nonprofit information transmitted from the Internal Revenue Service to the Justice Department on or around October 6, 2010;**
 - b. **All documents and communications between or among employees of the Department of Justice and employees of the Internal Revenue Service referring or relating to the production of the 21 disks of nonprofit information to the Committee on June 2, 2014; and**
 - c. **All documents and communications between or among employees of the Department of Justice and employees of the Internal Revenue Service referring or relating to the discovery of confidential taxpayer information protected by I.R.C. 6103 on the 21 disks of nonprofit information produced to the Committee on June 2, 2014.**

On June 26, 2014, the Department informed the Committee that these requests implicate "Executive Branch confidentiality interests." It is unclear whether the Department has identified responsive material or whether it is asserting a blanket confidentiality interest without identifying the material. Has the Department identified material responsive to the Committee's requests of June 10, 2014?

With respect to the Committee's request in subparagraph (a) for communications regarding the transmittal of disks from the IRS to the FBI in October 2010, the Department produced to the Committee on May 28, 2014 all such communications that were located after a diligent search. Beginning in May of 2014, as part of the Department's effort to respond to the Committee's subpoena and consistent with established third-agency practice, the Department consulted with the IRS regarding the content of the disks that the IRS provided to the FBI in October 2010. Some communications generated in the course of that consultation are responsive to subparagraphs (b) and (c). The Committee's request for internal communications generated in the course of our efforts to respond to the congressional inquiry implicates Executive Branch separation of powers concerns and confidentiality interests, especially the concern that disclosure of such materials would have a chilling effect on communications by agency employees that would interfere with our ability to respond to congressional oversight requests. Accordingly, it is longstanding Executive Branch practice not to disclose internal communications generated in the course of efforts to respond to congressional inquiries. To the extent that we identify additional documents responsive to your requests that the Department can produce without undermining the equities described above, we will produce such documents to the Committee at that time.

8. **By letter dated June 10, 2014, the Committee requested the following three categories of material:**
- a. **All documents and communications between or among employees of the Department of Justice and employees of the Internal Revenue Service referring or relating to the 21 disks of nonprofit information transmitted from the Internal Revenue Service to the Justice Department on or around October 6, 2010;**

- b. All documents and communications between or among employees of the Department of Justice and employees of the Internal Revenue Service referring or relating to the production of the 21 disks of nonprofit information to the Committee on June 2, 2014; and**
- c. All documents and communications between or among employees of the Department of Justice and employees of the Internal Revenue Service referring or relating to the discovery of confidential taxpayer information protected by I.R.C. 6103 on the 21 disks of nonprofit information produced to the Committee on June 2, 2014.**

On June 26, 2014, the Department informed the Committee that these requests implicate “Executive Branch confidentiality interests.” Is it the Department’s position that every document responsive to the Committee’s three requests for material in its June 10, 2014, letter implicates “Executive Branch confidentiality interests”?

Please see the response to #7.

- 9. Is the Department asserting any privilege on material responsive to the Committee’s request of June 10, 2014?**

Throughout this process we have endeavored to accommodate the Committee’s oversight needs, consistent with Executive Branch confidentiality interests. As described above in response to Question 7, the Committee’s request for internal communications generated in the course of our efforts to respond to the congressional inquiry implicate Executive Branch separation of powers concerns and confidentiality interests. Disclosure of such materials would have a chilling effect on communications by agency employees that would interfere with our ability to respond to congressional oversight requests. Accordingly, it is longstanding Executive Branch practice not to disclose internal communications generated in the course of efforts to respond to congressional inquiries. To the extent that we identify documents responsive to your requests that the Department can produce without undermining the equities described above, we will produce such documents to the Committee at that time.