

TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION



Fiscal Year 2024 Mandatory Review of Compliance With the Freedom of Information Act

April 11, 2024

Report Number: 2024-100-023

Why TIGTA Did This Audit

The overall objective of this audit was to determine whether the IRS improperly withheld information requested by taxpayers in writing based on Freedom of Information Act (FOIA) exemption 5 United States Code (U.S.C.) Section (§) 552(b)(7) or Internal Revenue Code (I.R.C.) § 6103. TIGTA is required to conduct periodic audits to determine whether the IRS properly denied written requests for taxpayer information 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. While I.R.C. § 6103(c) and (e) 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

The Disclosure Office processes all written FOIA requests, and it closed 3,533 FOIA requests between October 1, 2022, and March 31, 2023. The Disclosure Office denied the requested information either partially or fully based on FOIA exemption (b)(7) for 516 of these 3,533 requests. TIGTA reviewed a statistically valid stratified sample of 99 of the 516 fully or partially denied FOIA requests and determined that the IRS correctly withheld information using FOIA exemption (b)(7) for 98 of the 99 FOIA information requests TIGTA sampled. This was an improvement when compared to our last report, in which TIGTA reported that the Disclosure Office did not follow FOIA redaction requirements for 11 of the 83 requests reviewed.

Although the IRS Disclosure Office is tasked with responding to written requests for IRS information, other IRS offices having custody of taxpayer records may also process written requests for information made under I.R.C. § 6103. The Disclosure Office does not track I.R.C. § 6103(c) and (e) information requests received and processed by other offices. The Disclosure Office closed 162 I.R.C. § 6103(c) or (e) requests between October 1, 2022, and March 31, 2023, and withheld information from the requestor in 10 requests. TIGTA reviewed all 10 I.R.C. § 6103(c) and (e) requests and did not identify any disclosure errors.

The infographic is a dark blue rectangle with a white banner at the top that says "The Disclosure Office". Below the banner is a white icon of a clipboard with a checklist and a blue checkmark. At the bottom, white text reads: "Closed over 3,500 FOIA and 160 I.R.C. § 6103 requests between October 1, 2022, and March 31, 2023."

What TIGTA Recommended

TIGTA did not make any recommendations in this report. However, IRS officials were provided an opportunity to review the report but did not provide any comments.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

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

April 11, 2024

MEMORANDUM FOR: COMMISSIONER OF INTERNAL REVENUE

A handwritten signature in black ink, appearing to read "MAW", is positioned above the typed name of the sender.

FROM: Matthew A. Weir
Acting Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Fiscal Year 2024 Mandatory Review of Compliance
With the Freedom of Information Act (Audit No.: 2024100002)

This report presents the results of our review to determine whether the Internal Revenue Service (IRS) improperly withheld information requested by taxpayers in writing based on the Freedom of Information Act exemption 5 United States Code § 552(b)(7) or Internal Revenue Code § 6103. This review is part of our Fiscal Year 2024 Annual Audit Plan and addresses the major management and performance challenge of *Taxpayer Rights*.

The Treasury Inspector General for Tax Administration made no recommendations as a result of the work performed during this review. IRS officials were provided an opportunity to review the report but did not provide any comments. If you have any questions, please contact me or Bryce Kisler, Assistant Inspector General for Audit (Management Services and Exempt Organizations).

Table of Contents

<u>Background</u>	Page 1
<u>Results of Review</u>	Page 3
<u>Freedom of Information Act Requirements Were Generally Followed When Redacting Taxpayer Information</u>	Page 3
<u>Information Was Properly Withheld in All Internal Revenue Code Section 6103 Cases Reviewed</u>	Page 3
Appendices	
<u>Appendix I – Detailed Objective, Scope, and Methodology</u>	Page 4
<u>Appendix II – Abbreviations</u>	Page 6

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.) Section (§) 6103.¹ If the IRS does not process requests under these statutes correctly, taxpayers do not receive the information to which they are entitled.

FOIA requests

The FOIA requires Federal agencies to make records of the Federal Government available to the public upon request, unless specifically exempted. Although the statute was intended to allow access to documents concerning policy and procedures, it is also used for requesting tax records. Federal agencies are required to make records promptly available to any person upon request, providing that:



The request reasonably describes such records.



The request is made in accordance with published rules and procedures.



There are no legal requirements to deny the request.

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.
- 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.

¹ 5 U.S.C. § 552.

² 5 U.S.C. § 552(b)(7).

The Disclosure Office processes all written FOIA requests. The Disclosure Office closed 3,533 FOIA requests between October 1, 2022, and March 31, 2023.³

I.R.C. § 6103

I.R.C. § 6103(c) and (e) 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 specific documents and information. The Disclosure Office closed 162 I.R.C. § 6103(c) or (e) requests between October 1, 2022, and March 31, 2023. Although the IRS Disclosure Office is tasked with responding to written requests for IRS information, other IRS offices having custody of taxpayer records may also process written requests for information made under I.R.C. § 6103. The Disclosure Office does not track I.R.C. § 6103(c) and (e) information requests received and processed by other offices. Therefore, the complete population of I.R.C. § 6103(c) and (e) requests processed by the IRS between October 1, 2022, and March 31, 2023, is unknown.



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

The IRS Disclosure Office accepts FOIA and I.R.C. § 6103(c) and (e) information requests via fax, mail, or the online portal. When a request is received, IRS employees scan the request into the computer system, and a disclosure manager assigns the request to a disclosure case worker. Caseworkers have three days to complete their initial analysis. 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 response letter notifying the requestor. If responsive records are located, the disclosure caseworker will review them to determine if any information should be withheld. The IRS then responds to the requestor via letter providing all requested information or providing partial information and explaining why certain parts of the requested documentation have been redacted. Managers review all requests in which information is 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 based on I.R.C. § 6103 or FOIA exemption (b)(7).⁴ TIGTA is also required to include information regarding the IRS's improper denial of requests for information in one of its semiannual reports to Congress. In accordance with this statutory requirement, the scope of our review addressed closed FOIA requests for which the information requested was either denied in

³ 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.

⁴ For § 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).

full or in part under FOIA exemption (b)(7). 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 in the Disclosure Office's computer system that were denied or partially denied. We did not review requests for improper release of information. See Appendix I for additional information about the objective, scope, and methodology.

Results of Review



Freedom of Information Act Requirements Were Generally Followed When Redacting Taxpayer Information

We reviewed a statistically valid stratified sample of 99 of the 516 FOIA exemption (b)(7) requests closed between October 1, 2022, and March 31, 2023, for which the IRS withheld information from the requestor.⁵ We determined that the IRS correctly withheld information using FOIA exemption (b)(7) for 98 (99 percent) of the 99 FOIA information requests we sampled.⁶ This was an improvement when compared to our last report, in which we reported that the Disclosure Office did not follow FOIA redaction requirements for 11 of the 83 requests reviewed.⁷ For this reporting period, the only exception we identified involved human error. Based on our sample results, we estimate that the IRS erroneously applied the (b)(7) exemption on approximately five of the 516 FOIA exemption (b)(7) information requests closed between October 1, 2022, and March 31, 2023, based on our statistical projection. Because this error was not systemic in nature, we did not make a recommendation for this issue.



Information Was Properly Withheld in All Internal Revenue Code Section 6103 Cases Reviewed

We reviewed all 10 I.R.C. § 6103(c) and (e) requests closed between October 1, 2022, and March 31, 2023, for which the IRS withheld information from the requestor. We did not identify any disclosure errors in these cases.

⁵ Our sample was selected using a 90 percent confidence interval, a 1 percent error rate for denials in full, a 13 percent error rate for denials in part, and a ± 5 percent precision factor. When projecting the results of our statistical sample, we are 90 percent confident that the actual number of requests for which FOIA requirements were not followed when redacting information is between one and 13 (for which one and 13 represent the lower and upper range, respectively). The strata consisted of 94 cases partially denied and five cases denied in full. We used a statistical sample because we planned to project to the population.

⁶ The one error was in the partially denied stratum.

⁷ TIGTA, Report No. 2023-10-055, *Fiscal Year 2023 Mandatory Review of Compliance With the Freedom of Information Act* p. 3 (Sept. 2023). The prior report covered cases closed during all of Fiscal Year (FY) 2022; this report is limited to cases closed during the first six months of FY 2023.

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 FOIA exemption 5 U.S.C. § 552(b)(7) or I.R.C. § 6103. To accomplish our objective, we:

- Reviewed the applicable policies, procedures, and controls that were in place to provide reasonable assurance that the IRS complied with the FOIA and I.R.C. § 6103(c) and (e) when denying information.
- Determined whether IRS disclosure officers adhered to statutory requirements when denying written requests received from taxpayers under the FOIA.
 - Obtained a database extract for the period October 1, 2022, through March 31, 2023, and identified 516 FOIA cases closed as denied or partially denied [based on FOIA exemption (b)(7)] out of a total population of 3,533.¹
 - Reviewed a statistically valid stratified sample of 99 denied or partially denied cases and determined if the decision to withhold information was appropriate and the record search was adequately documented. Our stratified sample was selected using a 90 percent confidence interval, a 13 percent error rate for requests denied in part, a 1 percent error rate for requests denied in full, and a ± 5 percent precision factor. When projecting the results of our statistical sample, we are 90 percent confident that the actual number for which FOIA requirements were not followed when redacting information is between 1 and 13 (for which 1 and 13 represent the lower and upper range, respectively). We used a statistical sample because we planned to project to the population. TIGTA's contracted statistician assisted with developing the sampling plan. In cases where we determined that information was improperly withheld, we identified and documented the potential cause(s).
 - Discussed any exception cases with the Office of Privacy, Governmental Liaison, and Disclosure management to obtain agreement. We projected the number of exception cases to the partially denied FOIA population of 498 cases. We coordinated with TIGTA's contracted statistician to ensure the accuracy of the projection.
- Determined whether IRS disclosure officers adhered to legal requirements when denying written requests received from taxpayers under I.R.C. § 6103.
 - Obtained a database extract for the period October 1, 2022, through March 31, 2023, and identified all 10 closed I.R.C. § 6103(c) and (e) requests tracked in the Disclosure Office's computer system.²

¹ There were 18 denied cases, 498 partially denied cases, and 3,017 cases released in full for a total population of 3,533 FOIA cases. The total of 516 represents 18 denied cases plus 498 partially denied cases.

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.

- Reviewed all I.R.C. § 6103(c) and (e) cases where the request was denied or partially denied and determined if the decision to withhold information was appropriate and the record search was adequately documented.

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 September 2023 through March 2024. 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; Jennifer Earls, Audit Manager; and Donald L. Wall, Jr., Lead Auditor.

Data Validation Methodology

We received a database extract from the IRS's Office of Privacy, Governmental Liaison and Disclosure and performed tests to assess the reliability of its data. We reviewed the data and compared the FY 2023 record numbers in the Disclosure Office's computer system to the IRS provided data extract for the same period to determine if the number of records seemed reasonable. We also confirmed that there were no duplicate records or blank records. Additionally, we compared a sample of six FOIA records and six I.R.C. § 6103(c) and (e) records from the FY 2023 database extract with the actual computer system (source) for reliability of data. Finally, we interviewed agency officials who are knowledgeable about the data and determined that the FOIA and I.R.C. § 6103(c) and (e) data in the FY 2023 database extract 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 a statistically valid sample of closed FOIA information requests based on exemption (b)(7) and reviewing I.R.C. § 6103(c) and (e) information requests.

Appendix II

Abbreviations

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



**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.