

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JUDICIAL WATCH, INC.,)
)
Plaintiff,)
)
v.) Civil Action No. 13-1559-EGS
)
INTERNAL REVENUE SERVICE,)
)
Defendant.)

PLAINTIFF’S RESPONSE TO DEFENDANT’S NOTICE

Plaintiff Judicial Watch, Inc. (“Judicial Watch”), by counsel, respectfully submits this response to Defendant’s Notice dated May 7, 2015.

1. Defendant Internal Review Service (“IRS”) filed a Notice with the Court on May 7, 2015. (DKT No. 44). The Notice advised Plaintiff and the Court that the Treasury Inspector General for Tax Administration (“TIGTA”) has provided the IRS with an unidentified quantity of emails recovered from IRS backup tapes. The Notice did not state whether the emails are from all or only a subset of the 1,268 backup tapes located since July 1, 2014. Nor did it state whether additional emails remain to be recovered.

2. Undersigned counsel has repeatedly requested information from agency counsel about the status of emails recovered by TIGTA. During an April 13, 2015 telephone conference in two related FOIA lawsuits (*Judicial Watch, Inc. v. IRS* (15-220) and *Judicial Watch, Inc. v. IRS* (15-237)), the undersigned counsel asked for confirmation that the IRS had requested copies of all emails recovered by TIGTA, as reported by TIGTA’s Inspector General and Deputy Inspector General to the Congressional Committee on Oversight and Government Reform on February 26, 2015. See <http://oversight.house.gov/hearing/irs-tigta-update/>.

3. Agency counsel responded that the IRS is under no obligation to request copies of the emails recovered by TIGTA because they are allegedly not agency records. The IRS's position is extraordinary considering that, not only are the backup tapes and emails obviously IRS records, but the Court went to great lengths to address the issue of the "missing" emails, including holding a status conference, ordering a meet and confer before a magistrate judge, and ordering the IRS to submit multiple declarations about its efforts to recover or locate the emails. The IRS never mentioned the tapes in the seven declarations it submitted to the Court in August 2014 or during the meet and confer process. The IRS's position also ignores the undisputed fact that the tapes were within the agency's custody and control when Plaintiff submitted its FOIA request, yet the IRS failed to identify, locate, or search the tapes when it responded to the request. *See Ex. 1 at pp. 24-27, 49-56 (TIGTA Testimony Tr. Feb. 26, 2015).*

4. On February 26, 2015, TIGTA Inspector General J. Russell George and Deputy Inspector General Timothy P. Camus testified that they had obtained 744 backup tapes containing emails from Ms. Lerner's email account. Specifically, Mr. Camus testified that, on June 30, 2014, TIGTA asked the IRS to produce all backup up tapes used to back up Ms. Lerner's email account and, only one day later, on July 1, 2014, the IRS identified and produced 744 backup tapes to TIGTA. *Id.* at pp. 49-50. An additional 424 backup tapes were identified and produced to TIGTA in early February 2015. According to Inspector General George and Deputy Inspector General Camus' testimony, 32,774 unique emails from IRS Exempt Organizations Director Lois Lerner's email account were recovered from the initial 744 tapes. Plaintiff is unaware whether any of Ms. Lerner's emails have been recovered from the 424 subsequently discovered tapes.

5. The aforementioned testimony is uncontested that the recovered emails are from the email accounts of IRS officials, including Ms. Lerner, and cover the time period of Plaintiff's

request. The testimony also is unequivocal that the IRS reported publicly that any backup tapes had been recycled and were no longer available without asking its technicians whether the tapes existed. Mr. Camus also testified that hard drives previously reported by the IRS to have been destroyed had not, in fact, been destroyed. *See* <http://oversight.house.gov/wp-content/uploads/2015/02/TIGTA-Testimony.pdf> at p. 3.

6. Because the emails recovered from the backup tapes are responsive to Plaintiff's FOIA request, Plaintiff respectfully requests that the Court order the IRS to submit to the Court a report by June 12, 2015 addressing the status of the emails recovered by TIGTA. The report should include:

(a) clarification as to whether all emails that have been recovered by TIGTA have now been turned over to the IRS for review and processing in response to Plaintiff's request, the volume of those emails, and the time frame in which the IRS anticipates completing its review and production of responsive emails, and

(b) clarification as to whether the processing is complete for all 1,268 backup tapes to determine what emails are recoverable, and if not, when the processing is expected to be complete.

Dated: June 2, 2015

Respectfully submitted,

/s/ Ramona R. Cotca
Ramona R. Cotca, D.C. Bar No. 501159
JUDICIAL WATCH, INC.
425 Third Street SW, Suite 800
Washington, DC 20024
(202) 646-5172

Attorneys for Plaintiff

EXHIBIT 1

1

2

3

4

5

Committee on Oversight and Government Reform

6

Meeting

7

February 26, 2015

8

9

10

11

12

13

14

15

16

17

18

19

20

Job No.: 79514

21

Pages: 1 - 143

22

Transcribed by: Stephanie L. Hummon, RPR

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
MEETING

2

1 CHAIRMAN CHAFFETZ: The Committee on
2 Oversight and Government Reform will come to order.

3 Without objection, the Chair is
4 authorized to declare a recess at any time.

5 The Internal Revenue Service, the IRS,
6 perhaps no other agency, no other institution in
7 our government causes more fear, more concern, more
8 distress, or outright panic at the mere mention of
9 their name than the IRS.

10 Entanglement with the IRS is never good.
11 Most Americans work hard, pay their taxes, and just
12 want to live a life free of harassment. And most
13 of the IRS employees are good, decent,
14 hard-working, patriotic people doing a tough job
15 working for the government and are honest in their
16 dealings. But, unfortunately, not all of them.

17 Nearly two years ago, the Treasury
18 Inspector General for Tax Administration, often
19 referred to as "TIGTA," did an audit that confirmed
20 what many on this committee had feared and heard:
21 The IRS was targeting and delaying the applications
22 for 501(c)(4) status of conservative nonprofit

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
MEETING

3

1 organizations because of their political beliefs.
2 The IRS was on the lookout for applications that
3 focused on the national debt, quote, "criticized
4 how the country was run," end quote, or that sought
5 to educate the public on how to, quote, "make
6 America a better place to live," unquote.

7 These were conservatives trying to play
8 by the rules, but some in the IRS didn't want them
9 in the game. They didn't even want them to have a
10 voice.

11 When it was first revealed that the IRS
12 was targeting Americans and suppressing their First
13 Amendment rights because of their political
14 beliefs, President Obama said this, quote, "If, in
15 fact, IRS personnel engaged in the kind of
16 practices that have been reported on, and were
17 intentionally targeting conservative groups, then
18 that's outrageous and there's no place for it, and
19 they have to be held fully accountable. Because
20 the IRS, as an independent agency, requires
21 absolute integrity, and the people have to have
22 confidence that they are applying the laws in a

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
MEETING

4

1 nonpartisan way," end quote.

2 I agree with the President. He was
3 absolutely and totally right.

4 But sometime right before the Super Bowl
5 rolled around, before any of the investigations
6 were complete, the President concluded there was,
7 quote, "not even a smidgen of corruption," end
8 quote. I have no idea how the President came to
9 such a definitive conclusion without all the facts,
10 but he obviously sent a signal as to how he would
11 like this to be concluded.

12 On the one hand, the President has come
13 to a conclusion, and, on the other hand, there's an
14 ongoing investigation by the Inspector General and
15 the Department of Justice.

16 But Congress has a role. As the new
17 chairman of the committee, I thought it would be
18 appropriate to get an update on the investigation
19 from the Inspector General. I want us to focus on
20 the facts, wherever they may lead us.

21 And, thus far, the IRS, and specifically
22 its Commissioner, has given us a lot of different

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
MEETING

5

1 answers to some fairly simple questions.

2 The Oversight Committee subpoenaed the
3 IRS in August of 2013 seeking emails from Lois
4 Lerner, as well as others involved in the
5 targeting. Months later, we did not have all the
6 Lois Lerner emails.

7 In an Oversight hearing on March 26,
8 2014, Commissioner Koskinen testified under oath
9 that he had all the emails and he would produce all
10 the emails.

11 Yet, on June 13, 2014, the IRS sent a
12 letter to the Senate Finance stating a multiyear
13 tranche of Lois Lerner's emails had been destroyed.
14 A June 13, 2014, letter sent to Senate Finance
15 said, quote, "IRS confirmed the backup tapes from
16 2011 no longer exist because they've been recycled
17 pursuant to the IRS normal policy," end quote.

18 June 20, 2014, before Ways and Means,
19 Chairman Camp said, quote, "Your letter describes
20 the Lois Lerner emails as being unrecoverable," end
21 quote. Commissioner Koskinen, quote, "Correct,"
22 end quote.

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
MEETING

6

1 February 11, 2015, in an Oversight
2 hearing, Mr. DeSantis of Florida says, quote, "You
3 made the effort. You were not cavalier about this.
4 You made the effort to find what the committee
5 wanted," end quote. Mr. Koskinen, quote, "Yes,"
6 end quote.

7 The IRS Commissioner has said they went
8 to, quote, "great lengths" and made extraordinary
9 efforts to recover the emails. This is but a small
10 sampling of the Commissioner's definitive and
11 precise statements about the missing emails. Yet I
12 believe what we will hear this evening is far
13 different than we were led to believe.

14 To the men and women in the Inspector
15 General office, we cannot thank you enough for your
16 hard work, the long days that you're working to get
17 the information to the American public and for this
18 committee.

19 We look ultimately to reading the final
20 report, but it is appropriate to give an update
21 today, and so we appreciate you being here.

22 With that, I will yield back and

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
MEETING

24

1 the original 744 backup tapes we obtained in July
2 of 2014. We have taken possession of an additional
3 424 tapes, and we are in the early stages of
4 understanding if they have been erased, and if any
5 of these older tapes contain emails or data of
6 interest to the investigation.

7 In summary, to date, we have found 32,774
8 unique emails that were backed up from Lois
9 Lerner's email box. We are in the process of
10 comparing these emails to what the IRS has already
11 produced to Congress to determine if we did, in
12 fact, recover any new emails. We also are in the
13 process of having the email server hard drives
14 analyzed to determine if there are any readable
15 emails that can be recovered from these hard
16 drives.

17 And, finally, we are continuing to
18 determine if there are any other sources that may
19 contain Lois Lerner emails.

20 As I noted earlier, this is an ongoing
21 investigation, and I have provided the information
22 that I believe will not hinder our ability to

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
MEETING

25

1 continue our investigation, while simultaneously
2 providing the Congress with the progress on the
3 email search.

4 Thank you.

5 CHAIRMAN CHAFFETZ: Thank you. I'll now
6 recognize myself for five minutes.

7 Mr. Camus, from the time you started to
8 try to find the tapes that contained the emails,
9 how long did it actually take you to find them?

10 MR. CAMUS: We started the process when
11 we opened the investigation. We obtained the
12 backup tapes June 30th. And by November 13, I
13 believe it was, was the first time we saw Lois
14 Lerner emails.

15 CHAIRMAN CHAFFETZ: But from the time you
16 sought to go find the emails to the time -- the
17 tapes to the time you actually got to the place in
18 West Virginia, how long did that take?

19 MR. CAMUS: Literally about two weeks.

20 CHAIRMAN CHAFFETZ: So, despite
21 everything that the IRS said, from the time you
22 started to the time you found them was about two

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
MEETING

26

1 weeks.

2 MR. CAMUS: Correct.

3 CHAIRMAN CHAFFETZ: When you showed up
4 and talked to the IT people and said, well, what's
5 happened here, what did they tell you?

6 MR. CAMUS: They cooperated and answered
7 our questions fully.

8 CHAIRMAN CHAFFETZ: Had anybody ever
9 asked them for the tapes?

10 MR. CAMUS: No.

11 CHAIRMAN CHAFFETZ: So we send a
12 subpoena. We send letters. We have hearings. We
13 hear all kinds of excuses from the IRS. They can't
14 have them. They're recycled. They've been
15 destroyed. They're not available. We can't
16 find -- I mean, every excuse you can have under the
17 sun. You start. You find them in two weeks. And
18 then when you go talk to the IT people who are
19 there in charge of them, they told you that
20 they were never even asked for them; is that
21 correct?

22 MR. CAMUS: That's correct.

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
MEETING

27

1 CHAIRMAN CHAFFETZ: Are there potentially
2 even more tapes?

3 MR. CAMUS: Well, we believe there may be
4 additional tapes that we just learned of two weeks
5 ago.

6 CHAIRMAN CHAFFETZ: Are you investigating
7 any potential criminal activity?

8 MR. CAMUS: The entire matter continues
9 to be under active investigation, yes, sir.

10 CHAIRMAN CHAFFETZ: For potential
11 criminal activity?

12 MR. CAMUS: Yes.

13 CHAIRMAN CHAFFETZ: The IRS first knew
14 that there were problems with the emails back in
15 February of 2014, didn't they?

16 MR. CAMUS: I believe that's -- that's
17 correct.

18 CHAIRMAN CHAFFETZ: By April of 2014,
19 they had concluded that they had a problem on their
20 hands. But it wasn't until June of 2014 that TIGTA
21 actually became aware that there were problems,
22 correct?

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
MEETING

49

1 I now recognize --

2 MS. MALONEY: Will the gentleman yield?
3 Will the gentleman yield?

4 CHAIRMAN CHAFFETZ: I'm going to
5 recognize the gentleman from Ohio, Mr. Jordan, for
6 five minutes.

7 MR. JORDAN: I thank the Chairman.

8 Mr. Camus, we learned from John Koskinen
9 and the IRS that they had lost the backup tapes, or
10 that the backup tapes no longer existed, when we
11 got a letter -- well, the letter went to the Senate
12 Finance Committee, but that's when we learned,
13 that's when the American people learned.
14 When did you learn? When did the IRS tell you that
15 the backup tapes didn't exist?

16 MR. CAMUS: The same -- the same time as
17 everybody else.

18 MR. JORDAN: So you learned like everyone
19 else?

20 MR. CAMUS: Yes, I did.

21 MR. JORDAN: Okay. And then when did you
22 find the tapes that the IRS said didn't exist?

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
MEETING

50

1 MR. CAMUS: We asked for them on June
2 30th, and we had them by July 1st.

3 MR. JORDAN: That's where -- that's where
4 the Chairman was a few minutes ago.

5 MR. CAMUS: Yes.

6 MR. JORDAN: So you learned like the
7 whole world, and then, as the Chairman said, 15
8 days later, you find them. How'd you find them?

9 MR. CAMUS: We asked for them, and we
10 demanded them.

11 MR. JORDAN: But, I mean, how'd you
12 actually get the physical tapes? What'd you do?

13 MR. CAMUS: Well, we identified the IRS
14 experts that would know where the tapes are. We
15 interviewed them, and we obtained them.

16 MR. JORDAN: Did you get in a car and
17 drive to Martinsburg, West Virginia?

18 MR. CAMUS: That's correct.

19 MR. JORDAN: Yeah. You just got in the
20 car, we drove to the place that had the tapes and
21 said, "Can we see the tapes? Here they are." Yeah.
22 And those people, when you got the tapes from them,

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
MEETING

51

1 you said, "Hey, by the way, did the IRS ask you --
2 did they come out and ask you if the tapes were
3 here?" You asked them that question, right? And
4 their answer was?

5 MR. CAMUS: No.

6 MR. JORDAN: No, they didn't. So you
7 just did something pretty simple. Where are the
8 tapes? I'm going to get in the car, I'm going to
9 drive, and I'm going to get the tapes.

10 Now, as the Chairman pointed out, for
11 four months, the IRS knew they lost the tapes --
12 lost them -- and didn't tell us. And then told the
13 whole world, told you on June 13th, and within a
14 few days, you had those tapes. And there were 770
15 and -- or, excuse me, 744 tapes you got on July
16 1st.

17 MR. CAMUS: Correct.

18 MR. JORDAN: When you drove to
19 Martinsburg and actually got the tapes?

20 MR. CAMUS: That's right.

21 MR. JORDAN: Okay. So you have that
22 number -- you had a lot of numbers in your

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
MEETING

52

1 testimony, but I want to focus on that number.
2 And then I want to focus on, were these the only
3 tapes you have gotten -- or you've actually gotten
4 in your possession? Are these the only tapes
5 you've got?

6 MR. CAMUS: No. We -- two weeks ago, we
7 recovered an additional 424 tapes.

8 MR. JORDAN: All right. So that's what
9 you pointed out near the end of your testimony.
10 So 744 tapes originally. Now, just two weeks ago,
11 you obtained 424 more. How'd you find out about
12 these tapes?

13 MR. CAMUS: As we were following up on
14 our initial interviews, we realized that we were
15 missing a document. When we obtained that document
16 and reviewed it, we realized that there were an
17 additional population of tapes that had been
18 unaccounted for.

19 MR. JORDAN: So, missing a document.
20 Whose document was that, and who should have given
21 you that document?

22 MR. CAMUS: It was an IRS document.

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
MEETING

53

1 MR. JORDAN: So they withheld a document
2 from you that prevented you from figuring out there
3 were more tapes than these 744; is that accurate?

4 MR. CAMUS: "Withholding the document," I
5 can't characterize that at the time because that's
6 still under investigation.

7 MR. JORDAN: They didn't give you a
8 document, and by not having the document, you
9 couldn't figure out that there were more tapes out
10 there with potentially more Lois Lerner emails on
11 them; is that correct?

12 MR. CAMUS: That would be accurate.

13 MR. JORDAN: Yeah. So any concerns about
14 the fact that that document wasn't there? And how
15 did you figure out that the document was missing?

16 MR. CAMUS: Just following up. As
17 we're -- as we're coming down to the conclusion of
18 our investigation, we make sure we have all the
19 documents. So when we determined that we were
20 short one document, we went and demanded it, and we
21 obtained it. Then we were able to notice that
22 there were a population of tapes that had never

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
MEETING

54

1 been disclosed.

2 MR. JORDAN: And were those -- where were
3 those tapes? The same place?

4 MR. CAMUS: They were also in
5 Martinsburg.

6 MR. JORDAN: So you got in the car and
7 drove there again, right?

8 MR. CAMUS: Yes, we did.

9 MR. JORDAN: You got more tapes?

10 MR. CAMUS: We did.

11 MR. JORDAN: Amazing. Amazing. So, now,
12 here's the key. And this is -- the Chairman, in
13 his opening round of questions. So when you have
14 the IRS take four months to tell you something, and
15 they don't even go to the place -- you figured out
16 in two weeks, you got in a car, drove there, and
17 got them, the IRS says they don't exist. Right?
18 You can -- you can find them in two -- two weeks,
19 get access to those tapes, and then you learned
20 that there -- so four months there, you get it in
21 two weeks. And then you learn that they're not
22 giving you the documents that you need to find even

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
MEETING

55

1 more tapes.

2 So when the Chairman asked the important
3 question: Is there potentially criminal activity
4 here, your answer was?

5 MR. CAMUS: There is potential criminal
6 activity.

7 MR. JORDAN: And that's -- that's --
8 that's the thing, right? I mean, it sure smells
9 like it. If the IRS takes four months to tell us
10 something as important as: We lost Lois Lerner's
11 emails, and their excuse is: We're doing our due
12 diligence, we're doing everything we darn well can
13 do to get those, and then when they do make it
14 public to the whole world -- they didn't tell you
15 ahead of time. They told you when they told the
16 whole world. And in two weeks, you got them.
17 Suddenly, they're, "Oh, wait a minute" -- well, two
18 weeks to get them.

19 And then you find out, in addition to
20 that, they're withholding documents that uncover
21 even more tapes. So we're not talking 744 tapes.
22 We're talking over 1100 tapes that we now have.

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
MEETING

56

1
2 And so, of course, this -- that's why
3 we're -- she's done left. She should have stayed.
4 This is why we're having the hearing. When the
5 American people understand 1100 tapes that the IRS
6 said, "They're gone, we can't get them," and all
7 you do is get in a car, drive to Martinsburg, West
8 Virginia -- not that far, one state over -- and get
9 the tapes. Holy cow. Of course -- we should have
10 had this hearing two weeks ago when you first
11 learned that those tapes -- those 424 tapes were
12 out there.

13 CHAIRMAN CHAFFETZ: Thank the gentleman.

14 MR. JORDAN: My time's expired. I yield
15 back.

16 CHAIRMAN CHAFFETZ: Now recognize the
17 gentleman from the Massachusetts, Mr. Lynch, for
18 five minutes.

19 MR. LYNCH: Thank you, Mr. Chairman.
20 And I want to thank Mr. George and Mr. Camus for
21 your help tonight. Although, I have serious
22 misgivings about doing this hearing halfway through

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
MEETING

142

1 late. I appreciate the staff who's staying here
2 working late, other Members that are here.
3 And, certainly, we appreciate you and your
4 testimony here. The work that you do within your
5 organization is vital. It's important to Congress.
6 Please let the men and women who work so hard day
7 in and day out know that it is appreciated, it is
8 needed, we do pay attention to it. And we thank
9 them for their good, hard work.

10 This committee stands adjourned.

11

12

13

14

15

16

17

18

19

20

21

22

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
MEETING

143

1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

2 I, Stephanie Hummon, Registered
3 Professional Reporter, do hereby certify that the
4 foregoing transcript is a true and correct
5 record of the proceedings; that said proceedings
6 were taken by me stenographically and thereafter
7 reduced to typewriting under my supervision; and
8 that I am neither counsel for, related to, nor
9 employed by any of the parties to this case and
10 have no interest, financial or otherwise, in its
11 outcome.

12 IN WITNESS WHEREOF, I have hereunto set
13 my hand and affixed my notarial seal this 7th day
14 of April, 2015.

15
16 My commission expires June 18, 2015.

17
18
19 _____
20 NOTARY PUBLIC IN AND FOR
21 THE STATE OF MARYLAND