

VIA FAX

April 27, 2017

IRS FOIA Request
HQ FOIA
Stop 211
PO Box 621506
Atlanta, GA 30362-3006
Fax: 877-807-9215

Dear FOIA Officer,

This letter constitutes a request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and is submitted on behalf of the Electronic Privacy Information Center (“EPIC”) to the Internal Revenue Service (“IRS”).

EPIC seeks records concerning the IRS’s use (or contemplated use) of its power to release tax information under 26 U.S.C. § 6103(k)(3).

Documents Requested

- (1) All records concerning the IRS’s use (or contemplated use) in 1981 of its power to release tax information under 26 U.S.C. § 6103(k)(3), including but not limited to communications with the Joint Committee on Taxation.
- (2) All records concerning the IRS’s use (or contemplated use) in 1997 of its power to release tax information under 26 U.S.C. § 6103(k)(3), including but not limited to communications with the Joint Committee on Taxation.
- (3) All other records concerning the IRS’s use (or contemplated use) of its power to release tax information under 26 U.S.C. § 6103(k)(3), including but not limited to communications with the Joint Committee on Taxation.

Background

Section 6103(k)(3) of the Internal Revenue Code (Title 26) reads in full:

Disclosure of return information to correct misstatements of fact. -- The Secretary may, but only following approval by the Joint Committee on Taxation, disclose such return information or any other information with respect to any specific

taxpayer to the extent necessary for tax administration purposes to correct a misstatement of fact published or disclosed with respect to such taxpayer's return or any transaction of the taxpayer with the Internal Revenue Service.

Section 6103 was enacted as part of the Tax Reform Act of 1976 in order to strengthen the accountability of the IRS. Senator Weicker (R-CT) described the Act as a “legislative remedy to the flaws of Government exposed by the chain of abuses we call Watergate.”¹ Paragraph (k)(3) in particular was intended to ensure the “integrity and fairness [of the IRS] in administering the tax laws.”²

The IRS has pursued disclosure of tax information under § 6103(k)(3) on at least two occasions. In 1981, the IRS announced that it would request § 6103(k)(3) approval from the Joint Committee on Taxation to disclose the returns of so-called “tax protesters” in order to “refute false charges . . . that we are letting them get away with not filing or that we are harassing them.”³ IRS Commissioner Roscoe L. Egger, Jr. explained at the time:

[I]t is possible for public confidence in the government’s ability to fairly and firmly administer the tax laws to be jeopardized if the illegal tax protestor “movement” continues to grow. For this reason, we think it is essential, despite the cost and effort, to enforce the laws violated by these individuals, and to demonstrate to the public that these tactics should not be attempted by others.⁴

In 1997, IRS Commissioner Margaret Richardson “requested the opportunity to explore with [Joint Committee on Taxation] Chairman Archer and Chairman Roth the possibility of using Code section 6103(k)(3) to permit the IRS to correct misstatements of fact regarding examinations of tax-exempt organizations.”⁵ Richardson explained that “unfounded reports erode public confidence in the integrity of the IRS, thereby undermining the self-assessment compliance system.”⁶

It is not known whether the IRS has used (or considered using) its § 6103(k)(3) disclosure power on other occasions.

On February 16, 2017, EPIC submitted a separate FOIA request to the IRS seeking “all of Donald J. Trump’s individual income tax returns for tax years 2010 forward, and any other

¹ 122 Cong. Rec. 24,013 (statement of Sen. Weicker).

² *Confidentiality of Tax Return Information: Hearing Before the Comm. on Ways and Means*, 94th Cong. 22–23 (1976) (statement of Donald C. Alexander, Commissioner of Internal Revenue).

³ Roscoe L. Egger, Jr., *Commissioner Egger’s Remarks on Abusive Tax Shelters* (Oct. 6, 1981), 1981 WL 176410; see also Ray Walden, *Tax Protest Evangelism*, Neb. L. Rev. 681, 731 (1982) (citing NEWSWEEK, Oct. 5, 1981, at 69) (“The Service has asked for Congressional permission to publicize tax returns of protest leaders, as a way to discredit their sales pitches.”), <http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=2011&context=nlr>.

⁴ *IRS Response to the Illegal Tax Protester Movement: Hearing Before the Commerce, Consumer and Monetary Affairs Subcomm. of the H. Comm. on Gov’t Operations*, 97th Cong. 106 (1981) (opening statement of Roscoe L. Egger, Jr.).

⁵ Joint Committee on Taxation, Report of Investigation of Allegations Relating to Internal Revenue Service Handling of Tax-Exempt Organization Matters, No. JCS-3-00, at 1 (2000).

⁶ Letter from Margaret Milner Richardson, Commissioner, IRS, to Hon. William V. Roth, Jr., Chairman, Senate Committee on Finance (Feb. 25, 1997).

indications of financial relations with the Russian government or Russian businesses.”⁷ In a letter dated March 2, 2017, the IRS stated that it was “closing [EPIC’s] request as incomplete with no further action.”⁸

On March 29, 2017, EPIC submitted an appeal and renewed FOIA request explaining EPIC’s right to access such records under 26 U.S.C. § 6103(k)(3) and urging the IRS Commissioner to “move promptly to obtain permission from the Joint Commission on Taxation to release the records EPIC has requested.”⁹ In a letter dated April 6, 2017, the IRS again stated that it was “closing [EPIC’s] request as incomplete with no further action.”¹⁰

On April 15, 2017, EPIC filed suit against the IRS¹¹ in the U.S. District Court for the District of Columbia “for injunctive and other appropriate relief to secure the release of agency records requested by [EPIC].”¹²

Request for Expedited Processing

EPIC is entitled to expedited processing under the FOIA.¹³ Specifically, expedited processing is justified because this request involves an “urgency to inform the public concerning actual or alleged Federal government activity . . . made by a person primarily engaged in disseminating information.”¹⁴

First, there is an “urgency to inform the public concerning actual or alleged Federal government activity”—namely, the IRS’s decision not to pursue disclosure of Donald J. Trump’s tax records.¹⁵

President Trump’s tax records are of enormous public interest: they establish the President’s potential conflicts of interest, his dealings with foreign governments, and his compliance with the Emoluments Clause of the U.S. Constitution.¹⁶ Though the IRS has statutory authority to release the President’s tax records with approval from the Joint Committee on Taxation,¹⁷ the agency has affirmatively refused to take any steps toward disclosure.

There is a clear urgency to inform the public about the legality—or illegality—of the IRS’s actions. Americans have a pressing need to know when and how the IRS has exercised its

⁷ Letter from Eleni Kyriakides, Fellow, EPIC, to IRS FOIA Officer (Feb. 16, 2017), <https://epic.org/foia/irs/trump-taxes/EPIC-17-02-16-IRS-FOIA-20170216-Request.pdf>.

⁸ Letter from Michael C. Young, Tax Law Specialist, IRS, to Eleni Kyriakides, Fellow, EPIC (Mar. 2, 2017), <https://epic.org/foia/irs/trump-taxes/EPIC-17-02-16-IRS-FOIA-20170306-IRS-Response.pdf>.

⁹ Letter from John Davisson, Fellow, EPIC, to IRS FOIA Officer (Mar. 29, 2017), <https://epic.org/foia/irs/trump-taxes/EPIC-17-02-16-IRS-FOIA-20170329-Appeal.pdf>.

¹⁰ Letter from David Nimmo, Disclosure Manager, IRS, to John Davisson, Fellow, EPIC (Apr. 6, 2017), <https://epic.org/foia/irs/trump-taxes/EPIC-17-02-16-IRS-FOIA-20170410-IRS-Response.pdf>.

¹¹ *EPIC v. IRS*, No. 17-670 (D.D.C. filed Apr. 15, 2017).

¹² Complaint for Injunctive Relief at 1, *EPIC v. IRS*, No. 17-670 (D.D.C. filed Apr. 15, 2017).

¹³ 5 U.S.C. § 552(a)(6)(E)(v)(II).

¹⁴ 26 C.F.R. § 601.702(c)(6)(i)(B).

¹⁵ *Id.*

¹⁶ See Letter from John Davisson to IRS FOIA Officer, *supra* note 9; Complaint for Injunctive Relief, *supra* note 12.

¹⁷ 26 U.S.C. § 6103(k)(3).

§ 6103(k)(3) authority before; whether the present circumstances are consistent with past cases in which the IRS pursued (k)(3) disclosure; and whether the IRS is unlawfully refusing to exercise its (k)(3) powers with respect to President Trump's tax information.

Further, these records “pertain to a matter of current exigency” well beyond “the public's right to know about government activity generally.”¹⁸ The very legitimacy of Donald J. Trump's presidency is at issue in his tax returns, yet the agency in control of those records has declined to release them. Any delay in a full accounting of the IRS's actions would “compromise a significant recognized interest to and throughout the American general public.”¹⁹ The stakes could scarcely be higher.

EPIC's pending FOIA lawsuit²⁰ for the release of President Trump's tax returns only heightens the urgency to inform the public. Delaying the release of the requested records will deny the public the opportunity to fully understand and assess the meaning of § 6103(k)(3) as the court considers the case.

Second, EPIC is an organization “primarily engaged in disseminating information.”²¹ As the court explained in *EPIC v. Department of Defense*, “EPIC satisfies the definition of ‘representative of the news media.’”²²

In submitting this detailed statement in support of expedited processing, I certify that this explanation is true and correct to the best of my knowledge and belief.²³

Request for “News Media” Fee Status and Fee Waiver

EPIC, which is “organized and operated to publish . . . information about current events or of current interest to the public,”²⁴ is a “representative of the news media” for fee classification purposes.²⁵ Based on EPIC's status as a “news media” requester, EPIC is entitled to receive the requested records with only duplication fees assessed.²⁶

Any duplication fees should also be waived as (1) the records “are likely to contribute to the general public's understanding of the agency's operations” and do not consist of “information . . . already available to the general public”; and (2) disclosure “is not primarily in the commercial interest of the requester.”²⁷

¹⁸ 26 C.F.R. § 601.702(c)(6)(i)(B).

¹⁹ *Id.*

²⁰ *EPIC v. IRS*, No. 17-670 (D.D.C. filed Apr. 15, 2017).

²¹ § 601.702(c)(6)(i)(B).

²² *EPIC v. Dep't of Def.*, 241 F. Supp. 2d 5, 15 (D.D.C. 2003).

²³ § 601.702(c)(6)(ii).

²⁴ § 601.702(f)(3)(ii)(B).

²⁵ *EPIC*, 241 F. Supp. 2d at 15.

²⁶ 5 U.S.C. § 552(a)(4)(A)(ii)(II). EPIC wishes “to have [copies of the requested records] made and furnished without first inspecting them.” § 601.702(c)(4)(i)(G).

²⁷ § 601.702(f)(2)(i).

First, “the releasable records are likely to contribute to the general public's understanding of the agency's operations or activities.”²⁸ As noted above, President Trump’s tax records are of enormous interest to the public: they establish the President’s potential conflicts of interest, his dealings with foreign governments, and his compliance with the Emoluments Clause of the U.S. Constitution.²⁹ Nevertheless, the agency has refused to pursue disclosure under § 6103(k)(3).

Given the gravity of that decision, records on the IRS’s past use of § 6103(k)(3) will enlighten the public considerably about a critical aspect of government operations. The public will learn when and how the IRS has exercised its (k)(3) authority before; whether the present circumstances are consistent with past cases in which the IRS pursued (k)(3) disclosure; and whether the IRS is unlawfully refusing to exercise its (k)(3) powers with respect to President Trump’s tax information.

Further, the requested records will contribute “*significan[tly]* . . . to the general public's understanding” of IRS activities.³⁰ There is very little information available to the public about the IRS’s past use of § 6103(k)(3).³¹ By publishing the requested records on the EPIC website,³² EPIC will add substantially to the store of public knowledge.

Second, as to the “existence and magnitude of the requester's commercial interest . . . being furthered by the releasable records,” EPIC has no commercial interest in the requested records.³³ EPIC is a registered non-profit organization committed to privacy, open government, and civil liberties.³⁴

For these reasons, a fee waiver should be granted.

Conclusion

As provided in 5 U.S.C. § 552(a)(6)(A)(i), I will anticipate your determination on our request within twenty working days.

For questions regarding this request I can be contacted at 202-483-1140x120 or FOIA@epic.org.

Respectfully submitted,

John Davisson
EPIC Fellow

²⁸ § 601.702(f)(2)(i)(C).

²⁹ *Supra* notes 7, 9, 12.

³⁰ § 601.702(f)(2)(i)(D) (emphasis added).

³¹ *E.g.*, “§ 6103(k)(3)”, Google, [https://www.google.com/search?q=%22%22%22%A7+6103\(k\)\(3\)%22](https://www.google.com/search?q=%22%22%22%A7+6103(k)(3)%22) (last visited Apr. 26, 2017) (listing four search results).

³² EPIC.org (2017), <https://epic.org/>.

³³ 5 U.S.C. § 552(a)(4)(A)(iii).

³⁴ *About EPIC*, EPIC.org (2017), <http://epic.org/epic/about.html>.