

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, DC 20515

January 22, 2016

The Honorable John Koskinen
Commissioner
Internal Revenue Services
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Commissioner Koskinen:

On January 19, 2016, the Internal Revenue Service (IRS) announced that it had destroyed records subject to a court's document preservation notice in an ongoing Freedom of Information Act (FOIA) lawsuit against Microsoft Corp. Specifically, the IRS stated that a hard drive belonging to Samuel Maruca, formerly the Director of Transfer Pricing of the IRS's Large Business and International Division, "was inadvertently not captured by the litigation hold for these cases," and thus was "sanitized" in April 2015 while the litigation was pending.¹ The Committee is concerned that the IRS's document retention practices are inadequate to ensure compliance with the law and therefore is requesting that the IRS comply with the oversight requests below.

This is not the first time the IRS has lost key records that were subject to a document hold. In the course of this Committee's investigation into the IRS's targeting of conservative organizations, the IRS disclosed that it had destroyed backup tapes containing thousands of Lois Lerner's records. Furthermore, the IRS did not inform Congress of the destruction for several months. In the Microsoft case, the IRS discovered the loss of records in December 2015, but did not disclose the loss until January 19, 2016.

In order for taxpayers to trust the IRS, they need to know that the IRS is dealing with them fairly and playing by the rules. The IRS, however, has demonstrated now at least twice that it is either unwilling or unable to obey basic rules of discovery before federal courts and before Congress.

It is unacceptable that the IRS again destroyed documents critical to legal proceedings and that the IRS again failed to disclose the loss of documents contemporaneously with the discoveries. The Committee is conducting oversight of

¹ *Microsoft Corp. v. IRS*, No. 2:15-cv-00369, Statement (W.D. Wash. Jan. 15, 2016)

1. The IRS's document retention and document destruction policies for IRS records, including employee email, hard copy, and computer records.
2. The IRS's policies regarding issuing document hold notices.
3. All policies referring or relating to the IRS's disclosure of loss of documents subject to a preservation order or document hold.
4. All documents referring or relating to the decision regarding when the IRS would disclose the sanitization of Mr. Maruca's hard drive.
5. All documents related to the document collection, review, and production in this case, including a list of personnel to whom any hold memorandum was delivered.
6. All documents related to the discovery that Mr. Maruca's records were destroyed.
7. In a June 8, 2015, letter, you stated that, "[o]nce a FOIA caseworker determines [a FOIA request] can be processed, the caseworker prepares a search memorandum to the appropriate function or business unit that is likely to have custody of and control over the records requested," and then that request is forwarded to the appropriate personnel. Please provide the original search memorandum associated with Microsoft's FOIA request and all of the transmission correspondence distributing that memorandum.
8. A list of all other court cases, investigations, or other legal actions since January 1, 2011, in which the IRS has lost, destroyed, or otherwise has been unable to locate records subject to a document hold and a narrative describing the circumstances surrounding those instances.

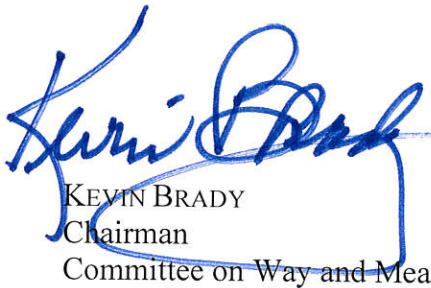
Additionally, please provide the following individuals for interviews with Committee staff by February 5:

1. The IRS employee who oversees the IRS records retention policy.
2. The IRS employee in the Disclosure function of the IRS Privacy, Governmental Liaison, and Disclosure Office who is responsible for operations of the FOIA process.
3. Mr. Ed Killen, Director, Privacy, Government Liaison, and Disclosure
4. The IRS employee who was in charge of ensuring documents were retained according to the hold notice in the Microsoft case.

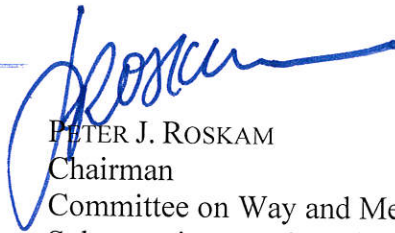
4. The IRS employee who was in charge of ensuring documents were retained according to the hold notice in the Microsoft case.

Please see the attached instructions regarding document productions. The Committee prefers that documents be delivered in electronic format. If you have any questions regarding this request, contact Amanda Neely with the majority staff at (202) 225-3783. Thank you for your attention to this matter.

Sincerely,



KEVIN BRADY
Chairman
Committee on Way and Means



PETER J. ROSKAM
Chairman
Committee on Way and Means
Subcommittee on Oversight