

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

March 2, 2023

The Honorable Douglas O'Donnell
Acting Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C. 20224

Dear Acting Commissioner O'Donnell

I write to you regarding my concerns over 100,000 taxpayers falling victim to multiple improper disclosures of their confidential tax information. The fact that the Internal Revenue Service (IRS) improperly published confidential taxpayer information once is bad enough. The fact that the agency put months into resolving the issue only to republish the exact same confidential taxpayer information again raises alarms about whether the agency is capable of upholding the fundamental principles – both legal and ethical – that are supposed to be part of the agency's core mission. The Committee on Ways and Means needs to gather documents and information to understand how this happened multiple times, and what the agency – and potentially Congress – needs to do to make sure it does not happen again.

Form 990-T, the form improperly published in these disclosures, is the business tax return used by tax-exempt entities, including tax-exempt organizations, government entities, and retirement accounts, to report and pay income tax on income that is generated from certain investments or income unrelated to their exempt purpose.¹ The IRS is required to publicly disclose this information for non-profits, also known as 501(c)(3) organizations. Similar information, however, was published for a subset of non-501(c)(3)s, which are not subject to public disclosure. Specifically, on August 8, 2022, the IRS discovered some machine-readable Form 990-T data was made available for bulk download on the Tax Exempt Organization Search (TEOS) that should not have been made public (hereinafter the “August Disclosures”).² In some instances, the data included individual names or business contact information.³

In accordance with the requirements of the Federal Information Security Modernization Act (FISMA) and criteria provided in the Office of Management and Budget (OMB) Guidance,

¹ Internal Revenue Service, About Form 990-T, Exempt Organization Business Income Tax Return (and proxy tax under section 6033(e)), <https://www.irs.gov/forms-pubs/about-form-990-t>. For example, exempt organizations use Form 990-T to report unrelated business income; figure and report unrelated business income tax liability; report proxy tax liability; claim a refund of income tax paid by a regulated investment company or a real estate investment trust on undistributed long-term capital gain; request a credit for certain federal excise taxes paid or for small employer health insurance premiums paid; and report unrelated business income tax on reinsurance entities. *Id.*

² Letter from Anna Canfield Roth, Acting Asst. Sec'y for Management, U.S. Department of the Treasury to The Hon. Bennie G. Thompson, Chairman, Committee on Homeland Security (Sept. 2, 2022), <https://s.wsj.net/public/resources/documents/IRSBREACH.pdf>.

³ *Id.*

the Department of the Treasury notified Congress of the inadvertent disclosures on September 2, 2022, and noted that the agency since corrected the disclosures of a subset of Forms 990-T.⁴ The notification also stated that IRS was reviewing the situation, and Treasury “instructed the IRS to conduct a prompt review of its practices to ensure necessary protections are in place to prevent unauthorized data disclosures.”⁵ According to the notification, in accordance with FISMA guidance, additional details – including summaries of the detection and response and remediation activities – would be forthcoming in 30 days.⁶ An internal programming error has since been cited as the cause for the August Disclosures.⁷

On September 23, 2022, the IRS produced a report to Congress explaining the nature of the August Disclosures. That report revealed:

- The improperly disclosed data was publicly available online for approximately eight months before the agency detected the error.
- A summary of what was disclosed, the types of taxpayers impacted, the type of information disclosed, and provided a series of “preventative measures” the IRS would take to address the root cause of the August Disclosures.
- The information disclosed included names, phone numbers, business addresses, compensation attributable to unrelated businesses, preparer tax identification numbers, and limited financial information.

As if the first incident was not bad enough, in November 2022, the IRS *republished* the confidential data of about 112,000 taxpayers and this data remained online until early December 2022 (hereinafter the “November Disclosures”).⁸ This time, instead of an internal programming error, the contractor tasked with managing the database—Accenture—re-uploaded the old files with the original data instead of the new files provided by the IRS on November 23, 2022, that excluded the forms which should not have been uploaded.⁹

Confidential taxpayer information must be protected, and I am extremely concerned that this information was disclosed not once, but twice. These disclosures should have never happened. More must be done to prevent such disclosures from happening in the future and to protect confidential taxpayer information. Therefore, we request that you produce the following documents relating to the August Disclosures and the November Disclosures:

1. All documents and communications relating to the how the IRS learned about the August Disclosures.
2. All documents and communications relating to how the IRS learned about the November Disclosures.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Chris Cioffi, *IRS Accidentally Releases 112,000 Taxpayers' Private Data Again*, BLOOMBERG TAX (Dec. 15, 2022), <https://news.bloombergtax.com/daily-tax-report/irs-accidentally-releases-112-000-taxpayers-private-data-again>.


⁸ *Id.*

⁹ *Id.*


3. All documents and communications relating to details about the nature of the private information disclosed in both the August Disclosures and November Disclosures.
4. All documents and communications relating to remediation efforts taken between the August Disclosures and the November Disclosures.
5. All documents and communications related to the decision to use an external contractor to update and re-publish the data that led to the November Disclosures.
6. All documents and communications relating to the duties assigned to the contractor that published the data related to the November Disclosures, including but not limited to any Memorandum of Understanding between the agency and the contractor.
7. All documents and communications relating to any agency investigation or other effort to determine how the November Disclosures occurred.
8. All existing contracts between the relevant contractor and the IRS.
 - a. Please also provide a list of IRS employees responsible for management of the contractor involved in either the August Disclosures or the November Disclosures.
9. All documents and communications relating to providing notice to taxpayers who had information improperly published by the IRS in the August Disclosures and/or November Disclosures.

Thank you for your attention to this request. Please produce documents responsive to this request by March 16, 2023. To schedule delivery of the requested documents or ask any follow-up questions, please contact Sean Clerget of the Ways and Means Committee staff.

Sincerely,



Jason Smith
Chairman
Committee on Ways and Means



David Schweikert
Chairman
Subcommittee on Oversight
Committee on Ways and Means