

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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<https://oversight.house.gov>

July 29, 2021

The Honorable Charles P. Rettig
Commissioner
Internal Revenue Service
1111 Constitution Avenue NW
Washington, D.C. 20224

Dear Commissioner Rettig:

Over the last several weeks, *ProPublica* has published a series of stories regarding the private tax information of prominent wealthy Americans.¹ According to *ProPublica*, the news source has obtained “a vast trove of Internal Revenue Service data on the tax returns of thousands of the nation’s wealthiest people, covering more than 15 years.”² *ProPublica* has since used this information, which shows no evidence of any wrongdoing by any subjects of the articles, to conclude that “billionaires . . . pay little in income tax compared to their massive wealth,”³ implying certain Americans should be obligated to pay more than legally required.

As *ProPublica* acknowledges, “[t]ax information is among the most zealously guarded secrets in the federal government.”⁴ Indeed, 26 U.S.C § 6103 states “[r]eturns and return information shall be confidential” and that “no other person (or officer or employee thereof) who has had access to returns or return information . . . shall disclose any return or return information obtained by him in any manner in connection with his service . . .” Though some exceptions do exist to this requirement, no exception exists for providing information to a news or so-called public interest organization. It is therefore deeply disturbing that *ProPublica*—or anybody outside of those with authorized access—has obtained, let alone analyzed and reported, tax information on any individual taxpayer.

¹ See, e.g., Jesse Eisinger, Jeff Ernsthansen, and Paul Kiel, *The Secret IRS Files: Trove of Never-Before-Seen Records Reveal How the Wealthiest Avoid Income Tax*, PROPUBLICA (June 8, 2021), available at <https://www.propublica.org/article/the-secret-irs-files-trove-of-never-before-seen-records-reveal-how-the-wealthiest-avoid-income-tax> [hereinafter June 8 Article]; Justin Elliott, Patricia Callahan, and James Bandler, *Lord of the Roths: How Tech Mogul Peter Thiel Turned a Retirement Account for the Middle Class Into a \$5 Billion Tax-Free Piggy Bank*, ProPublica (June 24, 2021), available at <https://www.propublica.org/article/lord-of-the-roths-how-tech-mogul-peter-thiel-turned-a-retirement-account-for-the-middle-class-into-a-5-billion-dollar-tax-free-piggy-bank>; and Robert Faturechi, Justin Elliott, and Ellis Simani, *The Billionaire Playbook: How Sports Owners Use Their Teams to Avoid Millions in Taxes*, ProPublica (July 8, 2021), available at <https://www.propublica.org/article/the-billionaire-playbook-how-sports-owners-use-their-teams-to-avoid-millions-in-taxes>.

² June 8 Article.

³ *Id.*

⁴ *Id.*

Soon after the publication of the first *ProPublica* story on the private information of wealthy Americans, Republican Committee staff began to investigate the extent of the information gathered, how confidential returns were accessed, and—ultimately—the source of this unprecedented leak. They have spoken with IRS employees, former IRS officers, experts who have deep knowledge of the workings of IRS and Treasury Department systems and security, and employees from the Treasury Inspector General for Tax Administration (TIGTA). Those discussions have revealed an audit trail system—the logs created to record events occurring on a computer system, in this case an account for every person accessing a sensitive file—wholly inadequate to protect Americans’ sensitive information from rogue IRS employees and contractors. As such, the IRS is completely unprepared to protect private data from improper use and disclosure, and an investigation into the ultimate source of the leak is seriously hampered.

A lack of an adequate audit trail system prevents the IRS and other investigators from being “able to reconstruct and determine what events occurred on a system . . . to establish[] individual accountability, monitor[] compliance with security policies, identify[] malicious activity, and investigat[e] security violations.”⁵ Prior TIGTA investigations have recommended the IRS clean up its audit trails so it can better identify unauthorized access to return information, and since at least 1997, the IRS has been warned that its audit trails are an area of weakness.⁶ Despite the Taxpayer Browsing Act of 1997⁷ placing “an additional responsibility on the IRS to protect taxpayer information from unauthorized inspection and disclosure,”⁸ apparently that weakness is still an area of vulnerability.

As the IRS has migrated increasingly to virtual data use and storage, the problems have only compounded. In 2020, of 67 IRS applications that store or process taxpayer data, only six, or nine percent, were providing accurate and complete audit trails. Thirty applications, or forty-five percent, were providing incomplete and inaccurate audit trails, and 31 applications, or forty-six percent, were not providing any audit trails at all. Additionally, TIGTA found that “the IRS could not provide an accurate inventory of all applications that store or process taxpayer data and Personally Identifiable Information.”⁹

It is therefore no surprise that certain Americans’ tax information has been leaked, and many are wondering whose information will be publicized next. Despite Americans expecting and deserving privacy concerning the tax information that the federal government requires from them, *ProPublica* has unilaterally determined it is in the public interest to reveal this private information.

⁵ *Most Internal Revenue Service Applications Do Not Have Sufficient Audit Trails to Detect Unauthorized Access to Sensitive Information*, Treasury Inspector Gen. for Tax Admin. (July 31, 2020), available at <https://www.treasury.gov/TIGTA/auditreports/2020reports/202020033fr.pdf> [hereinafter Audit Trails Report].

⁶ *Id.*

⁷ Pub. L. 105-35, 26 USC §§ 7213, 7213A, 7431.

⁸ Audit Trails Report.

⁹ *Id.*

Given the trove of 15 years' worth of IRS data on thousands of people, *ProPublica's* admission they "do not know the identity of [the] source" of the information,¹⁰ and the alarming lack of audit trails at the IRS, it is becoming increasingly clear that the source of the information was an Edward Snowden-like individual with inside access to the data and a political agenda he or she wanted to accomplish. This individual was meticulous and targeted with accessing the information, as no single application holds return information for thousands of the wealthiest Americans, and no single individual, even systems administrators or the Commissioner, has access to all return information.

Although Republican staff has been told in each interview that IRS employees "have it in their DNA" to zealously protect taxpayer return information, there are over 6,000 information technology contractors who have authorized access to this information as well and are subject to audit trails. At the time he extracted classified information and fled the country, Edward Snowden was a contractor at the National Security Agency—not a government employee. By publishing this information and doing the public bidding for this "IRS Snowden," *ProPublica*, therefore, is capitalizing on criminal behavior and encouraging future acts of criminal conduct for those who make a judgment that it serves the public interest.¹¹

Although you have acknowledged TIGTA has begun an investigation into the leak, such an investigation does not in any way preclude you from cooperating with a parallel congressional inquiry. Therefore, to assist the Committee with its investigation of the leak and to help understand the extent of the IRS's audit trail vulnerabilities, please produce the following information to the Committee by August 12, 2021:

1. The audit trail for the return information for each individual listed in Appendix A, from January 1, 2019 to June 1, 2021;
2. For each of the individuals listed in Appendix A, please list all IRS applications which contain their tax return information;
3. A list of the 67 applications discussed in the July 31, 2020 TIGTA report, broken down by application(s) that had accurate and complete audit trails in the Security Audit and Analysis System (SAAS), applications that had deficient audit trails, and applications that were not sending any audit trail information to the SAAS;
4. The rationale for the IRS's decision not to identify applications that use Personally Identifiable Information for the purpose of detecting improper activities and to reconstruct events for potential criminal investigations, as was recommended by TIGTA in 2020;

¹⁰ Stephen Engelberg and Richard Toftel, *Why We Are Publishing the Tax Secrets of the .001%*, *PROPUBLICA* (June 8, 2021), available at <https://www.propublica.org/article/why-we-are-publishing-the-tax-secrets-of-the-001>.

¹¹ See 26 U.S.C. § 7213(a)(1)..

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5. A roster of all employees and contractors with access to any application with tax return information for all of the individuals identified in Appendix A; and
6. A list of the number, date, and nature of all phone calls you have had with *ProPublica* in an effort to stop them from publishing additional articles containing taxpayer return information, and a list of any other steps you may have taken to prevent the public dissemination of this information.

The Committee on Oversight and Reform is the principal oversight Committee of the U.S. House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X.

If you have any questions about this request, please contact Committee staff at (202) 225-5074. Thank you for your cooperation with this inquiry.

Sincerely,

A handwritten signature in black ink that reads "James Comer". The signature is written in a cursive, flowing style.

James Comer
Ranking Member
Committee on Oversight and Reform

cc: The Honorable Carolyn Maloney, Chairwoman
Committee on Oversight and Reform

Appendix A

1. Adelaide Avila
2. Steve Ballmer
3. Jeff Bezos
4. Michael Bloomberg
5. Warren Buffett
6. Anthony Davis
7. Farhad Ebrahimi
8. Bill Gates
9. Dan Gilbert
10. Carl Icahn
11. Michael Jordan
12. LeBron James
13. Shahid Khan
14. Floyd Mayweather
15. Robert Mercer
16. Michael Milken
17. Rupert Murdoch
18. Elon Musk
19. Bob Piccinini
20. Randall Smith
21. George Soros
22. David Tepper
23. Peter Thiel
24. Justin Verlander
25. Ted Weschler
26. Leonard Wilf
27. Tiger Woods
28. Mark Zuckerberg