



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

11.3.41

FEBRUARY 26, 2024

EFFECTIVE DATE

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PURPOSE

- (1) This transmits the revised text for Internal Revenue Manual (IRM) 11.3.41, *Disclosure Case Processing and Inventory Management*.

MATERIAL CHANGES

- (1) IRM 11.3.41.1.2, **Authority** - Added references to Delegation Orders 11-5 regarding Certification, 11-7 regarding the Freedom of Information Act and 11-8 regarding the Privacy Act.
- (2) Added subsections 11.3.41.1.3.1, *The Role of the Disclosure Specialist*, IRM 11.3.41.1.3.2, *The Role of the Disclosure Assistant* and IRM 11.3.41.1.3.3, *The Role of the Tax Law Specialist*. These sections were taken from IRM 11.3.38 in their entirety and added to this IRM.
- (3) IRM 11.3.41.2.1.1, **Disclosure Programs** - Removed (3) on Quality Reviews since that program is not a responsibility for Disclosure. Added new (5) and (6) to provide further guidance on the Disclosure Help Desk responsibilities. All other paragraphs in this subsection were renumbered accordingly.
- (4) IRM 11.3.41.2.2, **Code, Authority, Procedure (CAP)** - Added new (5) to reference IRM 11.3.41.1.2, **Authority**.
- (5) IRM 11.3.41.2.5, **Guidelines for Elevating Issues** - Added Note to (1) referencing the listing of Disclosure PPO analysts program assignments.
- (6) IRM 11.3.41.3, **General Disclosure Case Processing Procedures** - Added information to (4) 1a to provide guidance on discussing direct release with a FOIA requester. Added information to (4) 1c to provide guidance on working with a Business Unit who is providing a direct release. Added information to (4) 2b to include guidance on the use of the search memo and to reference IRM 11.3.41.13.5.3 for information on searches for email records. Added information to (4) 2c to state that emails and their attachments should be provided in PDF format.
- (7) IRM 11.3.41.3.2, **Initial Analysis** - Updated (4) and added reminders to that paragraph to clarify guidance on the use of backlog categories. Also updated the table in this paragraph to match the current backlog categories.
- (8) IRM 11.3.41.3.3, **Research and Search Efforts** - Removed references in (9) to the copy contractor process. This process is no longer used in Disclosure. In (8) and in Note, added reference to IRM 10.5.4.3.3 to provide guidance on reporting requirements when there is a loss, theft, or unauthorized destruction of records.
- (9) IRM 11.3.41.3.3.2, **IDRS Research** - Added Note to (2) indicate IDRS research may require a review of the Non-Master File.
- (10) IRM 11.3.41.3.4, **Review and Edit** - Added information to (1) that caseworker must work with record owner to do review of responsive records.
- (11) IRM 11.3.41.3.5, **Respond and Close** - Added sentence to (9) to identify the electronic delivery option available via the Public Access Link.

- (12) IRM 11.3.41.3.8.6, **Counsel Administrative Files** - Moved Note regarding Counsel emails from (3) to (2).
- (13) IRM 11.3.41.3.8.7, updated title to **Whistleblower Administrative Claim Files** - Added new paragraphs (3) through (6) to incorporate the IGM PGLD 11-0323-0004, **Interim Guidance for Freedom of Information Act (FOIA) Requests Involving Whistleblower Related Records**.
- (14) IRM 11.3.41.3.10.3(1), **Certification** - Updated Note to clarify we do not certify third party records, i.e., income transcripts from SSA are third party records.
- (15) IRM 11.3.41.4.1, **General Case Processing for Disclosure of Designee of Taxpayer** - Added Note to (3) and added new (7), stating IRC 6103(c) requests for returns must be sent to RAIVS for processing.
- (16) IRM 11.3.41.4.3, Title changed from **Miscellaneous** to **Processing Disclosure Requests from Government Agencies for Non-tax Programs and Policy Statement 11-99**. - Updated this subsection to follow the policy in Policy Statement 11-99 clarifying government agencies have no right of access to tax information that is not otherwise codified in IRC 6103(l).
- (17) IRM 11.3.41.5.1(12) - **General Case Processing for Disclosure to State Tax Agencies Pursuant to IRC 6103(d)**, - Removed sentence indicating to contact disclosure for a list of IRS approved employees to send requests to a state agency. This IRM provides guidance for Disclosure employee processes, IRM 11.3.32 provides guidance for compliance employee processes.
- (18) Added IRM 11.3.41.5.7, **IRC 6103(d) requests for Internet Provider (IP) Address** as a new section to the IRM to provide guidance on requests for IP Addresses. Also added IRM 11.3.41.5.8, **Narrative Record of Accounting** as a new subsection to capture the accounting process that should be used by Disclosure employees. Subsequent sections were renumbered accordingly.
- (19) IRM 11.3.41.6.1, **General Case Processing for Disclosure to Person Having Material Interest Pursuant to IRC 6103(e)** - Added information to (2) stating Disclosure employees must verify identity and authority of a recipient before disclosing returns or return information.
- (20) Added IRM 11.3.41.6.3, **Disclosure of Collection Activities with Respect to Joint Returns Pursuant to IRC 6103(e)(8)** as a new subsection to provide guidance on IRC 6103(e)(8) disclosures. Subsequent sections were renumbered accordingly.
- (21) IRM 11.3.41.6.5, **Limitation on Disclosures Pursuant to IRC 6103(e)(10)** - Updated title to **Limitation on Disclosures Pursuant to IRC 6103(e)(10) for Partnerships, Subchapter S Corporations, Estates and Trusts**. Removed last two sentences of (2) to remove example regarding Form K-1.
- (22) The following subsections were added to provide additional guidance on IRC 6103(e)(10) limitations:
- IRM 11.3.41.6.5.1, *IRC 6103(e)(1)(C) - Partnerships*
 - IRM 11.3.41.6.5.1.1, *Tax Equity and Fiscal Responsibility Act (TEFRA) and Bipartisan Budget Act (BBA) Partnerships*
 - IRM 11.3.41.6.5.1.2, *IRC 6103(e)(1)(D)(iv) - Subchapter S Corporation*
 - IRM 11.3.41.6.5.1.3, *IRC 6103(e)(1)(E) - Estates*
 - IRM 11.3.41.6.5.1.4, *IRC 6103(e)(1)(F) - Trusts*
- (23) IRM 11.3.41.7.1, **Redisclosures of Returns and Return Information by State Agencies Pursuant to IRC 6103(h)(4)**, removed last item from table in (3) since the Reportable Transaction MOUs were terminated.

- (24) IRM 11.3.41.8.1, **General Case Processing for Disclosure to Department of Justice Under an Ex Parte Court Order Pursuant to IRC 6103(i)(1)** - Add another note to (5) c) to discuss requirements for disclosure of federal tax information to state and local personnel.
- (25) IRM 11.3.41.8.3, **Narrative Record of Accounting** - Added another Note to (1) to state a “lack of record” is an accountable disclosure. Also updated list in (3) to identify all items that are included in the accounting, also removed the Note and added a reference to IRM 11.3.37.
- (26) IRM 11.3.41.8.6, **Ex Parte Court Orders for SSA Records** - Updated (1) to state requests can be received by the SSA or directly from the DOJ. Added new (2) to provide guidance on advance notification.
- (27) Added IRM 11.3.41.8.8, **IRC 6103(i)(1) requests for Internet Provider (IP) Address** as a new section to the IRM to provide guidance on requests for IP Addresses. Subsequent sections were renumbered accordingly.
- (28) Added IRM 11.3.41.9.3, **Narrative Record of Accounting** as a new subsection to capture the accounting process that should be used by Disclosure employees.
- (29) IRM 11.3.41.12.1, **Processing for Disclosure to Social Security Administration Pursuant to IRC 6103(l)(1)(A)**, - Removed guidance in (4) indicating Form 4506-T could be used by SSA as that is no longer the process. Updated this subsection to match the guidance found in IRM 11.3.29 regarding the Form 1099 Series.
- (30) IRM 11.3.41.13.1, **General Case Processing for Disclosure Pursuant to the Freedom of Information Act (FOIA) 5 USC 552** - Added a Note to (2) indicating FOIA cases for TLS group are indexed as FOIA-TLS.
- (31) IRM 11.3.41.13.2, **Receipt and Control** - Removed (2) since Disclosure employees do not need to classify the FOIA case within the inventory management system.
- (32) IRM 11.3.41.13.3, **Initial Analysis** - Removed references in (5) a) and b) to using a previously submitted Form 8821 or Form 2848.
- (33) IRM 11.3.41.13.3.2, **Expedite Processing** - Moved Note from (2)c to (2)b. Added two new Notes and one Example to (2)c.
- (34) IRM 11.3.41.13.5, **Research and Search Efforts** - Added new (2) to incorporate guidance from IGM PGLD 11-0323-0003, *Interim Guidance for Using Search Memoranda with Freedom of Information Act (FOIA) Requests*. Updated other references to the records requests process, throughout the IRM, to ensure the Search Memo guidance was clarified.
- (35) IRM 11.3.41.13.5.3, **Search Efforts Pertaining to Email Records** - Updated entire subsection to incorporate guidance from IGM PGLD 11-0723-0007, **Interim Guidance (IG) for Freedom of Information Act (FOIA) Requests Seeking Email Records**. Also added Note to (4) to indicate specific key word searches would not provide results if an email is encrypted.
- (36) IRM 11.3.41.13.6(3), **Review and Redacting**, and IRM 11.3.41.13.6.1(3), **Approach to Exemptions** - Added Reminder to state employees should not use FOIA exemptions to withhold information in Non-FOIA cases.
- (37) IRM 11.3.41.13.6.4, **Open Investigatory Files** - Added Note to (3) to state returns and return information of individuals who filed jointly may be disclosed to either spouse.
- (38) IRM 11.3.41.13.7.1, **Extension Letters** - Updated (3) to provide a table and a Note clarifying the extension letter requirements. Removed (4) through (6) as this information is included in the table

added to (3). Subsequent paragraphs were renumbered accordingly. Added new (7) at the end to state extension and revised due date fields must be updated in the inventory management system when extension letters are sent.

- (39) IRM 11.3.41.13.8.9, **DIF, DAS, and UIDIF Score, SERFE Indicator** - Moved the Caution and added new Exception in (1) to incorporate guidance from IGM PGLD 11-0723-0008, **Interim Guidance (IG) for Discriminant Index Function/Discriminant Analysis Score (DIF/DAS) Reason Codes**.
- (40) IRM 11.3.41.13.8.20, **Personnel Records** - Added new (12) to provide guidance on responsive documents that contain fingerprint records.
- (41) IRM 11.3.41.13.8.28, **Automated Lien System** - Removed (2) regarding the fee for an ALS record.
- (42) IRM 11.3.41.13.8.38, **Trusts** - Removed this subsection since information regarding Trusts was added to new IRM section 11.3.41.6.5.1.4 **IRC 6103(e)(1)(F) - Trusts**. Subsequent sections were renumbered accordingly.
- (43) IRM 11.3.41.13.8.46, **Requests for Centralized Authorization File (CAF) Extracts** - Updated (3) and added new (4) through (13) to provide guidance on processing requests for the CAF Listing.
- (44) IRM 11.3.41.13.8.55, **FOIA Litigation** - Added new 3) to (2) to indicate Disclosure employees should notify record custodians to discontinue a search for records when FOIA Litigation is initiated.
- (45) Added IRM 11.3.41.13.8.57, **Transferee, Nominee and Alter Ego** to provide guidance on requests for Transferee, Nominee and Alter Ego information.
- (46) IRM 11.3.41.15.4, **Processing Requests for Privacy Act Protected Records** - Updated (4) to provide current guidance on where to send subpoenas for personnel records for active employees.
- (47) IRM 11.3.41.17.3, **Contracts** - Removed reference to "Contract File Content Checklist" in (6).
- (48) IRM 11.3.41.18.3, **Specific Casework Roles and Responsibilities** - Added b) to (3) to state withholding of IRC 6103 information in a subpoena is signed by the disclosure manager.
- (49) Exhibit 11.3.41-1, **Terms/Definitions/Acronyms** - The following terms/definitions were added:
- Attorney-in-fact
 - Delegation of Authority
 - Direct Partner
 - Indirect Partner
 - Investor Level Statute Controls
 - Power of Attorney
 - Principal
- (50) Exhibit 11.3.41-2, **IRC 6103(c) Case Processing Checklist**, - Removed Note related to consent being signed within 120 days of the date on the consent form.
- (51) Exhibit 11.3.41-3, **IRC 6103(d) Case Processing Checklist** - Added information at the end of the table to clarify that the checklist is not all inclusive and Disclosure employees must make sure cases are worked correctly. Also updated Note to reference state agencies may have access to TDS to receive transcripts.
- (52) Exhibit 11.3.41-5, **IRC 6103(i)(1) Case Processing Checklist** - Added information under Initial Analysis subsection indicating TRDVB shows processing dates that an ELF return was accepted or rejected.

- (53) Exhibit 11.3.41-10, **Subpoena Case Processing Checklist**, - Removed guidance stating to provide requested records when a consent is received with a subpoena.
- (54) References to the disclosure analyst role were added throughout the IRM to reflect the duties of this specific Disclosure position.
- (55) Removed references to Notice 129 since this Notice is no longer used in Disclosure casework.
- (56) Removed relevant references to Form 5466-B throughout the IRM since this form is no longer used in Disclosure casework to account for disclosures. Any references in this IRM to Form 5466-B pertain to guidance other IRS Business Units should follow.
- (57) Editorial changes have been made throughout:
- Updated the titles and revision numbers to Delegation Orders and Policy Statements. Added references to Delegation Orders 11-5 regarding Certification, 11-7 regarding the Freedom of Information Act and 11-8 regarding the Privacy Act.
 - Updated statute, organizational references and terms.
 - Updated to correct hyperlinks and to properly identify resources on the Disclosure Share Point site.
 - Updated plain language, grammar, titles and IRM references.
 - Updated Acronyms to ensure all acronyms were defined and added relevant definitions to the exhibit.
 - Updated table contents to ensure 508 compliance.

EFFECT ON OTHER DOCUMENTS

This Material supersedes IRM 11.3.41, Disclosure of Official Information, Disclosure Case Processing and Inventory, dated December 8, 2022. This IRM incorporates Interim Guidance Memorandums PGLD 11-0323-0003, **Interim Guidance for Using Search Memoranda with Freedom of Information Act (FOIA) Requests**, PGLD 11-0323-0004, **Interim Guidance for Freedom of Information Act (FOIA) Requests Involving Whistleblower Related Records**, PGLD 11-0723-0007, **Interim Guidance (IG) for Freedom of Information Act (FOIA) Requests Seeking Email Records** and PGLD 11-0723-0008, **Interim Guidance (IG) for Discriminant Index Function/Discriminant Analysis Score (DIF/DAS) Reason Codes**.

AUDIENCE

Disclosure Office

Celia Y. Doggette
Director, Governmental Liaison, Disclosure and Safeguards

11.3.41
Disclosure Case Processing and Inventory Management

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 - 11.3.41.13.8.10 RWMS Score
 - 11.3.41.13.8.11 ICE Indicators
 - 11.3.41.13.8.12 RTVUE and BRTVU Prints
 - 11.3.41.13.8.13 Penalty and Interest Notice and Explanation (PINEX)

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- 11.3.41.13.8.14 Privacy Act Transcript Request Activity (PATRA)
 - 11.3.41.13.8.15 Requests for IDRS Records That Have Been Removed to Retention
 - 11.3.41.13.8.16 SS-8 (Determination of Worker Status) Requests
 - 11.3.41.13.8.17 Risk Analysis Reports
 - 11.3.41.13.8.18 Executive Performance Agreement
 - 11.3.41.13.8.19 Requests for Audit Trails
 - 11.3.41.13.8.20 Personnel Records
 - 11.3.41.13.8.21 Public Information Listing
 - 11.3.41.13.8.22 Employee Privacy Matters
 - 11.3.41.13.8.23 Commercial Solicitation
 - 11.3.41.13.8.24 Trust Fund Recovery Penalty
 - 11.3.41.13.8.25 Credit Bureaus
 - 11.3.41.13.8.26 Non-specific Requests Citing “A Citizen’s Guide to FOIA”
 - 11.3.41.13.8.27 Requests Involving Asset Locator Records (ChoicePoint/Accurint, etc.)
 - 11.3.41.13.8.28 Automated Lien System
 - 11.3.41.13.8.29 Requests for Pocket Commissions
 - 11.3.41.13.8.30 Undeliverable Refund Lists
 - 11.3.41.13.8.31 Electronic Return Originator Lists (EROs)
 - 11.3.41.13.8.32 Possible Refund Scheme Requests
 - 11.3.41.13.8.33 IRC 6001 Requests
 - 11.3.41.13.8.34 Requests for the IRS EIN
 - 11.3.41.13.8.35 Federal Witness Security Program Information
 - 11.3.41.13.8.36 Grand Jury Information
 - 11.3.41.13.8.37 Requests for Certified Copies of Records
 - 11.3.41.13.8.38 Requests for Documents Associated with a Document Locator Number (DLN)
 - 11.3.41.13.8.39 Request for Form W-7, Application for IRS Individual Taxpayer Identification Number (ITIN)
 - 11.3.41.13.8.40 Requests for Third Party Contact Information
 - 11.3.41.13.8.41 FedState Agreements
 - 11.3.41.13.8.42 Requests for Copies of Information Provided to State Tax Agencies
 - 11.3.41.13.8.43 Requests for Lottery Information
 - 11.3.41.13.8.44 Requests for Offshore Credit Card Project (OCCP) Files
 - 11.3.41.13.8.45 Requests for Centralized Authorization File (CAF) Extracts
 - 11.3.41.13.8.46 Preparer Tax Identification Numbers (PTINs) and Enrolled Agent (EA) Listings
 - 11.3.41.13.8.47 Requests for Taxpayer Recording Made in the Contact Recording Process
 - 11.3.41.13.8.48 Requests for Whistleblower Office Records
 - 11.3.41.13.8.49 Requests for Congressional Correspondence
 - 11.3.41.13.8.50 Requests for Blank IRS Forms
 - 11.3.41.13.8.50.1 IRS Tax Forms

- 11.3.41.13.8.50.2 IRS Internal Use Forms
- 11.3.41.13.8.50.3 Requests for the Paperwork Reduction Act Submission (OMB 83-I)
- 11.3.41.13.8.51 Requests for FOIA Case Files
- 11.3.41.13.8.52 Requests for Audit Information Management System (AIMS) Case Files
- 11.3.41.13.8.53 Requests for Tax Court Cases
- 11.3.41.13.8.54 FOIA Litigation
- 11.3.41.13.8.55 Requests for Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) Information
- 11.3.41.13.8.56 Transferee, Nominee and Alter Ego
- 11.3.41.14 Privacy Act (PA)
 - 11.3.41.14.1 General Case Processing for Disclosure Pursuant to the Privacy Act (PA) 5 USC 552a
 - 11.3.41.14.2 Case Timeliness Expectations Privacy Act
 - 11.3.41.14.3 Privacy Act Exemptions
 - 11.3.41.14.4 Access to Records of Deceased Employees
 - 11.3.41.14.5 Notifying Individuals That Their Records Were Made Available Under Compulsory Legal Process
- 11.3.41.15 Subpoena and Testimony Authorizations
 - 11.3.41.15.1 General Case Processing for Disclosure Pursuant to Touhy Regulations 26 CFR 301.9000-1 through 301.9000-7
 - 11.3.41.15.2 Case Timeliness Expectations Subpoena and Testimony
 - 11.3.41.15.3 Requests for IRS Records
 - 11.3.41.15.4 Processing Requests for Privacy Act Protected Records
 - 11.3.41.15.5 Request for Testimony of IRS Employee
 - 11.3.41.15.6 Briefing the Employee Who Will Testify
 - 11.3.41.15.7 Testimony Authorizations in Identity (ID) Theft Cases
- 11.3.41.16 Other Case Types
 - 11.3.41.16.1 Forwarding Letters for Humane Reasons
 - 11.3.41.16.2 Tax Checks Service
 - 11.3.41.16.2.1 Department of Commerce Tax Check Requests
 - 11.3.41.16.3 Requests for Certification
- 11.3.41.17 Tax Law Specialist (TLS)
 - 11.3.41.17.1 TLS Case Processing Criteria
 - 11.3.41.17.2 Written Determinations
 - 11.3.41.17.3 Contracts
 - 11.3.41.17.4 Congressional Correspondence
- 11.3.41.18 Disclosure Manager (DM) Roles and Responsibilities
 - 11.3.41.18.1 Case Management Responsibilities
 - 11.3.41.18.2 Report Recommendations
 - 11.3.41.18.3 Specific Casework Roles and Responsibilities

Exhibits

- 11.3.41-1 Terms/Definitions/Acronyms
- 11.3.41-2 IRC 6103(c) Case Processing Checklist
- 11.3.41-3 IRC 6103(d) Case Processing Checklist
- 11.3.41-4 IRC 6103(e) Case Processing Checklist
- 11.3.41-5 IRC 6103(i)(1) Case Processing Checklist
- 11.3.41-6 IRC 6103(i)(2) Case Processing Checklist
- 11.3.41-7 IRC 6103(i)(3)(A) Case Processing Checklist
- 11.3.41-8 Freedom of Information Act Case Processing Checklist
- 11.3.41-9 Privacy Act Case Processing Checklist
- 11.3.41-10 Subpoena Case Processing Checklist
- 11.3.41-11 Criteria for Assignment to GS-13 Caseworker
- 11.3.41-12 IDRS Research Tools
- 11.3.41-13 Exam/AIMS/AMDISA Status Codes
- 11.3.41-14 Collection Status Codes
- 11.3.41-15 Case Type Timeliness
- 11.3.41-16 IRC 6103(l)(1)(A) Request Template
- 11.3.41-17 FOIA and Privacy Act Decision Matrix
- 11.3.41-18 FOIA and Title 26 Cases with CTRs or Data Extracted from CTRs
- 11.3.41-19 Procedures for Processing Requests for 23c/RACS006
- 11.3.41-20 Definition of Written Determination and IRC 6110(h)

11.3.41.1
(08-26-2021)
Program Scope and Objectives

- (1) **Purpose:** This IRM provides case processing and inventory management guidelines for Disclosure employees.
- (2) **Audience:** This IRM serves as guidance for Disclosure employees.
- (3) **Policy Owner:** The Director of Governmental Liaison, Disclosure and Safeguards (GLDS) is responsible for oversight of Disclosure policy.
- (4) **Program Owner:** The Disclosure Office, under GLDS, is responsible for the Disclosure program and guidance. Each IRS organization is responsible for ensuring its employees are aware of and follow Servicewide Disclosure policy.

11.3.41.1.1
(08-26-2021)
Background

- (1) Disclosure supports the IRS commitment to openness in government by providing timely access to tax or other IRS records in accordance with applicable IRS, Privacy, and Freedom of Information laws. To support this commitment Disclosure processes requests for IRS records.
- (2) This IRM provides information to disclosure managers (DM) and caseworkers on inventory management and casework processing that should be followed in the performance of their duties.

11.3.41.1.2
(02-26-2024)
Authority

- (1) The following items govern the authority pertaining to case work processed by the Disclosure office:
 - *26 USC 6103*
 - *26 CFR 301.6103*
 - *Freedom of Information Act, 5 USC 552*
 - *31 CFR , Subtitle A, Part 1, Appendix B*
 - *26 CFR 601.702*
 - *Privacy Act (PA), 5 USC 552a*
 - *26 CFR 301.9000-1 through 26 CFR 301.9000-7*
 - Delegation Order 11-2, found in IRM 1.2.2.12.2, *Delegation Order 11-2 (Rev. 4), Authority to Permit Disclosure of Tax Information and to Permit Testimony or the Production of Documents* Exhibit 1.2.2-2, **Reference Chart** and Exhibit 1.2.2-3, **Authorization Tables 1-8**
 - Delegation Order 11-5, found in IRM 1.2.2.12.5, *Delegation Order 11-5 (Rev. 2), Seal of the Office of the Internal Revenue Service and Certification to the Authenticity of Official Documents*
 - Delegation Order 11-7, found in IRM 1.2.2.12.6, *Delegation Order 11-7, Authority for Initial Determinations with Respect to Written Requests Pursuant to 5 USC 552, Freedom of Information Act*
 - Delegation Order 11-8, found in IRM 1.2.2.12.7, *Delegation Order 11-8, Authority for Initial Determinations with Respect to Requests for Records Pursuant to 5 USC 552a, Privacy Act*

11.3.41.1.3
(12-08-2022)
Responsibilities

- (1) This IRM is used by Disclosure employees identified by the position descriptions disclosure manager (DM), tax law specialist (TLS), disclosure analyst (DA), senior disclosure specialist (SDS), disclosure specialist (DS), disclosure assistant (DA), and anyone who processes casework related to IRC 6103, the Freedom of Information Act (FOIA), the Privacy Act (PA) and non-tax subpoenas in the Disclosure Program.

- (2) The director, GLDS is responsible for executive oversight and direction of Disclosure programs.
- (3) The associate director (AD), Disclosure is responsible for the oversight and management of Disclosure policy, program operations, case processing, project management and program development.
- (4) The area manager, (AM) Disclosure East and West are responsible for the oversight and management of the field disclosure offices and managers. See IRM 11.3.38, *Role and Responsibilities of Disclosure Managers*, for additional information on the responsibilities of AMs.
- (5) The supervisor, Headquarters (HQ) Disclosure Policy and Program Operations (PPO), is responsible for day-to-day oversight and supervision over senior disclosure analysts who develop and implement disclosure policy, projects, guidance and awareness products.
- (6) The DMs, Disclosure Area Operations are responsible for the day-to-day oversight of case and program work of the field disclosure offices, including front-line supervision of Disclosure employees identified by the position descriptions of TLS, DA, SDS, DS and DA.
- (7) Disclosure employees identified by the position descriptions of TLS, DA, SDS, DS and DA are responsible for balancing disclosure program assignments as well as casework inventory and providing timely responses to assigned casework following relevant laws, authorities and guidance.

11.3.41.1.3.1
(02-26-2024)

**The Role of the
Disclosure Specialist**

- (1) The specific duties of Disclosure Specialists are determined by their position descriptions. The assignments are technical and non-supervisory in nature.
- (2) Specialists generally handle day-to-day technical issues (i.e., casework).
- (3) Disclosure Specialists with sufficient experience may be assigned responsibility for aspects of program management as needed and act for the DM in their absence.
- (4) Disclosure Specialists may be asked to coordinate or conduct awareness presentations.
- (5) Senior Disclosure Specialists may have additional assignments or responsibilities based on their position descriptions. Senior Disclosure Specialists may also be assigned responsibility for aspects of program management, provide guidance to lower graded specialists and act for the D in their absence.
- (6) Effective January 26, 2017, the job series of the Disclosure Specialist and Senior Disclosure Specialist was changed to Government Information Specialist; however the working title of the employee remained as Disclosure Specialist or Senior Disclosure Specialist.

11.3.41.1.3.2
(02-26-2024)

**The Role of the
Disclosure Assistant**

- (1) The Disclosure Assistant performs a variety of duties in assisting in the administration of local disclosure policies, practices and procedures.
- (2) These duties normally include processing the more routine type of FOIA, Privacy Act and IRC 6103 requests, as well as performing many of the administrative duties, such as preparing accountings for disclosure and certification of documents.

- 11.3.41.1.3.3
(02-26-2024)
The Role of the Tax Law Specialist
- (1) The specific duties of the Tax Law Specialist are determined by their position descriptions. The assignments for a Tax Law Specialist may be more complex or sensitive than assignments of other Disclosure employees.
 - (2) Tax Law Specialists may also be assigned responsibility for aspects of program management and act for the D in his or her absence.
 - (3) Effective January 26, 2017, the job series of the Tax Law Specialist was changed to Government Information Specialist; however the working title of the employee remained as Tax Law Specialist.
- 11.3.41.1.4
(12-08-2022)
Program Management and Review
- (1) Disclosure inventory management and case processing is facilitated within FOIAXpress (FX), which is monitored and maintained by the GLDS Data Services office. FX allows management to validate program compliance through generating reports and requiring inventory to be processed under IRC 6103 statutory authority.
- 11.3.41.1.5
(12-08-2022)
Program Controls
- (1) Disclosure program oversight also includes participation in operational and quality reviews. The Disclosure Office uses the Embedded Quality Review System (EQRS) to perform quality review on Disclosure specific casework.
- 11.3.41.1.6
(08-26-2021)
Terms/Definitions/ Acronyms
- (1) See Exhibit 11.3.41-1, *Terms/Definitions/Acronyms*, for a listing of commonly used terms, definitions and acronyms used throughout this IRM section.
- 11.3.41.1.7
(08-26-2021)
Related Resources
- (1) The following items are some related resources for disclosure casework and inventory management.
 - *IRM 11.3 series, Disclosure of Official Information*
 - *Disclosure and Privacy Knowledge Base*
 - *Disclosure SharePoint Online*
 - *Orientation to Disclosure (Student Guide) Catalog Number 58325G*
 - *Pre-Classroom Disclosure Training (Student Guide) Catalog Number 58318R*
 - *Disclosure New Hire Training Phase I (Student Guide)*
 - *Disclosure New Hire Training Phase II (Student Guide) Catalog Number 58243B*
 - *FOIAXpress, Training for Disclosure Employees (Student Guide) Catalog Number 73953Y*
 - *Document 11599, Performance Plan for Disclosure Tax Law Specialist - GS-0306*
 - *Document 11704, Performance Plan for Disclosure Specialist and Senior Disclosure Specialist, GS-0306*
 - *Document 11706, Performance Plan for Disclosure Assistant, GS-0303*
 - *IRM 1.15 series, Records and Information Management*
 - *Document 12990, Records Control Schedules*
- 11.3.41.2
(08-26-2021)
Disclosure Program and Inventory Management
- (1) Inventory management techniques and time utilization skills are fundamental aspects of a Disclosure caseworker's duties and responsibilities.

- (2) Critical Job Elements (CJEs) found in a Disclosure employee's position description require efficient workload management and time utilization, respectively.
- (3) Effective workload management involves using a basic planning system to calendar, plan, schedule, and complete work assignments in a timely and efficient manner. Managing work assignments includes, but is not limited to, the following:
 - Prioritizing and working cases in the most expeditious manner, consistent with management expectations
 - Advance planning for Help Desk duties
 - Participating in training sessions or development
 - Performing Need and Use Reviews
 - Effectively managing changing priorities
 - Informing DM when situations arise that may cause delays
 - Handling interruptions in a manner that minimizes their effects on daily work assignments

11.3.41.2.1
(08-26-2021)
**Effective Time
Management**

- (1) A focus on timely actions will reduce requester burden. Managing time effectively requires awareness of how much time is needed and available to work both business priority and routine cases while meeting mandated statutory response time frames.
- (2) Using an organized approach to *all* activities is the key to managing your time effectively. Every task should be identified, prioritized, and scheduled as far in advance as possible taking into consideration next steps, deadlines, due dates, work schedule, balancing daily activities and should allow for flexibility to manage changing priorities.
- (3) A disclosure employee will be responsible for working many priority tasks. It helps to develop a plan of action in priority order you have established and maintain your focus throughout the day, week and month. However, flexibility is important, and reassessment of priority items can help with effective time management.
- (4) Disclosure caseworkers must effectively manage time on casework and on Disclosure programs. All Disclosure employees will record time on a daily basis to cover their full tour of duty in the Disclosure electronic inventory management system.
- (5) Employee time is input by employee name and current position in three categories:
 - a. Disclosure Casework - Any case specific activities should be reported as time spent on that assigned case. This includes all activities of the assigned caseworker. Case notes must document actions taken and time applied on cases by the individual entering the note.
 - b. Program Work - Defined as direct time spent on activities that are required to develop and deliver key GLDS programs and operational initiatives. Each area of Program Work is used to develop the Disclosure Work plan.
 - c. Overhead Time - Defined as normal activities associated with a staff year that are not directly applied to a specific case or defined GLDS program

activity. This time must be captured to get a complete picture of the utilization of assigned staff years. For example, time spent on group meetings is an overhead activity.

- (6) For additional information on time tracking, review the *Time Reporting Guidelines* found on the Disclosure SharePoint site.

11.3.41.2.1.1 (02-26-2024) Disclosure Programs

- (1) Disclosure is responsible for several programs that have Servicewide impact. Disclosure caseworkers may be asked to help with Awareness and Outreach, Disclosure Help Desk and Training programs.
- (2) **Disclosure Awareness and Outreach:** The objective of the Disclosure Awareness and Outreach program is to ensure, to the extent possible, that IRS employees know the disclosure statutes and principles and apply this knowledge correctly in the performance of their duties. Disclosure caseworkers may be called upon to participate in Awareness and Outreach. See IRM 11.3.38.3.1, *Disclosure Awareness and Outreach*, for additional information.
- (3) **Disclosure Help Desk:** The Help Desk is responsible for responding to IRS employee questions and inquiries related to IRS disclosure and confidentiality statutes and the employees' responsibilities in adhering to them. Many of the questions received on the Disclosure Help Desk may be answered with resources on the *Disclosure and Privacy Knowledge Base*. See IRM 11.3.38.3.3, *Disclosure Help Desk*, for additional information.
- (4) Experienced technical Disclosure staff are responsible for responding to Help Desk inquiries. Management determines proficiency for the role of Help Desk assistor.
- (5) The Help Desk procedures are commemorated in a Help Desk guide posted on SharePoint. It is imperative to timely respond to inquiries, therefore strict adherence to a schedule for Help Desk coverage is necessary. Help Desk inquiries are recorded as cases in the inventory management system.
- (6) **Training:** Disclosure employees may be called upon to attend or facilitate a Disclosure training regarding disclosure of information and PA responsibilities. If the disclosure employee attends an extended training (i.e., one week or more) the manager should review inventory management and consider reassigning cases as appropriate. See IRM 11.3.38.3.4, *Training*, for additional information.
- (7) **On the Job Instructor (OJI):** Disclosure employees may be asked to help train a newer or lower graded disclosure employee. DMs should review inventory management and make appropriate determinations in assigning cases to the trainee and the OJI.
- (8) The Disclosure employees are part of a team. Some members of this team are more experienced than others so please share those skills with others and be open to receiving assistance. Be assertive in asking for help if you need it.
- (9) Be flexible—Disclosure is a small division with a huge responsibility. Please be open to change and be adaptable. Discuss with your DM any suggestions for improvement.

11.3.41.2.2
(02-26-2024)
**Code, Authority,
Procedure (CAP)**

- (1) Code, Authority and Procedure (CAP) is one of the fundamental concepts that must be used by disclosure employees to ensure timely and complete responses to disclosure case work.
- (2) **Code:** For each case worked it is vital for the disclosure employee to first identify what Code section(s) allow for the disclosure of information, if any.
- (3) **Authority:** After determining the relevant code section, the disclosure employee must utilize the appropriate delegation order to confirm who is authorized to make the disclosure.
- (4) **Procedure:** Following all relevant procedures found in IRMs and other approved resources is the final step to ensure case work is completed accurately.
- (5) See IRM 11.3.41.1.2, *Authority*, for more information.

11.3.41.2.3
(08-26-2021)
**Inventory Management
Requirements**

- (1) Conduct timely case documentation – Use the inventory management system documentation features to record actions and decisions taken on cases. It is extremely important that casework documentation be clear, accurate, concise, complete, and timely. Record entries the day the action occurs or as soon as practical thereafter. Upload records to the case management system associated with the applicable case; do not maintain separately unless extenuating circumstances exist which should be documented in the case management system. Also, the caseworker should notate a plan of action or next steps in case documentation. See *IRM 11.3.41.3.6, Case Documentation*.
- (2) The Disclosure employee must keep their inventory current, review inventory reports at least weekly and document actions taken, actions needed and estimated time for closure. Effective inventory and workload management is paramount and should include the use of a calendar or task reminders in the inventory management system, to schedule initial, follow up and closing case actions. Schedule follow up actions commensurate with expected next steps and within the timeframes to resolve the inventory in accordance with established timeframes for resolution/case actions. Establish deadlines/agreed-upon response dates with internal and external customers.

11.3.41.2.4
(12-08-2022)
**Inventory Management
System**

- (1) Disclosure casework is processed through an electronic inventory management system designed to help the IRS comply with legal requirements for processing requests for information. The system accommodates all Disclosure case type processing, and allows for electronic processing of images, creation of pattern correspondence, use of redaction tools, facilitation of managerial and secondary review and access to fee/payment tools. The inventory management system also permits daily time tracking and generation of reports for workplan monitoring.
- (2) Disclosure casework is received through a central repository called the GLDS Support Services (GSS). The GSS receives the request and creates a corresponding case in the inventory system. Disclosure casework is managed as a “corporate asset,” meaning any case type, from any geographic location can be assigned out to any Disclosure employee across the nation.

Note: Some case types may be assigned geographically based on other criteria. For example, subpoenas may be assigned based on geographical location to better facilitate conversations with local attorneys.

11.3.41.2.4.1
(12-08-2022)
**Electronic Inventory
Case Organization**

- (1) Disclosure employees must keep their electronic inventory case files well organized and ready for any type of case review. The electronic case file should maintain the following types of documents, when applicable:
 - Incoming correspondence and any related attachments
 - Subsequent requester correspondence
 - Integrated Data Retrieval System (IDRS) and other database research
 - Search Memos, email correspondence to the IRS custodian of records or Form 2275, *Records Request, Charge and Recharge*
 - Accounting records such as a Narrative Record of Accounting
 - Sensitive Case Reports (SCRs)
 - Records responsive to the request
 - Extension Letters
 - Interim and/or Final Response Letters
- (2) To facilitate case organization, caseworkers should follow the training guide relevant to the appropriate inventory management system, including the use of Naming Conventions, Closing Dispositions, etc.
- (3) The inventory management system has the capability to provide workload reports to help Disclosure employees with inventory management and statutory due dates. These reports, once generated, may be viewed electronically or printed as necessary. Disclosure employees have access to these reports and should use them often to support case processing and inventory management.
- (4) Management reports can also be generated within the inventory system to support program control purposes.

11.3.41.2.5
(02-26-2024)
**Guidelines for Elevating
Issues**

- (1) Disclosure employees must follow protocol to elevate issues or case processing items. It is a Disclosure caseworker's responsibility to research the CAP to resolve issues or case processing items. Should the caseworker not be able to reach a decision on next steps, the caseworker should leverage their DM and DA. If discussion with the DM and DA does not result in resolution, the issue should be discussed with the area technical advisor (TA) and area manager. If still unresolved then the DM will collaborate with the appropriate PPO analyst.

Note: For a current listing of Disclosure PPO analysts and their program assignments, see the *Disclosure PPO Contacts on the Disclosure Privacy and Knowledge Base Site*.

- (2) Disclosure caseworkers processing requests for files assigned to an IRS employee of another business unit (BU), to the extent possible, should work directly with that employee. If the Disclosure caseworker cannot get resolution through their contact with the IRS employee, the caseworker should follow the protocol in (1) to elevate the issue to the DM. The DM should consider contact with the IRS employee's manager and, as needed or as the acceleration process continues, involve the area TA or area managers.
- (3) Internal items should be vetted within Disclosure, including coordination with the senior disclosure analyst (SDA) in PPO, before going external following acceleration procedures cited above.

Example: Caseworkers should not independently reach out to Department of Justice (DOJ), Office of Information Policy (OIP), IRS Counsel, and/or

Department of Treasury to hold consultative discussions; rather the protocol in (1) should be followed and if it is determined the items warrant further elevation, the issue will be discussed with the SDA first, and then a decision made on next steps, as needed.

- (4) There may be times when Disclosure caseworkers, especially related to the TLS case work, need to obtain legal guidance from Counsel Procedure and Administration (P&A); in those instances, the caseworker and their manager should consult with the Senior FOIA policy analyst prior to direct reach-out to Counsel.

Note: TLS caseworkers processing cases for Counsel P&A records and/or caseworkers processing tax administration files assigned to a specific Counsel employee or to Counsel for a testimony authorization review, must still utilize the established channels of communication to process those workstreams.

- (5) Disclosure caseworkers are not to contact IRS executives directly. In instances where IRS executives are implicated in request(s), caseworkers should be consulting with the assigned FOIA Functional Coordinator (FFC) within the appropriate business unit and/or the DM and DA, as appropriate, to determine next steps.
- (6) The Disclosure Issue Referral process should be used for any new and/or updated procedures or technical issues not currently available in an IRM, posted on Disclosure SharePoint, or in Interim Guidance provided by management. This is the approved process that should be used to elevate this type of issue to a PPO staff member for consideration. If this type of suggestion is submitted to any Employee Suggestion Box, it will be resolved from that platform recommending the use of the Disclosure Referral.

11.3.41.3
(02-26-2024)

General Disclosure Case Processing Procedures

- (1) Overview: Disclosure casework processing includes requests for information under the FOIA, PA and IRC 6103. Disclosure casework consists of both routine and complex case issues. A thorough knowledge of the Privacy and Information laws as well as an institutional knowledge of the IRS processes and programs is very beneficial.
- (2) Processing disclosure casework consists of five basic steps:
- a. Receipt and Control - classifying, assigning and controlling requests in the inventory management system.
 - b. Initial Analysis - determining validity, identifying expedited processing or fee waiver requests, and other special features.
 - c. Research and Search - searching IRS systems or offices for responsive records.
 - d. Review - reviewing records located in the search and applying exemptions or exclusions, if appropriate.
 - e. Response and Closing - drafting responses to the requester and closing the case.
- (3) Each of the five basic steps will be discussed further. Each of the case types listed later in this IRM may have additional case processing considerations.
- (4) The following are some case processing items caseworkers should consider in regard to Disclosure case processing. These items should be discussed with their manager, as needed.

Note: The following steps apply to all work streams in general, however additional FOIA case processing steps have been included.

1. **Initial analysis of a case:**

a. **Communicate with the requester:** Call the requester, Assistant United States Attorney (AUSA), state Agency representative etc., to get additional information when the records are not reasonably described, if citations in an ex parte court order are not clear or any clarification of records requested is needed.

Note: If the records requested are from an open case, such as an open exam, collection or Appeals, ask a requester if they would be willing to receive the records through direct release. If the requester agrees to direct release, obtain the requesters agreement to withdraw their FOIA request.

b. **Conduct internet and/or intranet searches:** Conduct minimal research on the internet or IRS intranet, if applicable, to locate information about the subject matter of the request to assist in determining the correct business unit where requested records may exist. Use this information to communicate with the business unit to discuss if the request is processable as submitted or if additional clarity is needed.

c. **Communicate with Business Units:** Work with business unit (business owner of records) to gain more knowledge of the records or subject matter of the request to discuss further with the requester to assist in rescoping. Build good relationships with business unit functional contacts. This leads to collaborations between business units on how efficiencies can be gained when searching for records, identifying proactive disclosures, or better utilizing technology.

Note: If the requester has agreed to receive records in an open case by direct release, work with the business unit to ensure they understand their obligations in providing the records by direct release and provide them with the Respond Directly guidance on the Knowledge Management Portal.

d. **Inappropriate assumptions:** If a clear understanding of what the requester is seeking is not provided in the request, do not 'assume' what you 'think' the requester is asking for. Clarification from the requester is needed before proceeding with the processing of the request.

e. **Case note documentation:** Case notes must document all actions taken regarding initial analysis of a request. Refer to IRM 11.3.41.3.6, *Case Documentation*.

2. **Ensure adequate search efforts are completed:**

a. **IDRS search efforts:** Ensure a thorough analysis of IDRS account information is completed. This may include searching other tax years that are not cited in the request. Analyzing the entire account may offer insight to assist in obtaining all records responsive to the request.

b. **Communicate with Business Units:** Contact the business unit functional contact to confirm requested records fall within that business unit. Explain search efforts required by the business unit outlining their responsibilities and send the required search memo to the custodian of records.

Note: See IRM 11.3.41.13.5.3 for information on search efforts pertaining to email records.

c. **Format of responsive records:** Responsive records should be provided by the business unit to the Disclosure office in their original format and/or readily reproducible format.

Note: Email records and their attachments should be provided by the business unit in pdf format.

d. **Case note documentation:** Case notes must document all search efforts conducted by a caseworker and all support documents to that search must be imported into the inventory management system to support the search efforts completed. Case notes must also include any conversations with a business unit functional contact regarding the business unit search efforts. Refer to IRM 11.3.41.3.6, *Case Documentation*.

3. **Identifying responsive records:**

a. **Inventory management system functionality:** Understanding the functionality of the inventory management system is key to ensure any records not responsive to the request are deleted or removed from the documents considered responsive.

b. **Case note documentation:** Case notes must document any deletion or removal of records provided by a business unit that were not considered responsive to the request and why they were not responsive. Refer to IRM 11.3.41.3.6, *Case Documentation*.

4. **Processing responsive records:**

a. **Electronic tools:** Incorporate the use of electronic tools to review and apply FOIA exemptions. Import all responsive documents into the appropriate section of the inventory management system to conduct all review and redactions. Do not review and redact outside of the inventory management system.

b. **Rolling productions:** Discuss with the requester the option of providing interim responses or rolling productions, such as providing a production every month. Provide rolling productions, interim responses, to requesters when feasible.

c. **Maintain copies:** Maintain copies of responsive records in a clean, unredacted form, as required by the inventory management system functionality.

d. **Applying redactions:** Using the functionality of the inventory management system to apply redactions will ensure proper markings are made on documents released in part and in full. Using the functionality of the inventory management system will also ensure all redactions made electronically cannot be removed once the document is sent outside of the IRS. **Reminder:** FOIA exemptions are only to be used on FOIA requests.

e. **Review process:** DMs or their delegated official are required to use the functionality of the inventory management system to ensure a secondary review process is completed, when applicable (i.e., when there is a no records response or when records are being withheld in part or in full, before providing a final response to a FOIA request.)

5. **Response Preparation:**

a. **Standardized response language:** Always use the pattern letters which have standardized response language, when responding to a request. If pattern language is revised or additional non-pattern language

is included in the response letter, DMs must approve any deviation to pattern language.

b. **Review all letters:** Caseworkers must review all letters before they are sent to the requester to correct typographical errors, ensure all items requested are being addressed, and in the case of a FOIA request, all FOIA exemptions applied are stated in the response letter with an explanation of each exemption. DMs or their designees must also review the following: Testimony Authorizations, FOIA response letters which contain appeal rights as well as any pattern letters which contain deviations. See IRM 11.3.41.15.5(6), *Request for Testimony of IRS Employee*, and IRM 11.3.41.13.7(8), *Respond and Close*, for additional information.

c. **Required accountings:** All accountings under IRC 6103(p)(3) and the PA must be completed. DMs should establish a process to ensure all accountings are completed as required.

6. **Responsiveness to inquiries:**

a. **Points of contact:** DMs or their designees will ensure caseworkers provide a point of contact to the requester who can respond to inquiries about their request.

b. **Communicate with requesters:** DMs or their designees will ensure caseworkers make contact with requesters during the processing of the request to discuss any aspect of the request or its handling to facilitate the most efficient processing.

c. **Status updates:** DMs or their designees will ensure timely extension letters for FOIA cases and status letters are provided to the requester with estimated completion dates and explanations of any delays, as applicable.

11.3.41.3.1
(08-26-2021)
Receipt and Control

- (1) Most disclosure casework is sent to the GSS for receipt and control purposes. Receipt and control of requests for information includes:
 - a. Date stamping or marking the paper request by hand with the date received. Receipts received electronically will be identified by the date they are electronically provided to the GSS, or the next business day if received on a weekend, holiday or after normal business hours (6:00 A.M. to 6:00 P.M. ET, Monday through Friday).
 - b. Determining the type of request and identifying it under the appropriate case type in the inventory management system.
 - c. Inputting the request into the inventory management system (including all required information).
 - d. Assigning the request to a caseworker.
- (2) If a disclosure employee receives correspondence locally, they should take the following actions:
 - If the correspondence is related to a case previously or currently assigned to that Disclosure office, the documents should be scanned locally and associated with the case. Do not send these documents to GSS.
 - If the correspondence is related to a case that was previously or is currently assigned to another Disclosure office, contact the employee who worked or is working the case, with a CC to the manager, and provide them copies of the scanned correspondence to associate with the appropriate case. Do not send these documents to GSS.

- If the correspondence is a request for records and there is no evidence that a case has been previously or currently assigned to Disclosure, the disclosure employee must date stamp the document indicating receipt and then send the documents to GSS as soon as possible to index and assign as a new case.
- If the correspondence is a mis-routed payment related to a Disclosure case, send the payment to GSS for processing. Document case notes with the payment information.
- If the correspondence is a mis-routed FOIA Appeals request, mail the correspondence to the IRS FOIA appeals office at the address in the Notice 393. Do not send these documents to GSS.
- If the correspondence is not related to Disclosure casework (i.e., summons to be worked by Advisory, garnishments for IRS employee wages to be worked by Human Capital Office (HCO), mis-routed documents that are not requesting IRS records), if possible, route the correspondence to the appropriate BU. Do not send these documents to GSS.

11.3.41.3.1.1
(08-26-2021)

Reassigning Requests

- (1) Receipt of Disclosure casework is centralized to the GSS, then assigned to each Disclosure Office for processing. Case reassignments may be needed following the guidance below or upon DM discretion.
- (2) Cases may be reassigned to a field TLS or other Disclosure caseworker based on managerial approval.
- (3) When a request is received in a local Disclosure office, and the request is subsequently forwarded to the GSS, the received date is the date initially received in the local Disclosure office. The inventory management system received date must match the date of initial receipt.
- (4) Process inventory reassignments expeditiously so that Disclosure personnel will have time to complete all administrative processing within the statutory time frames.
- (5) Requests that appear to rebut or challenge a prior response will not be routinely reassigned to the caseworker that processed the prior request unless additional records are located in response to the original request. The manager of the receiving office will review the request and will notify the manager of the closed case if the subsequent request provides information that indicates the original request was processed improperly. If the managers agree, the new case will be reclassified as Miscellaneous and closed. The prior case will be reinserted and assigned to the initial office. If the managers disagree the issue will be elevated to the appropriate area managers, Disclosure, for a determination.

11.3.41.3.2
(02-26-2024)

Initial Analysis

- (1) The first step in Disclosure casework processing requires the assigned Disclosure caseworker to analyze the incoming request to determine if it contains all essential elements. This analysis may include determining if the proper Code (i.e., IRC 6103, FOIA) is cited, confirming that the requested records are within the jurisdiction of the IRS, and validating access and authentication requirements. Each case type may have other specific initial analysis steps. If initial analysis shows that a request is missing any required elements, the caseworker should make sufficient effort to contact the requester and ask for the

missing elements. Generally, making two attempts to contact the requester would show sufficient effort, DMs can adjust this on a case-by-case basis.

- (2) The assigned Disclosure caseworker must also review the incoming request to determine if it has been properly entered within the inventory management system. If not, the Disclosure caseworker must take corrective actions within the system to correct the data. The following elements should be considered when determining if the request is correctly entered into the system:

- Request should be logged in under the proper request type category.
- Received date in the system must match the earliest disclosure date stamp or electronic receipt indicator.
- Requester and/or taxpayer information fields are complete, including name, Taxpayer Identification Number (TIN) (i.e., Social Security Number (SSN) or Employer Identification Number (EIN)) and address.

Note: For IRC 6103(i) cases the requester should be listed using the first and last name and address of the AUSA. For IRC 6103(d) cases the requester should be the authorized official listed in section C4 of the Form 8796-A. Use their first name, last name and address.

- (3) The caseworker must also confirm that any other required fields within the inventory management system are reviewed and correct. The subject category must be updated to properly identify the types of records being requested.
- (4) The backlog and work stoppage categories must also be entered, with the relevant category below, to highlight potential complexities that may affect timeliness. Work stoppage categories are applicable when all actions by Disclosure caseworkers have been exhausted and there are delays outside of Disclosure’s control.

Reminder: If there are still records to review, or any other substantive actions to move the case toward resolution, a work stoppage indicator is not applicable.

Reminder: Communicate promptly with the requester to discuss the status of the case, including the work stoppage issue, when appropriate.

Backlog Category Code	Description
AA	1,800 or more responsive pages

Backlog Category Code	Description
B	<p>Multi-functional Coordination</p> <ul style="list-style-type: none"> • Two or more functions are in possession of responsive files (i.e., Exam and Collection are under Small Business/Self Employed (SB/SE) but are two separate functions). • The Document Requested screen should reflect documents requested from more than one function.
C	<p>Counsel Coordination</p> <ul style="list-style-type: none"> • Responsive records must be secured from IRS counsel; Document Requested screen should reflect documents requested from counsel. and/or <ul style="list-style-type: none"> • Counsel must review responsive records prior to release due to open litigation, anticipation of litigation, or as needed by the business unit.
D	<p>E-Discovery</p> <ul style="list-style-type: none"> • Potential responsive documents are or will be loaded into an E-Discovery platform, initiated by Counsel or the business unit, due to existing or pending litigation outside of the FOIA process.
E	<p>None of the Above</p> <ul style="list-style-type: none"> • No other category fits. By default, it is a single stakeholder under 1,800 pages. • To be used on its own and should be removed if other categories are appropriate.
F	Work Stoppage
G	Work Stoppage - FRC
H	Work Stoppage - Custodian of Records

Backlog Category Code	Description
I	Work Stoppage - Scanning
J	Work Stoppage - Computer/FX Issues
K	Work Stoppage - POD/Mailroom Access Issues
L	Work Stoppage - Case On Hold

The category may change as the case progresses and should be updated accordingly. In situations where more than one category applies caseworkers may input multiple entries.

Note: Category Code “E” is the default backlog category code that will be entered when a case is created. This code is to be used on its own. It will be removed if another category is appropriate.

Note: If none of the other work stoppage backlog categories apply, but a case is still at a processing impasse for one of many reasons, caseworkers can use “F-Work Stoppage” under limited circumstances. The Work Stoppage categories can be used in conjunction with other categories.

Note: The above list of backlog and work stoppage categories is current as of the publishing of this IRM. Any new backlog or work stoppage categories that are added after the publication of this IRM, should be considered when processing cases.

- (5) Some records can be provided using an established access procedure worked by another function at the IRS. These routine agency procedures include, but are not limited to, the use of a Form 4506, *Request for Copy of Tax Return*; Form 4506-A, *Request for Public Inspection or Copy of Exempt or Political Organization IRS Form*; Form 4506-F, *Request for Copy of Fraudulent Tax Return*; or Form 4506-T, *Request for Transcript of Tax Return*, sent to Return and Income Verification Services (RAIVS) for processing. Not all case types allow for a Routine Agency Procedure response, review the specific case type processing chapter in this section.
- (6) Initial analysis also includes researching the inventory management system to identify any duplicate requests. If the request is a true duplicate (that is, the request is identical in every aspect), take appropriate action to close the case following inventory management system procedures. No response letter is necessary for a true duplicate request. If the request is not a true duplicate, but seeks the same information as another request, contact the caseworker(s) controlling the other case(s) to determine whether to consolidate the request(s) to eliminate repetitive work and to decide which office will process the request. Offices other than the office that will process the case will close their case(s) as duplicates.
- (7) If the Disclosure caseworker identifies that the assigned case contains more than one request in the incoming correspondence, the caseworker will process

the first request, then they will contact the GSS through their manager to request the other request(s) be entered as separate cases.

- (8) If correspondence has been entered into the inventory management system that involves an issue not worked by Disclosure, take appropriate action to close the case in the system. Enter a case note explaining that the correspondence is not a disclosure work process, then print the correspondence locally and send it to the appropriate BU.
- (9) Third party requests seeking tax records protected by IRC 6103 must include a valid authorization document (i.e., Form 2848, *Power of Attorney and Declaration of Representative*, Form 8821, *Tax Information Authorization*). If the request does not contain a valid authorization, caseworkers should contact the requester to obtain a valid authorization document.
- (10) During the course of reviewing an incoming request, the translation of non-English language may be required. See IRM 11.3.21.12(3), *Internet Research*, for additional guidance on available translation services.

11.3.41.3.3
(02-26-2024)
Research and Search Efforts

- (1) After determining that the request is valid, the second step in Disclosure casework processing is determining the scope of the request and the manner in which to conduct a search for responsive records.
- (2) Disclosure caseworkers must research appropriate databases to determine if the requested record exists and/or is in the control of the IRS. If the request is for tax information, the caseworker will conduct a search of the Master File (MF) to identify the taxpayer's account(s) for the tax period(s) requested and order the necessary returns and return information. The Disclosure caseworker is responsible for ensuring that all requested case files contain complete written audit trails including, but not limited to, information on communications with requesters and the extent and results of search efforts.

Note: For those requests containing numerous taxpayers, caseworkers should use a spreadsheet to document and track research, requests for and receipt of returns, and documents or other information that were provided to the requester. When using a spreadsheet, the caseworker must upload a copy into the inventory management system.

- (3) If there are indicators of identity theft or a fraudulent tax return on the taxpayer's account, the Disclosure caseworker should discuss this matter with their manager and document their findings in the inventory management system. See IRM 11.3.41.3.10.1, *ID Theft Considerations*, for additional information.
- (4) Caseworkers must also follow procedures to retrieve records and provide the most expeditious response possible to the requester. These search procedures may include, but are not limited to, initial special searches, direct contact with Federal Records Centers (FRCs), pulling records from an IRS database, or reaching out to the IRS employee who owns the record.
- (5) Disclosure personnel will request responsive documents from the FRC using Special Search procedures. Caseworkers will prepare an accurate Form 2275, *Records Request, Charge and Recharge*, when ordering returns or administrative files. Form 2275 should include the mailing address of the GSS as well as the phone numbers of the caseworker and DM. Caseworkers will use the Integrated Automation Technologies (IAT) Fill Forms Tool, when completing the

Form 2275. The IAT Fill Form tool automates entries of several fields on the Form 2275 using IDRS account information. Step by Step instructions for using Form 2275 in IAT can be found in the Record Retrieval Resources (RRR). Instructions to gain access to IAT can be found in the Account Research Tools (ART) on SharePoint. Fax Form 2275 to the proper Campus Special Search Unit or FRC. If no reply is received within 14 business days, the caseworker will notify their DM who should follow up with the appropriate official at the applicable site. If the DM is unable to resolve the problem, they should contact the Disclosure PPO BU Liaison for Wage & Investment (W&I) for assistance. Special Search and FRC site information is available on the Disclosure SharePoint page.

Caution: When ordering files to respond to a request, please make one request to the appropriate FRC. Do not send a separate Form 2275 for the same records to Campus Special Search Units. Most of the records are located at the FRCs. When a Form 2275 is sent to the FRC and the same Form 2275 is sent to Campus Special Search, Campus Special Search forwards the Form 2275 to the appropriate FRC for processing. FRC receives the second Form 2275 and then must process a duplicate request.

Note: There are other systems and databases which can be used to request IRS records. The RRR document on the Disclosure SharePoint site provides guidance on other ways in which records can be retrieved. See IRM 11.3.41.3.3.2, *IDRS Research*, for additional information. The RRR document is not all inclusive, it is still up to the caseworker to do sufficient research and complete all search efforts to retrieve responsive records.

- (6) To ensure responsive records are properly associated to the correct case in the inventory management system, below are a few reminders for preparing a Form 2275:
- Caseworkers should use the most current version of the Form 2275, which can be found in the *Product Catalog*, under Form 2275.
 - Caseworkers should include the correct case number on the Form 2275 to ensure GSS associates the responsive records to the correct case.
 - Caseworkers should include the word **DISCLOSURE** in all caps to the top of the Form 2275 as well as to the fax coversheet.
 - Caseworkers should include the two-digit list year for the document being requested.

Example: If the list year on a Form 2275 is a single digit, such as a “2”, the FRCs will research 2002, 2012 and 2022 to locate the correct responsive document. Providing the two-digit list year allows for the FRCs to search more efficiently (i.e., “12” for the list year 2012).
 - Include the FRC location on the form to assist GSS with the re-file process.
 - The Form 2275 must be signed/approved by an employee on the FRC authorization list for the respective Disclosure office.
 - Caseworkers should utilize the crosswalks prior to faxing the Form 2275 to ensure the request is being made to the correct FRC. The crosswalks are located on the RRR on the Disclosure SharePoint.

- (7) To request administrative, program, and policy records, specifically certain retired Collection files, such as retired Offer in Compromise (OIC), Taxpayer Delinquent Account (TDA) and others from the FRC, a caseworker will complete an Optional Form 11, also known as OF-11. The OF-11 can be found on the Disclosure SharePoint Site>RRR> Collection. Below are some reminders when completing an OF-11:
- A separate OF-11 must be completed for each request.
 - In the case of requests for sensitive records like 6103, Grand Jury, and Criminal Investigation (CI) records, caseworkers must request the whole box.
 - Email the completed OF-11 to the Disclosure PPO analyst who is assigned FRCs as a program assignment. For a current listing of Disclosure PPO analysts and their program assignments, see the *Disclosure PPO Contacts on the Disclosure Privacy and Knowledge Base Site*. The assigned analyst will process your request with the FRC. Once processed, the OF-11 will be returned and will include the FRC issued 'Reference Request #'.
 - Keep a copy of the form for your records. The form will be needed to return the file to the appropriate FRC.
- (8) Files or boxes that are temporarily withdrawn from an FRC using a OF-11, must be returned within 14 days for refiling. Below are some reminders when returning files to the FRC, previously requested on an OF-11:
- Caseworkers should use the original approved/processed OF-11 that was returned by the Disclosure PPO analyst, with the original request. This will have the FRC issued 'Reference Request #'.
 - Under 'Nature of Service', Uncheck the box for 'Temporary loan of record'. Check the box marked 'Other' and mark it 'REFILE'.
 - Email the OF-11/Refile to the appropriate Disclosure PPO analyst.
 - Once you receive a response from the Disclosure PPO analyst, take the following steps:
 - 1.) Return the records to the FRC from which they were shipped, including a copy of the OF-11/Refile.
 - 2.) Utilize UPS for return of the records, for tracking purposes. Refer to IRM 10.5.1.6.9.3, *Shipping*, for proper shipping requirements. Refer to IRM 1.15.3, *Disposing of Records*, and IRM 10.5.4.3.3(2) , **Inadvertent Unauthorized Disclosures and Losses or Thefts of IT Assets, BYOD Assets and Hardcopy Records/Documents**, for timely and accurate reporting of records loss.
- Note:** Follow established procedures when shipping federal records from the IRS office to FRC. If records are lost or damaged during transit follow established procedures, which can be found in IRM 10.5.4.3.3 , **Inadvertent Unauthorized Disclosures and Losses or Thefts of IT Assets, BYOD Assets and Hardcopy Records/Documents**, and on the *Disclosure and Privacy Knowledge Base Site*.
- (9) Any responsive records identified and received must be imported into the specific assigned case. The caseworker may import the records locally, or may send them to GSS to be imported, whichever is most effective for their case. If the caseworker identifies records that have been imported into the case that are not responsive or not related to the request, consult with the DM to ensure

the records are removed from the case. If the records appear to belong to a previous or currently assigned case, the caseworker should contact the employee who worked, or is working the case, with a CC to the manager, and let them know the records are in the inventory management system and they should associate them with the appropriate case.

11.3.41.3.3.1
(08-26-2021)
Research Tools

- (1) For requests involving tax information, caseworkers should do sufficient research in IDRS to determine if the relevant return or return information exists. This research may include reviewing a cross-referenced SSN to determine if a joint return was filed. Exhibit 11.3.41-12, *IDRS Research Tools*, and IRM 11.3.41.3.3, *Research and Search Efforts*, provides some basic research that should be considered to make an adequate search.
- (2) The IRS Disclosure SharePoint site contains a link to the Account Research Tool (ART) which provides guidance on IRS research databases that may be used by a disclosure caseworker to retrieve IRS records. The ART contains links to research tool resources and information on how to get access to research databases, as relevant. All access to IRS research databases must be approved by the DM.
- (3) The IRS Disclosure SharePoint site also contains a link to the RRR which provides suggested resources that can be used to help a disclosure caseworker research and retrieve IRS records that may be responsive to a request. The RRR also contains BU Points of Contacts and instructions on which forms or procedures should be used to request certain types of IRS records.

Note: For TLS casework only – The TLS will use the FFC Listing to retrieve IRS records that may be responsive to a request. The FFC Listing is located in the TLS Work Center on the Disclosure SharePoint site.

- (4) The ART and the RRR are suggested resources however the disclosure caseworker is still responsible to research and retrieve any responsive records. If the ART and/or RRR does not contain the applicable resource, the caseworker must still complete all research and take all actions to retrieve the records needed to fulfill the request.

11.3.41.3.3.2
(02-26-2024)
IDRS Research

- (1) Overview: Requests for tax administrative records will generally require research of IDRS.
- (2) This IRM subsection provides guidelines to assist with IDRS research as it applies to various administrative files. On a case-by-case basis, additional IDRS research may be required in addition to the information provided in this IRM section. Document 6209, *IRS Processing Codes and Information*, is the main source to use when analyzing any IDRS research. This IRM section will provide some common command codes but is not all inclusive and additional research of Document 6209 may be required.

Note: Thorough IDRS research may require review of the Non-Master File (NMF) as well as records moved to retention register.

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- (4) The ART on SharePoint provides links to research tool resources that may be useful for additional information pertaining to IDRS.
- (5) Control-D WebAccess (CTDWA) allows quicker access and greater report management for users to their respective report files. The reports are made available to the user upon logging in to the CTDWA Server and selecting a Host Repository. For additional information pertaining to these reports see ART>Control-D.

11.3.41.3.3.2.1
(08-26-2021)
**IDRS Research
Examination
Administrative Files**

- (1) Overview: Examination Administrative files may be found in multiple locations such as FRCs, Examination Databases and with compliance officers. The Audit Information Management System (AIMS) command code AMDIS or AMDISA is used to display taxpayers account information stored on the AIMS database as it progresses through an examination. An “-L” freeze on the IDRS database may also indicate Examination activity. This assists in locating the Examination file needed to determine the appropriate steps to initiate search efforts and/or locate Examination files. Refer to IRM Exhibit 11.3.41-13, *Exam/AIMS/AMDISA Status Codes*, for common Examination status codes.
- (2) Command code AMDIS/AMDISA displays statuses of the Examination which should be used as the initial point of analysis to determine the location of the Examination file requested. The status alerts to where your search initiation will begin, (i.e., Status 10 - Selected, Not assigned, Status 90 - Exam Closed). See IRM Exhibit 11.3.41-13, *Exam/AIMS/AMDISA Status Codes*.
- (3) To retrieve Examination files that are in an open status, refer to the RRR document titled Examination Files>Exam Case Files. Use the Primary Business Code (PBC), Secondary Business Code (SBC) and the Employee Group Code (EGC) found on the AMDISA to initiate search efforts for the Exam file needed.
- (4) To retrieve Examination files that are in a closed status, Form 2275, *Records Request, Charge and Recharge*, must be completed to retrieve the file from the appropriate FRC.
- (5) Centralized Examination Automation Support (CEAS) View Case allows users to view case inventory records, generated tax reports, letters, workpapers, summary information, and case notes. See ART for additional information regarding access to CEAS. Refer to the RRR>Examination files>CEAS/RGS Files for additional information on points of contact.
- (6) Report Generation Software (RGS) is a comprehensive program used by SB/SE and W&I campus, and Large Business & International (LB&I) Withholding, Exchange and International Individual Compliance (WEIIC) examiners throughout the audit process. Refer to the RRR>Examination files>CEAS/RGS Files for additional information on points of contact.
- (7) The Automated Underreporter (AUR) business unit also conducts examinations and these are identified by a Transaction Code (TC) 922 on the IDRS tax account. Refer to the RRR>AUR Files>AUR/BUR Files for additional information to retrieve a file in AUR.

- (8) To determine whether there has been any other exam activity, reference Document 6209, *IRS Processing Codes and Information*, Section 12, for additional exam codes.
- 11.3.41.3.3.2.2
(08-26-2021)
IDRS Research Collection Administrative Files
- (1) Overview: Collection Administrative files may be found in multiple locations such as FRCs, Collection Databases and with revenue officers. The Taxpayer Delinquent Inquiry (TDINQ) command code is used to display the Collection Status codes progress through the collection process. This assists in locating the Collection file needed to determine the appropriate steps to initiate search efforts and/or locate Collection files.
- (2) Various Collection Status codes as outlined in Exhibit 11.3.41-14, *Collection Status Codes*, will assist in identifying the status of a tax administration file in the Collection process.
- (3) To retrieve Collection files that are in an open status, refer to the RRR document titled Collection Files>Open Collection File Requests. Use the revenue officer (RO) Group contact number by TSIGN/ZIP/STATE, to initiate search efforts for the Collection file needed.
- (4) To retrieve Collection files that are in a closed status, refer to the RRR document titled Collection Files>Closed Collection Case Files to initiate search efforts for the Collection file needed.
- (5) To retrieve Automated Collection System (ACS) documents refer to the RRR>Collection Files>Automated Collection System (ACS) documents.
- (6) To retrieve Collection files that are assigned to Advisory, refer to the RRR document titled Collection Files>Collection Advisory to initiate search efforts for the Collection file needed.
- (7) To retrieve Notice of Federal Tax Lien (NTFL) files, refer to RRR document titled Collection Files>Liens to initiate search efforts for the NTFL file needed.
- (8) To retrieve Private, Debt Collection Cases, refer to the RRR document titled Collection Files>Private Debt Collection Cases to initiate search efforts for the Private Debt Collection file needed.
- (9) To retrieve Trust Fund Recovery Penalty Files, refer to the RRR document titled Collection Files>Trust Fund Recovery Penalty Files to initiate search efforts for the Trust Fund Recovery Penalty file needed.
- 11.3.41.3.3.2.3
(08-26-2021)
IDRS Research Appeals Administrative Files
- (1) Overview: Appeals Administrative files may be found in multiple locations such as FRCs, Appeals Databases and with appeals and settlement officers.
- (2) For Administrative files in Appeals, command code AMDIS/AMDISA displays statuses of the Appeals process which should be used as the initial point of analysis to determine the location of the Appeals file requested. The status alerts the caseworker to where their search initiation should begin, (i.e., Status 80 - Non-Docketed Appeals, Status 81 - Unassigned Appeals). Refer to the RRR document titled Appeals Cases for additional information.
- (3) For Collection Administrative files, TC 520 with a Closing Code of 76 or 77 indicates a Collection Due Process (CDP) hearing has been requested.

11.3.41.3.3.2.4
(12-08-2022)
**IDRS Research
Miscellaneous Tax
Administrative Files**

- (4) Refer to the RRR document titled Appeals Cases>Appeals Cases to initiate search efforts for the Examination or Collection file assigned to Appeals.
- (1) Overview: The following are types of tax administration files that may fall under the jurisdiction of Examination or Collection which will require research accordingly as identified in IRM 11.3.41.3.3.2.1, *IDRS Research Examination Administrative Files*, and IRM 11.3.41.3.3.2.2, *IDRS Research Collection Administrative Files* (above).
- (2) Tax Equity and Fiscal Responsibility Act (TEFRA) Administrative and Bipartisan Budget Act (BBA) files: Refer to Document 6209, *IRS Processing Codes and Information*, and IRM 11.3.41.6.4.1.1, **Tax Equity and Fiscal Responsibility Act and Bipartisan Budget Act Partnership**, for additional information.
- (3) Innocent Spouse (IS) Administrative files: Master File Transaction (MFT) 31 is a Master File Account Code used to identify assessments against an individual taxpayer on a joint module where one spouse is fully or partially relieved of the liability for an assessment made against a joint module. Refer to SharePoint RRR>Innocent Spouse for additional information for obtaining innocent spouse files.
- (4) Trust Fund Recovery Penalty (TFRP): Trust Fund Recovery Penalty Files with an assessed penalty can be located by identifying MFT 55 on IMFOLI, then reading the IMFOLT specific transcript to check for a closing code of 618 pertaining to the TC 240. The Document Locator Number (DLN) of the TC 240 will indicate where the penalty was assessed. Another method is to pull up Command Code UNLCER for either the EIN of the company or the SSN of the corporate officer. Refer to IRM 11.3.40, *Disclosures Involving Trust Fund Recovery Penalty Assessments*, and the RRR>Collection Files>Trust Fund Recovery Penalty Files for additional information.
- (5) CI Administrative files: For information on how to use IDRS to identify CI information, review Document 6209, *IRS Processing Codes and Information*. Additional information for CI can be found on the RRR>Criminal Investigation Points of Contact.

11.3.41.3.4
(02-26-2024)
Review and Edit

- (1) Once the responsive records have been retrieved, the next step in case processing requires the Disclosure caseworker to work with the IRS employee who has ownership of the records to review the material and determine what should be released or what should be withheld in full or in part. The determination to grant or deny access to a specific record is made for each request on a case-by-case basis. Information being withheld must be approved by the authorizing official (i.e., information withheld under IRC 6103 requires manager approval per Delegation Order 11-2, found in IRM 1.2.2.12.2, *Delegation Order 11-2 (Rev. 4), Authority to Permit Disclosure of Tax Information and to Permit Testimony or the Production of Documents*).
- (2) Disclosure caseworkers are responsible for ensuring the documents are responsive to the request. Caseworkers will review documents provided by IRS functions to ensure they have received all responsive records and to separate and remove any non-responsive records. The Disclosure caseworker will also review all releases of documents to ensure that only covered documents and information are released in response to the request.

- (3) If there are periods with open collection, examination, CI or other compliance activity, the Disclosure Office will obtain clearances from the applicable functions before releasing any information pertaining to those periods.

Note: Functional clearances are not required for the disclosure of information on periods with no open compliance or with no CI activity. Any local alternative procedures for securing clearances should be documented and be kept in the case file.

- (4) Consider the following when obtaining clearances:
- Is there a pending criminal investigation of the taxpayer?
 - Is the taxpayer the subject of an open examination or collection activity?
 - Will disclosure of the requested information seriously impair a civil or criminal tax investigation? If so, can any information be furnished that would not impair the tax investigation?
 - Will the information identify a confidential informant, and, if so, can it be redacted?

- (5) The following information may need to be edited:
- Information that would identify a confidential information or seriously impair a civil or criminal tax investigation.
 - ID Theft indicators or fraudulent tax returns.
 - Tax convention information protected under 26 USC 6105.
 - Wagering tax information protected under 26 USC 4424 (see IRC 6103(o)(2)).
 - Information obtained from, or on behalf of, a grand jury proceeding, unless a valid order permitting the use, or the information has been issued under Rule 6(e) of the Federal Rules of Criminal Procedure (FRCP).
 - Returns and return information of a third party or unrelated taxpayer.
 - Returns and return information covering tax years not specifically covered by an IRC 6103 authorization.
 - Numeric Discriminant Index Function (DIF) scores, Discriminant Analysis System (DAS) scores, and Underreported Income DIF (UIDIF) scores and Selection of Exempt Organization Returns for Examination (SERFE) indicators. It is IRS policy to delete all DIF, DAS, and UIDIF scores and SERFE indicators.
 - Other information where disclosure is prohibited by 18 USC 1905 (for example, trade secrets and other business proprietary information).

Note: The DM will ensure any information prohibited from disclosure is edited accordingly.

- (6) Disclosure receives delegated authority to determine what documents should be released or withheld. Caseworkers should consult compliance employees, when necessary, to help decide what records are releasable. However, do not rely solely on the guidance given by a non-Disclosure employee when making a determination. Disclosure employees must confirm that all statutory requirements are addressed, and cases are processed correctly.

- (7) If a case includes responsive records that are privileged, only the trial attorney has the authority to invoke or waive that privilege. The caseworker should consult with that person and get their decision.
- (8) Copies of responsive records made in connection with disclosure casework must be as legible as possible. When copies are illegible because the originals are poor, the copy must be stamped with the notation "best copy available."

Note: Do not withhold illegible documents on that basis alone. However, review illegible or barely legible documents for possible redactions. Assert applicable redactions for illegible material and withhold in the same manner as for legible documents. This is equally true whether the illegibility is caused by indecipherable handwriting or by poor quality of the original or electronically scanned document. Disclosure personnel will work with the function providing the documents or the GSS to determine the contents of the illegible documents or to have the illegible copy re-scanned to try to improve legibility.

- (9) The burden of proof in defending withholding rests with the Government. Therefore, copies of documents which may ultimately be submitted to a court for *in camera* inspection must be legible.
- (10) During the course of reviewing responsive records, the translation of non-English language may be required. See IRM 11.3.21.12(3), *Internet Research*, for additional guidance on available translation services.

11.3.41.3.4.1
(12-08-2022)
Outside the Scope

- (1) "Outside the scope" is not a legal term and should rarely be used when processing any case types. Caseworkers should only be retrieving or receiving documents that are responsive to the request. The term outside the scope refers to responsive records or portions of records that have been provided or obtained that are outside the scope of the request. Once records are received, information can only be withheld as applicable.

Note: Documents such as the Form 2275, *Records Request, Charge and Recharge*, that the caseworker used to request files are not considered responsive and should be removed from responsive records before sending a final response to the requester. Do not include them as responsive documents to the request. Non-responsive records such as Form 2275 should be scanned and placed in the inventory management system, using appropriate procedures to import documents for that specific system, but should be maintained separately from responsive records. These types of documents should remain in the inventory management system to support actions and determinations taken on the case.

- (2) If records are received from record holders that are not responsive to the request, change the document status to "non-responsive" in the inventory management system or delete them from the scanned file on a page-by-page or file-by-file basis. Failure to do so may misrepresent the total number of responsive pages reviewed and in the case of a FOIA request, makes the number of pages withheld by a valid FOIA exemption incorrect. That opens the door for a legal challenge of the withholding and complicates any litigation as the records were withheld outside of a bona-fide FOIA exemption.
- (3) A legitimate and rare outside the scope situation only applies when there are records that are "created" or came into the possession or control of the record

holder after the date of the request. However, out of scope does not apply to entries on transcripts or case history entries that were made after the date of the request as the case history entry is not creating a record, it only reflects actions taken after the date of the request. The record in its entirety is responsive because it was within the possession and control of the function prior to the date of the request. See 26 CFR 601.702(c)(8)(ii). Even if the record was created after the date of the request, release should be considered based upon the concept of openness and transparency or based on the time it takes to locate and retrieve responsive records.

11.3.41.3.5
(02-26-2024)
Respond and Close

- (1) The final response letter issued to the requester is the final action to complete a request. Interim responses must be issued to the requester throughout case processing, as applicable. The final or interim response letters must contain specific items of information such as the request receipt date, must explain the reason for withholding any information denied in full or in part and must address all items requested.
- (2) All response letters should be created using approved pattern language. Any deviations from approved language must be reviewed and approved by the DM and the DM must document the approval of the deviation in the case history notes. Combining multiple approved pattern letter paragraphs does not require managerial approval. The caseworker should give attention to detail and thoroughly review all outgoing correspondence to make sure it is professional and technically accurate. DM case reviews should also ensure response letters are properly completed.
- (3) Interim responses should be issued to requesters when it is appropriate. DOJ OIP has provided guidance regarding interim responses during the processing of a FOIA request, and this same guidance should be considered for all Disclosure case processes. When working a request that involves a voluminous amount of records or which involves searches in multiple places, when feasible, the Disclosure employee should provide an interim response rather than waiting until all records are located and/or processed. Any exceptions made not to engage in interim responses, when records are clearly available, should be reflected and supported in case notes.
- (4) A case should not be closed unless all responsive records were retrieved and reviewed, or until all search efforts to retrieve the responsive records have been exhausted.
- (5) Case files and history notes must contain sufficient information to permit reviewers to determine precisely what was and/or was not released, and the underlying reasons. In many cases, the response letter itself may be adequate to determine the extent of records released. However, the case notes must be detailed enough to support all relevant activities, actions, and/or research used to make a determination in sufficient detail for others to understand.
- (6) The electronic file must contain copies of the signed and dated response letter, edited and/or withheld records, any index that may have been prepared, and any other records that are necessary to document the processing of the request. See IRM 11.3.41.2.4.1(1), *Electronic Inventory Case Organization*, for additional documentation that should be included in the electronic file.

- (7) When appropriate for the case type, the caseworker must prepare the record of accounting. Document the case history to show accountings were made. Each case type discussed later in this IRM will identify specific accounting requirements.
 - (8) Before final closing the caseworker and/or manager should look over the case and make sure all actions were timely and accurately documented. The case should reflect the time spent on all case activities and should adequately describe all relevant actions taken. See IRM 11.3.41.3.6, *Case Documentation*, for additional information.
 - (9) When appropriate, responsive records should be mailed locally, through printing or electronic methods, then sent to the assigned Disclosure employee for closing. Follow procedures established by the DM. As an alternative, cases could be forwarded to the GSS for printing and closing. If the case is due the same day it is ready for closure, do not send the case to GSS, respond and close the case locally. An electronic delivery may be used if the request was received via the Public Access Link (PAL).
 - (10) When sending the case for closure, enter a case note with clear instructions to close the case in the way best suited to the efficiency of case closure.
 - (11) When sending the case for closure **ONLY**, below are a few reminders:
 - a. The requested close date cannot be in the future.
 - b. Ensure all required actions were taken on the case, and that it is ready for closing.
 - c. Ensure that there are no payments being held in GSS, that need to be returned to the requester, prior to sending for closing. If there is a payment being held in GSS that is to be returned, caseworkers must include this information as part of the closing instructions in the final case note to GSS.
 - (12) When sending a case for printing and mailing, below are a few reminders:
 - a. Case notes should indicate what needs to be printed and mailed with the response letter (i.e., invoice, responsive documents).
 - b. If the final response letter is not dated, the case note should instruct the closer what date to put on the letter and instruction that the case should be closed with the same date.
 - c. If the final response letter is dated, the case note should instruct the closer that the closing date is to match the date on the letter.
 - d. Ensure that there are no payments being held in GSS, that need to be returned to the requester, prior to sending for printing and mailing. If there is a payment being held in GSS that is to be returned, caseworkers must include this information as part of the closing instructions in the final case note to GSS.
- 11.3.41.3.6
(08-26-2021)
Case Documentation
- (1) Case notes in the inventory management system should clearly define actions taken including: initial analysis steps, identification of records requested, IDRS research completed, location of records and BU who owns the records, name of BU employee issued a search memo etc. Search memos need to clearly define due dates and what is expected (records in a readable format, preferably electronic, user ready condition, impairment recommendations if

applicable, method for delivery of records, use of a transmittal form). A history entry should be made to refer to an action even though a form or document relative to the action is in the case file.

- (2) Disclosure caseworkers are responsible for ensuring that their case note documentation is contemporaneous, professional, accurate, and provides a clear description of all actions taken on a case, including next steps, and estimated dates for next steps and for completed resolution. Case notes should include planned activity in the event that the caseworker is out of office or if it is necessary for another caseworker to work on the case or determine the current status. Case notes should be factual and objective.
- (3) Case note documentation must be:
 - Complete - Include all significant actions taken to analyze a request, search for records, review records, and articulate the basis for the release or the withholding of records. Document contacts with the requester to limit the scope, clarify the request or address other issues that are significant to the resolution of the case. Managerial, OJI and Counsel involvement as well as other external/internal stakeholder communication should be documented using full names, explanation of who the person is, and phone numbers, emails, or other contact information used for external contacts.
 - Coherent - Use plain language and proper grammar. Do not use acronyms or abbreviations that are not commonly understood.
 - Timely - Document all case actions as they take place to ensure case notes are accurately updated in a timely manner. Contemporaneous case note documentation is part of workload management and if done timely and correctly will save time on cases. Taking timely substantive action on casework and documenting those actions, including reason(s) for delays, help mitigate risks. Periods of inactivity should be explained. Entries should be made in chronological order and recorded the day the action occurs or as soon as practicable thereafter.
 - Relevant - Stick to the facts. Do not document personal observations, speculation or opinions.
- (4) Case note entries in the inventory management system should document all actions taken on a request from initial analysis through research, review and edit and final response. These actions include but are not limited to:
 - Steps taken to analyze the request
 - Confirmation of the applicable disclosure law and the requester's right to have access to the information
 - The search efforts made to obtain responsive records
 - Contacts made with the requester and follow up response times
 - Number of pages reviewed, what was reviewed, including citing the file or folder and general content of records
 - Description of withheld information, exemptions/exceptions applied and justification for the recommendation of withholding information

11.3.41.3.7
(08-26-2021)
**Case Timeliness
Expectations**

- (1) Case timeliness expectations are necessary to promote effective and timely Disclosure case processing. For all case types, Disclosure personnel should respond within 24 hours to customer communication. Review the different case type sections in this IRM for additional case timeliness considerations. Also see Exhibit 11.3.41-15, *Case Type Timeliness*.
- (2) Due to the nature of a case, expedited processing timeframes may be needed. Cases should be reviewed as early as possible to identify requests requiring expedited processing. The timeframes discussed in IRM Exhibit 11.3.41-15, are the maximum allowed for taking case actions. Certain cases may involve issues that require the immediate attention of the manager and should therefore be worked more expeditiously.
- (3) Other situations may warrant extended timeframes that should be discussed with and approved by the DM and documented in the case file.

11.3.41.3.8
(12-08-2022)
**Description of Tax
Administration Records**

- (1) Overview: This subsection contains information about commonly requested tax administrative files. This is not an inclusive listing. Always research each request on a case-by-case basis to determine the appropriate administrative file being requested.
- (2) IRC 6103(b) defines a tax return as “any tax or information return, declaration of estimated tax, or claim for refund required by, or provided for or permitted under, the provisions of this title which is filed with the Secretary by, on behalf of, or with respect to any person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to, or part of, the return so filed.”
Return information “includes such things as a taxpayer’s identity, the nature, source, or amount of their income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer’s return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense.”

11.3.41.3.8.1
(08-26-2021)
Transcripts

- (1) Some IRS databases allow for a transcript to be pulled, providing specific tax information. Common IRS transcripts from the IDRS database include:
 - a. Return Transcript: Includes most of the line items of a tax return as filed with the IRS. It does not reflect changes made to the account after the return is processed.
 - b. Account Transcript: Contains information on the financial status of the taxpayer’s account, such as payments made, penalty assessments and adjustments made by the taxpayer or the IRS after the return was filed.
 - c. Record of Account: Provides detailed information, it is a combination of the return transcript and the account transcript.
- (2) Specific IDRS command codes can be used to pull other specific transcripts.
- (3) Information Returns: These transcripts include data from *Form W-2*, *Form 1099 series*, *Form 1098 series* or *Form 5498 series*.

Note: *Form W-3* and *Form 1096* is filed with the Social Security Administration (SSA) and not available from the IRS. Requests for copies or transcripts of these forms should be directed to the SSA.

11.3.41.3.8.2
(12-08-2022)
**Examination
Administrative Files**

- (1) Overview: The Examination Program within the IRS is maintained by the SB/SE, LB&I and W&I departments. Requesters who are seeking records may ask for the complete examination file, assessment file, audit file, TC 290/300 files, IRC 6020(b) files, etc.
- (2) The contents of an Examination Administrative File generally include documents prepared or maintained to support the examination findings, information obtained from the taxpayer during the course of the examination and specific forms required to be used by examiners and/or revenue agents (RAs).
- (3) Some of the common forms found in an Examination Administrative File are:
 - a. Form 4549, *Report of Income Tax Examination Changes*
 - b. Form 886-A, *Explanation of Items*
 - c. Form 9984, *Examining Officer's Activity Record*
 - d. Form 11661, *Fraud Development Recommendation - Examination*
 - e. Form 11660, *Potential Fraud Development Plan of Action*
 - f. Letter 3253, *Taxpayer Appointment Confirmation*
 - g. Form 4564, *Information Document Request*
 - h. Letter 2205 or Letter 2205-A, *Initial Contact*
 - i. Letter 2205-D, *Initial Contact to Schedule Appointment - Partnership Returns*
- (4) Other common documents found in an Examination Administrative File are:
 - a. RGS documents
 - b. CEAS documents

11.3.41.3.8.2.1
(12-08-2022)
**Tax Equity and Fiscal
Responsibility Act
(TEFRA) and Bipartisan
Budget Act (BBA)**

- (1) Overview: TEFRA was passed in 1982 to allow examinations and statutes to be controlled at the partnership level. This eliminated the need to control each individual partner statute. It also unified the litigation process whereby the partnership files the petition rather than each individual partner. Section 1101 of the Bipartisan Budget Act of 2015 (BBA) repealed the TEFRA partnership procedures and replaced them with an entirely new centralized partnership audit regime.
- (2) The TEFRA process identifies a Tax Matters Partner (TMP) who is the designated partner to whom the IRS looks as the primary representative of the partnership that is subject to a TEFRA proceeding. The TMP serves as the representative for the TEFRA exam only.
- (3) The BBA is applicable to tax years beginning after December 31, 2017, unless the partnership is an eligible partnership that has elected out of the centralized partnership audit regime, the partnership is required to designate a Partnership Representative (PR). The PR (as defined in section 6223(a)) has the sole authority to act on behalf of the partnership under the centralized partnership audit regime. A partnership can designate, resign or revoke someone as the PR using the Form 8979, *Partnership Representative Revocation/Resignation and Designation*. If the partnership does not designate a PR, IRS will

designate one. The PR does not have to be a partner and their authority is specific to the centralized partnership audit. A partnership can elect out of the centralized partnership audit regime for a tax year if it is an eligible partnership that year. An eligible partnership is a partnership with 100 or fewer partners for the taxable year can elect out of the centralized partnership audit regime if all partners are eligible partners. Eligible partners are:

- Individuals
 - C corporations
 - Foreign entities that would be treated as a C corporation if it were domestic
 - S corporations
 - Estates of deceased partners
- (4) In addition to the commonly found Examination forms found in IRM 11.3.41.3.8.2, *Examination Administrative Files*, TEFRA examination files could include the following forms:
- a. Form 13728, *Partnership Administrative Adjustment Request (AAR) Field Examination Check Sheet*
 - b. Form 906, *Closing Agreement on Final Determination Covering Specific Matters*
 - c. Form 13813, *TEFRA Partnership Procedures Check Sheet*
 - d. Form 15034, *PCS Limited Linkage Approval - TEFRA*
 - e. Form 5606, *Workpapers Cover Sheet*
 - f. Form 4318, *Examination Workpapers Index*
- (5) In addition to the commonly found Examination forms found in IRM 11.3.41.3.8.2, *Examination Administrative Files*, BBA examination files could include the following forms/letters:
- a. Form 15260, *Determination of Pass-through Audit Regime*
 - b. Form 15262, *Bipartisan Budget Act (BBA) Partnership Procedures Check Sheet*
 - c. Form 15263, *Bipartisan Budget Act (BBA) Partnership Chapter 2/2A Relevant Partner Determination*
 - d. Form 15264, *Bipartisan Budget Act (BBA) Chapter 2/2A Linkage Check Sheet*
 - e. Form 15271, *Bipartisan Budget Act (BBA) Partnership Adjustment Statute Extension Check Sheet*
 - f. Form 906, *Closing Agreement on Final Determination Covering Specific Matters*
 - g. Letter 5893, *Notice of Administrative Proceeding -Partnership*
 - h. Letter 5893-A, *Notice of Administrative Proceeding - Partnership Representative*
 - i. Form 14791, *Preliminary Partnership Examination Changes, Imputed Underpayment Computation and Partnership Level Determinations as to Penalties, Additions to Tax and Additional Amounts*
 - j. Form 14792, *Partnership Examination Changes, Imputed Underpayment Computation and Partnership Level Determinations as to Penalties, Additions to Tax and Additional Amounts*
- (6) See IRM 11.3.2.4.2, *Partnerships*, for additional information on TEFRA and BBA partnerships.

11.3.41.3.8.2.2
(08-26-2021)
Innocent Spouse

- (1) Overview: Married taxpayers may elect to file joint returns with their spouse per IRC 6103. Married taxpayers who file joint returns under 6103:
 - a. Have joint and several liability with respect to the income tax liability.
 - b. Are responsible for the accuracy and completeness of the return.
 - c. Are responsible for the payment of the income tax liability reported on the return as well as any deficiency (additional tax), penalties, additions to tax, and interest.
- (2) Taxpayers who file a joint return may elect to seek relief from joint and several liability under IRC 6015 from income tax liability as well as penalties, additions to tax, and interest, per the relief provisions enacted in the Revenue Reconciliation Act of 1998 (RRA '98). See IRM 25.15.3, *Technical Provisions of IRC 6015*, for more information.
- (3) Some common terms found in an Innocent Spouse Administrative File:
 - a. Innocent spouse claim, or request for innocent spouse relief - a request for innocent spouse relief filed on Form 8857, *Request for Innocent Spouse Relief*, or similar statement containing the same information and signed under penalties of perjury.
 - b. Requesting Spouse (RS) - the spouse making the request for relief.
 - c. Non-Requesting Spouse (NRS) - the spouse not making the request for relief.
- (4) Some of the common forms found in an Innocent Spouse Administrative File are:
 - a. Form 8857, *Request for Innocent Spouse Relief*
 - b. Form 12508, *Questionnaire for Non-Requesting Spouse*

11.3.41.3.8.3
(02-26-2024)
**Collection
Administrative Files**

- (1) Overview: The Collection program within the IRS is managed by SB/SE. A requester seeking collection records may do so by asking for the collection file, balance due (Bal due) file, delinquent return (Del ret) file, Taxpayer Delinquent Account (TDA) file, or Taxpayer Delinquency Investigation (TDI) file. They may also ask for all RO records or Offer in Compromise (OIC) records.
- (2) Some of the common forms found in a Collection Administrative File are:
 - a. Form 433-A, *Collection Information Statement for Wage Earners and Self-Employed Individuals*
 - b. Form 433-B, *Collection Information Statement for Businesses*
 - c. Form 433-D, *Installment Agreement*
 - d. Form 53, *Report of Currently Not Collectible Taxes*
 - e. Letter 1058, *Final Notice Reply Within 30 Days*
 - f. Letter 3174, *New Warning of Enforcement*
 - g. Letter 729, *Requesting Delinquent Return*
 - h. Letter 3164 (Series), *Third-Party Contact*
 - i. Form 9297, *Summary of Taxpayer Contact*
 - j. Form 668-A, *Notice of Levy*
 - k. Form 668-W, *Notice of Levy on Wages, Salary and Other Income*
 - l. Form 668 (Y) (C), *Notice of Federal Tax Lien*
 - m. Form 668-E, *Release of Levy*
 - n. Letter 1085, *30 Day Letter Proposed IRC 6020(b) Assessment*

- (3) Other common documents found in a Collection Administrative File are:
- a. ACS transcripts
 - b. Integrated Collection System (ICS) History transcripts
 - c. Accurant transcripts
 - d. Choice Point transcripts

11.3.41.3.8.3.1
(08-26-2021)
**Trust Fund Recovery
Penalty (TFRP)**

- (1) Overview: IRC 6672 provides that any person required to collect, truthfully account for, and pay over any tax imposed by the IRC who willfully fails to do so or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall in addition to other penalties provided by law, be liable for a penalty equal to the total amount of the tax.
- (2) See IRM 11.3.40, *Disclosure Involving Trust Fund Recovery Penalty Assessments*, for information on the disclosure of TFRP Administrative Files.

11.3.41.3.8.4
(12-08-2022)
**Criminal Investigation
Administrative Files**

- (1) Overview: The mission of CI is to serve the American public by investigating potential criminal violations of the IRC and related financial crimes in a manner that fosters confidence in the tax system and compliance with the law. CI cases are generally developed through Exam or Collections referrals, so refer to those sections for specific forms/documents found in CI case files.
- (2) The contents of the CI Administrative File may include documents prepared or maintained to support the examination findings, or collection activities.
- (3) Some of the common forms found in a CI Administrative File are:
- a. Form 2797, *Referral Report of Potential Criminal Fraud Cases*
 - b. Form 3949, *Information Report Referral*
- (4) Other common documents found in a CI Administrative File originate from the Criminal Investigation Management Information System (CIMIS).

11.3.41.3.8.5
(12-08-2022)
**Appeals Administrative
Files**

- (1) Overview: The mission of the Independent Office of Appeals is to resolve federal tax controversies without litigation on a basis which is fair and impartial to both the Government and the taxpayer, promotes a consistent application and interpretation of, and voluntary compliance with, the federal tax laws, and enhances public confidence in the integrity and efficiency of the IRS.
- (2) The contents of the Appeals Administrative File may include documents prepared or maintained to support the examination findings, or collection activities.
- (3) The Taxpayer First Act (TFA) requires the Independent Office of Appeals to make its referred case files available to:
- Individuals with adjusted gross incomes of \$400,000 or less for the tax year to which the dispute relates.
 - Entities with gross receipts of \$5 million or less for the tax year to which the dispute relates.
- (4) In addition to those forms listed in IRM 11.3.41.3.8.2, Examination Administrative Files, and IRM 11.3.41.3.8.3, *Collection Administrative Files*, that can be found in either Examination or Collection Administrative Files, some additional common forms found in an Appeals Administrative File are:

- a. Form 5402, *Appeals Transmittal and Case Memo*
- b. Form 843, *Claim for Refund and Request for Abatement*
- c. Form 13381, *Appeals Technical Guidance Referral*
- d. Form 3608, (CG) Request for TCS Service
- e. Form 3608-A, *Request for TEFRA/BBA Service*

- (5) Other common documents found in an Appeals Administrative File are:
- a. Appeals Case Memorandum
 - b. Appeals Case Notes

11.3.41.3.8.6
(02-26-2024)
Counsel Administrative Files

- (1) Overview: The Chief Counsel for the IRS provides advice to the IRS Commissioner on all matters pertaining to the interpretation, administration and enforcement of the Internal Revenue laws, represents the IRS in litigation, and provides all other legal support needed by the IRS to carry out its mission of serving America's taxpayers. In carrying out these responsibilities, Counsel must interpret the law with complete impartiality so that the American public will have confidence that the tax law is being applied with integrity and fairness.
- (2) Counsel often assists other BUs with their work. They receive Examination, CI, and/or Collection Administrative Files, and respond to the other BUs through emails and memos.

Note: Counsel must be contacted for release determination on any emails to/from Counsel that are found in any responsive records.

- (3) Counsel may also create additional records that are incorporated into the case file.
- (4) Often, Counsel records are withheld under exemption (b)(5) in response to a FOIA request. There are three primary privileges incorporated into exemption (b)(5):
- a. Deliberative process privilege
 - b. Attorney work product privilege
 - c. Attorney Client privilege

Note: See IRM 11.3.41.13.6.2.6, *Exemption (b)(5)*, for additional information on the use of FOIA exemption (b)(5) and the three privileges incorporated into the exemption.

11.3.41.3.8.7
(02-26-2024)
Whistleblower Administrative Claim Files

- (1) Overview: On December 20, 2006, the Tax Relief and Health Care Act of 2006 was enacted. Section 406 of the Act amended IRC 7623 concerning the payment of awards to whistleblowers. The amendment made significant changes to the IRS award program and required the establishment of a Whistleblower Office (WO) within the IRS that has responsibility for the administration of the award program. The 2006 amendments re-designated the prior IRC 7623 as IRC 7623(a), added new provisions as IRC 7623(b), and included program administration requirements that were not incorporated into the IRC.
- (2) Some of the common forms found in a Whistleblower Administrative Claim File are:

- a. Form 211, *Application for Award for Original Information*
 - b. Form 11369, *Confidential Evaluation Report on Claim for Award*
 - c. Correspondence with the whistleblower (Determination Letter, Acknowledgement Letter, Taxpayer First Act Letters, etc.)
 - d. Examination workpapers/files relevant to the whistleblower claim
 - e. Transcripts
 - f. Award Calculation workpapers
- (3) FOIA caseworkers searching for copies of IRS administrative files (e.g., examination files from a revenue agent or collection files from a revenue officer) should not request or secure any WO records (e.g., whistleblower administrative claim file information) directly from any non-WO business units. Search memoranda or other communications to the non-WO business units should alert custodians that they should not transmit WO records to Disclosure. This includes any WO records these non-WO business units may have in their possession or maintain separately from their examination or collection administrative files.
 - (4) This could include copies of whistleblower provided records, original versions of the records, debrief forms completed by the WO, WO forms such as Form 211, *Application for Award for Original Information*, etc. WO records are separate and distinct records from other administrative files and should be maintained independent from other offices' administrative files.
 - (5) Non-WO business units (e.g., SB/SE, LB&I examination offices, etc.) are required to maintain a separate file for storing information/documents related to the whistleblower claim and no information regarding the whistleblower should be included or mentioned in the non-WO administrative file (e.g., revenue agents should not co-mingle WO records with the main non-WO administrative file or make references that a whistleblower exists in their history notes).
 - (6) Despite these requirements, if WO records or reference to a whistleblower are included in the responsive non-WO records provided to Disclosure under FOIA, or responsive records mention, identify, or implicate WO records (e.g., case history notes in the examination files identify there is a whistleblower or informant); these WO records and any references to whistleblowers, WO activity, or whistleblower provided records should be withheld in full. Exemptions to consider for withholding this information would be (b)(3) in conjunction with IRC 6103, (b)(5), (b)(6), (b)(7)(A), and (b)(7)(C) as identified in IRM 11.3.41.13.8.48(3), *Requests for Whistleblower Office Records*.

11.3.41.3.9
(08-26-2021)

**Description of Non-Tax
Administration Records**

- (1) Overview: Non-Tax IRS administration records are those not retrievable by a unique identifier such as an SSN or EIN.

11.3.41.3.9.1
(08-26-2021)

Training Materials

- (1) Overview: Document requests for training material need to be reviewed to determine if the training material has been made available to the public in the *FOIA Library on irs.gov*. To promote transparency and efficiency, the IRS should make appropriate information public without waiting for specific requests.
- (2) Training materials generally made available to the public include formal, written training materials that have been fully vetted within the IRS. Examples include

the IRM, the Chief Counsel Directives Manual (CCDM), formal training material developed for internal use and posted on intranet sites.

- (3) Training material available to the public is not subject to written requests and requesters should be referred to the information publicly available on *IRS.gov*.

11.3.41.3.9.1.1
(12-08-2022)

Training Material Not Available to The Public

- (1) Overview: Employee publications, training and presentation materials are publicly available under the FOIA and in the *FOIA Library on irs.gov*. That makes it critical that all IRS employees follow published guidelines to prevent the unauthorized disclosure of tax information, Sensitive But Unclassified (SBU) data, Personally Identifiable Information (PII) and other confidential information.
- (2) PII should not be found in training material however all training material must be reviewed to determine if PII exists and withhold accordingly.
- (3) SBU information can be found in training material. All training material must be reviewed to determine if SBU exists and withheld accordingly.
- (4) Draft training material may be provided by a business unit as responsive to a written request. Draft material must be reviewed in connection with the business unit release recommendations and withheld accordingly. If the final draft is identical to the final publication, there is no basis to withhold the final draft.
- (5) See IRM 10.5.1.2.2, *Sensitive But Unclassified (SBU) Data* and IRM 10.5.1.2.3, *Personally Identifiable Information (PII)* for additional information on SBU data and PII.

11.3.41.3.10
(08-26-2021)

Case Processing Factors

- (1) Overview: This subsection provides guidance on other case processing considerations.

11.3.41.3.10.1
(12-08-2022)

ID Theft Considerations

- (1) Situations may arise when an individual's SSN or other personal information may be compromised, resulting in a fraudulently filed tax return or of income being reported that may or may not have been earned by that individual.
- (2) Identity Protection Strategy & Oversight (IPSO) developed identity theft indicators as a method to track identity theft cases. Identity Theft Action Codes are used with Transaction Code 971 to mark accounts on which identity theft is a factor. IRM 25.23.2.4.1, *Tracking and Reporting Identity Theft Cases – Identity Theft Indicators*, provides additional information on identity theft indicators found on IDRS.
- (3) Beginning with 2013 returns, Return Integrity and Compliance Services (RICS) established an MFT 32 procedure to "house" fraudulent identity theft returns discovered by the IRS. MFT 32 contains tax returns that are known instances of identity theft. Look to IRM 25.23.2.7.2.2, *MFT 32 - Overview*, for additional information on the MFT 32 process.
- (4) Upon discovery of identity theft indicators or any indication that a fraudulent identity theft tax return exists, Disclosure caseworkers should discuss the matter with their DM. The caseworker must also document the case with the

research performed and the discussion with the manager. The DM must consider how the ID theft may affect the release or withholding of records and must document the case with any final impairment determination made with respect to the identity theft findings.

- (5) In most situations the Form 4506-F, *Identity Theft Victims Request for Copy of Fraudulent Tax Return*, can be used to request a redacted copy of the fraudulent tax return.
- (6) Form 8821-A, *IRS Disclosure Authorization for Victims of Identity Theft*, can be signed by the taxpayer to authorize the IRS to disclose tax return or return information to state or local law enforcement in the event of possible identity theft.

11.3.41.3.10.2
(12-08-2022)

Sensitive Case Report

- (1) The caseworker must prepare a Sensitive Case Report (SCR) within 5 days of case assignment and route the SCR to their DM. DMs, at the time of review, can decide whether the case meets the sensitive case criteria. Caseworkers will identify “Sensitive Case” in the inventory management system as soon as possible, even if in advance of finalization of the SCR.
- (2) SCRs are used to notify top management of requests and actions being taken that are sensitive in nature. Employees should exercise good judgment in determining whether a SCR should be prepared. The caseworker must use the most recent PGLD SCR, found on the Disclosure SharePoint site, filling out the report using the instructions shown on the report. Remember, a SCR should be a summary (not verbatim) of a case and case activity. The report should be no longer than one page. Upload the completed SCR to the assigned case in the inventory management system.
- (3) The report identifies the criteria for “sensitive” to three categories as follows:
 - a. Likely to attract media or Congressional attention
 - b. Unique or novel issue
 - c. Involves PGLD Operations and/or PGLD Employees
- (4) Follow the approval path established to elevate the SCR to area leadership. See IRM 11.3.41.2.5, *Guidelines for Elevating Issues*. Area leadership will approve/reject the SCR and ensure reconciliation with the SCR prepared for the Chief Privacy Officer (CPO) and the director GLDS.

11.3.41.3.10.3
(12-08-2022)

Certification

- (1) The seals of office are used to authenticate originals or copies of IRS records.

Note: Certification should never be completed on records received from a third party. For example, Information Return Processing (IRP) documents are received from SSA and are not IRS records. Sometimes FOIA requesters return released documents requesting that the IRS certify the documents. Respond that the FOIA does not require certification of documents. If the documents are of a type that the IRS ordinarily could certify, direct the requester to the appropriate process or contact to properly obtain certified copies of the documents.
- (2) Delegation Order 11-5, (found in IRM 1.2.2.12.5, *Delegation Order 11-5 (Rev. 2) Seal of the Office of the Internal Revenue Service and Certification to the Authenticity of Official Documents*) and Delegation Order 11-2, (found in IRM 1.2.2.12.2, *Delegation Order 11-2 (Rev. 4), Authority to Permit Disclosure of*

Tax Information and to Permit Testimony or the Production of Documents), designates the persons who may affix the official seal of the IRS to any certificate or attestation required to authenticate IRS documents and records. See IRM 11.3.41.16.3(4), *Requests for Certification*, for guidance upon receipt of a request for certification from Chief Counsel or other Business Units.

- (3) Records being certified must be known to originate in official IRS files. Certifications may be issued only for records in the custody of the certifying officer.

Note: The certifying officer cannot attest to something they have not observed. Therefore, it is usually inappropriate to rely upon the oral assurance of other IRS personnel that the document being certified is a true and correct copy of the original.

- (4) The language on the certification refers to the certified copy, specifically, that what we are certifying is a true and correct copy of the original and that the copy consists of XXX number of pages. The number of pages shown on the certification should be counted page by page; each page should be printed on only one side.
- (5) The two formal processes for certification (discussed in IRM 11.3.6.3, *Form of Certification and Preparation of Forms*, and IRM 11.3.6.4, *Preparation of Original Form 2866*), require a completed Form 2866, *Certificate of Official Record*. Use of the formal processes for certification is not mandatory. This formal process includes “Routine or Non-Blue-Ribbon Certifications” or “Preparation of Blue-Ribbon Certifications”. See IRM 11.3.6.4.1, *Routine or Non-Blue Ribbon Certifications*, and IRM 11.3.6.4.2, *Preparation of Blue Ribbon Certifications*, respectively.
- (6) The informal process for certification is called the “ink stamp method” which is used in lieu of a Form 2866. This method is permissible in jurisdictions where both the U.S. Attorney and the governing District Courts find this practice suitable. The ink stamp method should include:
- Identification of the number of pages
 - The name, title and signature of the certifying officer
 - The date signed
 - The acceptable wording shown below

The ink stamp certification should be completed using a blue stamp and a red ink pen.

Example: Acceptable wording for an inked stamp is:

AUTHENTIC IRS REPRODUCTION, per IRC 6103(p)(2)(C) or

This photocopy has the same legal status as if it were the original.

- (7) With the exception of providing documents in lieu of testimony, the ink stamp method is the only type of certification that will be done for non-government requesters. If other situations arise that would appear to require one of the formal processes for certification, they should be discussed with the Disclosure PPO Supervisor in Disclosure HQ.

- (8) Certain applicants, usually the DOJ, occasionally request certifications from the IRS for use in court proceedings that confirm a lack of records. Form 3050, *Certificate of Lack of Record*, should be used for this purpose, using the embossed seal procedures detailed in IRM 11.3.6.4.1(12), *Routine or Non-Blue Ribbon Certifications*. When questions concerning the use of this type of certification cannot be resolved by a Disclosure employee, they must elevate the matter to Disclosure PPO, following proper procedures.
- (9) To prepare a Form 3050 for the lack of a return when a Substitute for Return (SFR) has been filed or an IDRS transcript shows that an SFR has been established, local procedures can be developed. However, one acceptable approach is to insert in the Form 3050 space for "Description of Record(s) Sought," the following:

"Form 1040 that was duly completed, executed, and filed by the taxpayer."

Note: Changing the "Description of Record(s) Sought" to "Form 1040 duly completed, executed, and filed by the taxpayer" when completing the certification of lack of record, clearly certifies that no Form 1040 was prepared and filed by the taxpayer.

- (10) The Form 3050 should only cover the specific years being certified as a lack of record. The Form 3050 must be dated and signed on the date it is created in order to properly attest to the information provided. The date the Form 3050 is signed represents the date that the certification was completed and is attesting, with the signature, that the information on the form is true and correct.

Note: Note: Form 3050 must avoid any inference that the lack of record determination extends beyond any cut-off period when responding to ex parte court orders under IRC 6103(i)(1) or IRC 6103(i)(7)(C). These orders have a specified cut-off date for disclosure of information coming to the IRS. See IRM 11.3.41.3.10.3, *Certification*, and IRM 11.3.41.16.3, *Requests for Certification*.

11.3.41.3.10.4
(08-26-2021)

Implied Consent

- (1) IRC 6103(c) and its regulation and IRC 6103(e) do not authorize implied consents. On occasion, Disclosure caseworkers may receive a request that is signed by both spouses. The presence of both spouses' signatures does not establish an implied consent by the requesters to receive the other's tax information that is unique to the spouse and not joint return information. Disclosure employees must obtain an IRC 6103(c) or (e) consent prior to discussing or providing tax information to these individuals. For additional information on implied consents see IRM 11.3.3.2.5, *Disclosure to Other Relatives*.
- (2) The review and redaction process must be done based on whether or not consent was obtained. If consent was not obtained, consider providing a separate response to each spouse with each response being reviewed and redacted to only provide to that person the information they should receive. As an alternative the caseworker could provide a response to both spouses the joint information they are entitled to, then send a separate response to each spouse providing only the specific information each person is entitled to receive (i.e., since IRP documents only pertain to the specific taxpayer, send these separately to each spouse).

- (3) Depending on the review and redaction process the caseworker may need to send out multiple response letters and/or response records to each party. Confirm with the DM the best way to respond based on policy and resources.
- (4) 26 CFR 301.6103(c)-1 authorizes IRS employees to accept a taxpayer’s verbal consent to disclose return information to parties assisting the taxpayer in **resolving a federal tax matter**. Disclosure casework is not considered part of “resolving a federal tax matter” therefore the taxpayer must provide a written consent. A written consent that meets all requirements of the regulation is still required when the issue is not tax related. Remember to take reasonable steps to confirm the identity of the taxpayer and the designee before disclosing any return information to the third party.

11.3.41.3.11
(12-08-2022)
E-Trak Procedures

- (1) The e-Trak system establishes an internal process for assembling, reviewing and closing correspondence packages. These procedures apply to all direct reports to the CPO, PGLD, which will impact both internal and external customers, and comply with the IRS Correspondence Manual.
- (2) All GLDS cases that are processed via the e-Trak system are representative of the Commissioner’s direct response and accountability; therefore, these cases are held to a priority standard. The e-Trak system was selected to assist the business unit with tracking and monitoring internal documents that require a response with the use of Step Activity.
- (3) The Associate Director of Disclosure has given the directive to categorize e-Trak cases with the same priority and handling of FOIA cases. If an e-Trak case is not closed within the due date provided by the Executive Secretariat Correspondence Office (ESCO), a progress report should be submitted to indicate the projected response date and any barriers to closure.
- (4) The e-Trak module provides users with the ability to timely and effectively manage responses to issues raised by taxpayers, IRS employees, Congress, Treasury, The White House, Government Accountability Office (GAO), Congressional offices, Trade Associations, State and Federal Governments, Referrals from Governmental Liaisons, Treasury Legislative Affairs, Treasury Executive Secretariat and Treasury Inspector General for Tax Administration (TIGTA).

11.3.41.3.11.1
(12-08-2022)
E-Trak Roles and Responsibilities

- (1) **Executive Secretariat Correspondence Office:** The e-Trak cases will be sent from a Congressional Office or the Commissioner’s Office through the ESCO to the Office of Director of GLDS’ coordinator. The Director’s coordinator will log the case into the e-Trak system, assign an e-Trak number (YYYY-NNNN) and forward the case to the area TAs for Field Disclosure. Refer to the Disclosure Share Point>How We Work>Tips for Case Processing>General for the current GLDS e-Trak coordinator.
- (2) **Disclosure Field - Area Technical Advisors:** The area TAs will review the correspondence and determine if the issue(s) fall under the purview of Disclosure. If the case will be worked by Disclosure, the TA will create a case in the inventory management database, import the associated correspondence, identify the case by placing the assigned e-Trak number (“E-Trak YYYY-NNNN”) in the Subject Field/Category, document the case notes and assign the case to a Field DM. Assignment of e-Trak cases will be done on an alter-

nating basis between area east and area west. The TAs will maintain a log of assignments by Area, to include: e-Trak and inventory management system case numbers, office assignment, caseworker assigned, requirement due date, if review by ESCO is required, etc.

11.3.41.3.11.2
(12-08-2022)
E-Trak Case Types

- (1) There are two types of e-Trak cases; General and Business Unit.
- (2) General (G) Type e-Trak cases may include taxpayer mail or Congressional Office referrals. The target response timeframe for G cases is within 30 business days of original receipt to respond and/or resolve the issue. Responses do not need to be cleared through the ESCO.
- (3) Business Unit E-Trak case types may include Senator referrals, White House referrals, state/federal agencies, taxpayer (if ESCO decides a review of the response is required). ESCO **must** review the draft response before issuance. A draft response **must** be cleared through ESCO within 15 business days. A signed response to the inquiry must be provided and the e-Trak case closed within 20 business days.

Note: Refer to IRM 1.10.1.14.7, *Senate Address Format and Salutations for ESCO Controlled Correspondence*, and IRM 1.10.1.14.8, *House of Representatives Formats & Salutations for ESCO Controlled Correspondence*.

- (4) The ESCO may grant **one 10-day extension** for extenuating circumstances for each case type. If an extension is needed, the caseworker will need to email and/or discuss the issue with the area TA, providing an explanation of extenuating circumstances, along with both the e-Trak and inventory management system case numbers. The area TA will review and send the request for extension by email to the Office of Director of GLDS' e-Trak coordinator and will cc the DM and caseworker. The GLDS e-Trak coordinator will contact ESCO and will send notification of approval or denial to the area TA, with a cc to the DM and caseworker.

11.3.41.3.11.3
(12-08-2022)
**E-Trak Guidance/
Procedures/Review
Process**

- (1) All e-Trak cases will be sent to the TAs with a cc to the area managers. Each e-Trak case should be assigned an inventory management system case number and assigned to a Disclosure group (alternate case assignment between the areas) within 24 hours of receipt.
- (2) The TA will forward the original email from the ESCO to the assigned DM, including any specific information needed to process the inquiry. Once the DM assigns the case, they will provide the TA with the name of the assigned Disclosure caseworker. The TA will provide the assigned caseworker's name and case number to the GLDS e-Trak Coordinator.
- (3) Managers will closely monitor the progress of all e-Trak cases and provide ongoing assistance and guidance to caseworkers to reduce and/or eliminate barriers to processing the e-Trak cases and provide a response within the response due date provided by ESCO.
- (4) Each e-Trak case should be reviewed within **3 business days** of the original date of receipt and a SCR may be prepared, if necessary (see IRM 11.3.41.3.10.2 , **Sensitive Case Report**). If needed and prepared, the SCR should reflect date of receipt, date of initial analysis and current case activity and the expected closing date and list any, and all barriers in the explanation area of the SCR.

- (5) Once assigned, the caseworker will process the case accordingly. This includes completing all required research, requesting all needed documents, and reviewing and applying FOIA exemptions, if appropriate.

Note: Caseworkers should adhere to appropriate Disclosure and IRS rules and procedures under 5 USC 552 and IRC 6103, the mere fact that a request has been forwarded from a Congressperson or Senators office does not grant higher level of access. Usually, e-Trak cases will consist of providing a status on a current or previous FOIA request, indicating that there is a routine procedure in place for copies of returns, etc.

- (6) Managers should ensure that all e-Trak correspondence is on appropriate IRS letterhead stationery and contains the following:
- Only use Arial 12 font.
 - All documents should be free of typos and grammatical errors.
 - Managers are to ensure that each reviewer thoroughly check documents for accuracy.
 - All attachments and/or enclosures should follow the original document for signature, if needed.
- (7) Managers should ensure the final response letters are cleared through the GLDS e-Trak Coordinator and ESCO before sending to the requester, if specified by ESCO. The ESCO specification will be contained in the body of the initial email sent by the Secretariat's office to the Director of GLDS' e-Trak coordinator.
- (8) All e-Trak emails should provide the following information on the subject line:
- Requester's name
 - E-Trak number
 - Inventory Management System number
 - Activity status (i.e., SCR, Interim Letter or Final Response Draft)
- (9) The Final Draft and enclosures will be sent to the Director of GLDS' office for routing to ESCO for review including any responsive documents or enclosures. Once an e-Trak Final Response Letter has been cleared through all levels, it will be returned to the caseworker for revisions and/or mailing out to the requester. The caseworker will store the copies of correspondence in the inventory management system (i.e., case correspondence folder/log) and the case may be closed.

11.3.41.4
(12-08-2022)
**Internal Revenue Code
(IRC) 6103(c)**

- (1) Overview: IRC 6103(c) allows disclosure of returns and return information to a designee of the taxpayer. The taxpayer's request for or consent to disclose to the designee must meet the requirements of *26 CFR 301.6103(c)*. Requests for returns and return information may be written or non-written. A taxpayer's designation of a third party to request and receive returns and return information is different than designation of an attorney-in-fact under IRC 6103(e) and the Conference and Practice Requirements *26 CFR 601.501*, et. seq. An IRC 6103(c) consent to a designee permits a designated third party to receive returns and return information, it does not permit the third party to represent the taxpayer before the IRS. See *Exhibit 11.3.3-1, Quick Guide to the Powers of Attorney and Tax Information Authorizations*. Disclosures made under IRC 6103(c) must align with Delegation Order 11-2, found in IRM 1.2.2.12.2, *Del-*

egation Order 11-2 (Rev. 4), *Authority to Permit Disclosure of Tax Information and to Permit Testimony or the Production of Documents*. Additional procedures relating to IRC 6103 disclosures can be found in IRM 11.3.3, *Disclosure to Designees and Practitioners*. For information on Disclosure casework processing procedures see IRM 11.3.41.3 *General Disclosure Case Processing Procedures*. This section will provide specific casework guidance pertaining to IRC 6103(c) requests. See IRM Exhibit 11.3.41-2, *IRC 6103(c) Case Processing Checklist*, for case processing guidance.

(2) CAP

- **Code** - IRC 6103(c) and *CFR 26 301.6103(c)-1*
- **Authority** - *Delegation Order 11-2*
- **Procedures** - IRM 11.3.41.4 and IRM 11.3.3

(3) Related Terms/Definitions. Review the following terms/definitions in Exhibit 11.3.41-1, *Terms/Definitions/Acronyms*:

- Consent
- Designee
- Federal Tax Matter

11.3.41.4.1
(02-26-2024)

**General Case
Processing for
Disclosure of Designee
of Taxpayer**

(1) An authorization for disclosure of returns and return information to a designee that is **not** for the purpose of assisting in the resolution of a federal tax matter must be on a separate written document pertaining solely to the authorized disclosure. For example, a statement contained in a loan application authorizing the loan company to obtain return information would not be sufficient. This type of consent is commonly referred to as a “general purpose consent.”

(2) A written authorization for disclosure under IRC 6103(c) must contain the following items:

1. The taxpayer’s identity (name, address, TIN, or any combination thereof), that enables the IRS to clearly identify the taxpayer.
2. The identity of the person to whom disclosure is to be made.
3. The type of return (or the specific portion of the return) or return information (including particular data) to be disclosed.
4. The taxable period(s) covered by the return or return information. The periods may be separately stated or when a series of inclusive periods are involved, use of the word “through,” “thru,” or a hyphen may be used (e.g., 2018-2022 would cover 2018, 2019, 2020, 2021 and 2022).
5. The signature of the taxpayer and the date the authorization was signed.

(3) The date an authorization is received by the IRS should be stamped or otherwise noted on the letter. This is important since *26 CFR 301.6103(c) - 1(b)* provides that returns and return information cannot be disclosed unless a request is received within 120 days following the date the authorization was signed and dated by the taxpayer. The 120-day requirement does not apply where taxpayers request information or assistance relating to their tax matters. See *26 CFR 301.6103(c)-1(c)*.

Note: Send IRC 6103(c) requests for returns (i.e. Form 4506, *Request for Copy of Tax Return*) to RAIVS for processing.

(4) The taxpayer may always authorize disclosure of their return but may not compel disclosure of return information. If an official authorized in accordance

with Delegation Order 11-2, found in IRM 1.2.2.12.2, *Delegation Order 11-2 (Rev. 4), Authority to Permit Disclosure of Tax Information and to Permit Testimony or the Production of Documents*, determines that disclosure of return information will seriously impair federal tax administration, the IRS must withhold disclosure of the return information.

- (5) Under IRC 6103(c), if the designee has authorization to receive all tax information for a particular year, then non-filing information for the year in question is covered and income documents for that year (including an Information Returns Master File (IRMF) transcript) may be disclosed regardless of whether or not a Form 1040 series return was filed.
- (6) IRC 6103(c) and its regulation do not authorize implied consents. On occasion, Disclosure caseworkers may receive a request that is signed by both spouses. The presence of both spouses' signatures does not establish an implied consent by the requesters to receive each other's tax information. Disclosure employees must obtain an IRC 6103(c) consent prior to discussing or providing tax information to these individuals. For additional information on implied consents see IRM 11.3.41.3.10.4, *Implied Consent*.
- (7) Send IRC 6103(c) requests for returns and transcripts to RAVS for processing.

11.3.41.4.2
(12-08-2022)
Case Timeliness Expectations in IRC 6103(c)

- (1) When processing requests made pursuant to IRC 6103(c), initial analysis and ordering records must be completed at the earliest opportunity but no later than 10 business days of case assignment. Plan and schedule timely actions to order and review records and move case toward closure within 30 business days of receipt. If a request made pursuant to IRC 6103(c) cannot be closed within 30 business days, an interim response to include an anticipated final response date is required every 30 business days until the case is closed.

11.3.41.4.3
(02-26-2024)
Processing Disclosure Requests from Government Agencies for Non-tax Programs and Policy Statement 11-99

- (1) In accordance with IRS Policy Statement 11-99, officers and employees of government agencies (federal, state, and local) have no right of access to confidential tax returns or return information that is not explicitly defined in IRC 6103. These officials, in connection with their duties may not act as a taxpayer's representative, such as on Form 2848, **Power of Attorney and Declaration of Representative**, or designee on Form 8821, **Tax Information Authorization**, to request tax records including tax transcripts or IRS notices sent to an individual or business taxpayer, to administer non-tax government programs otherwise not codified within IRC 6103(l). See Policy Statement 11-99 found in IRM 1.2.1.11.14 for additional guidance.

11.3.41.5
(08-26-2021)
Internal Revenue Code (IRC) 6103(d)

- (1) Overview: IRC 6103(d) mandates disclosure of returns and return information to state tax officials and state or local law enforcement agencies. The state request must be in writing and signed by the authorized official, or the request must be part of the Data Exchange Program process. Disclosures made under IRC 6103(d) must align with Delegation Order 11-2, found in IRM 1.2.2.12.2, *Delegation Order 11-2 (Rev. 4), Authority to Permit Disclosure of Tax Information and to Permit Testimony or the Production of Documents*. Additional procedures relating to IRC 6103(d) disclosures can be found in IRM 11.3.32, *Disclosure to States for Tax Administration Purposes*. For information on Disclosure casework processing procedures see IRM 11.3.41.3, *General*

Disclosure Case Processing Procedures. This section will provide specific casework guidance pertaining to IRC 6103(d) requests. See Exhibit 11.3.41-3, *IRC 6103(d) Case Processing Checklist*, for case processing guidance.

(2) CAP

- **Code** - IRC 6103(d)
- **Authority** - *Delegation Order 11-2*
- **Procedures** - IRM 11.3.41.5 and IRM 11.3.32

(3) Related Terms/Definitions. Review the following terms/definitions in Exhibit 11.3.41-1, *Terms/Definitions/Acronyms*:

- Basic Agreement
- Implementing Agreement
- Primary Disclosure Office
- State
- State Tax Administration

11.3.41.5.1
(02-26-2024)
**General Case
Processing for
Disclosure to State Tax
Agencies Pursuant to
IRC 6103(d)**

- (1) IRC 6103(d)(1) permits the disclosure of returns and return information with respect to taxes imposed to any state agency, body or commission, or its legal representative charged under the laws of the state with the responsibility for administration of any state tax law. Disclosure may be made only in response to a written request by the head of the agency, body or commission only for the purpose of, and to the extent necessary in, the administration of such tax laws. Disclosure of federal tax returns or return information must be denied if it will identify a confidential informant or seriously impair a civil or criminal tax investigation.

Note: Policy Statement 11-90 (Formerly P-1-35), **Agreements to exchange tax information with states entered into when in interests of good tax administration**, found in IRM 1.2.1.11.5: Formal agreements for the exchange of tax information with state tax authorities will be entered into by the Commissioner when such agreements are in the interests of good tax administration. In order to maximize the effectiveness of these formal agreements they will be supplemented with implementing agreements.

- (2) An authorized officer or employee of a state tax agency may inspect or receive federal returns or return information of specifically identified taxpayers if:

- a. The type of tax data is disclosable to the agency under an Agreement on Coordination of Tax Administration currently in effect between the agency and the IRS.
- b. The officer or employee has been designated in writing by the head of the state tax agency to receive the type of tax data requested. See the Disclosure SharePoint site>How we work>Case Processing>6103(d) for the current list of authorized state tax agency employees.

Note: Disclosure will maintain an authorization list of state employees who have the delegated authority to sign a request for disclosure of federal tax returns or return information. Each Disclosure office will ensure the list is periodically reviewed and updated.

- c. The officer or employee submits a proper written request in accordance with the Agreement on Coordination of Tax Administration and the implementing or other agreement.

- d. Disclosure of the information sought would not identify a confidential informant or seriously impair any civil or criminal tax investigation and is not otherwise restricted.
- (3) A proper request is one directed to the appropriate IRS official designated in the basic agreement or the implementing or other agreement that includes:
- a. The name, signature, title, and office location of the authorized individual who is to inspect or receive the returns or return information.
 - b. The name and other identifying information of each person or entity whose return(s) or return information is to be disclosed and a description of the specific return(s) or information requested, including type of tax and taxable years.
 - c. The purpose for which the information is being requested, including the reason why the information is **needed** and how the agency intends to **use** the information.
- (4) A Disclosure caseworker receiving a request from a state agency representative to inspect federal tax returns or obtain return information, must confirm the identity of the individual, and ensure that the above requirements are met. The request from the state agency must also provide sufficient information to determine the agency's "need and use" of the federal tax information (returns and return information). See IRM 11.3.32.2, *Need and Use*, for additional information.

Note: If the returns and return information requested includes out-of-state taxpayer information, the state must indicate a sufficient justification or nexus to the information. The caseworker must call the authorized state agency representative and establish the nexus prior to release of any returns and return information.

- (5) Disclosure caseworkers should follow official policy for receipt and transmission of tax information. The means for transmitting federal tax returns and return information may vary according to the sensitivity of the material involved. Refer to the Transmission and Email section of IRM 10.5.1, *Privacy Policy*. In the event alternative transmission methods are considered, ensure they are commensurate with, and adhere to, established IRM policy and/or other approved IRS guidance regarding secure transmission (i.e., Publication 1075, *Tax Information Security Guidelines for Federal, State and Local Agencies*).
- (6) Form 8796-A, *Request for Returns/Information (Federal/State Tax Exchange Program - State and Local Government Use Only)*, is used by employees of state tax agencies to request federal tax returns and/or return information in accordance with an approved basic agreement. Use of this form is encouraged but not mandatory. When Form 8796-A, is used, section C is signed by officials who are authorized to make requests and/or release information under the terms of the basic and implementing agreements. Requests from state tax agencies that only have a basic agreement must be signed by the head of the agency.

Note: Procedures on how to process requests from IRS compliance employees seeking state tax information or state tax agency employees requesting to speak with an IRS employee, are found in IRM 11.3.41.5.5, *Two-Way Memorandum Between the IRS and State Tax Agencies*.

- (7) Every effort will be made to eliminate disclosure of unnecessary information to state tax agencies. Requests for copies of federal tax returns or return information are to be carefully reviewed to determine what specific information is needed and whether a copy of the entire return should be provided or if a computer transcript or partial transcript is more appropriate. Information in transcripts or other IRS tax files should be reviewed and any tax information for tax years outside of what is requested should be redacted. See IRM 11.3.41.3.4, *Review and Edit*, for other information which may need to be redacted.
- (8) State tax agencies can participate in the Transcript Delivery System (TDS) that allows approved state employees to order certain IRS transcript products online. All regular rules regarding IRC 6103(d) disclosures apply, including need and use monitoring and accounting for disclosures. The transcripts contain information that would never be subject to an impairment call to withhold disclosure to the state.
- (9) Accountings for disclosures of returns or return information must be made in accordance with IRM 11.3.37, *Recordkeeping and Accounting for Disclosures*. Accounting for disclosures made by Disclosure employees pursuant to IRC 6103(d) are done by completing a Narrative Record of Accounting. See IRM 11.3.41.5.8, **Narrative Record of Accounting**.
- (10) A notation must be placed in the electronic inventory management system's history notes indicating the completion of the accounting for disclosures.
- (11) DM's will ensure that state tax agency ad hoc requests for federal tax returns or return information are processed consistent with IRC 6103(d)(1) requirements. These requests are received by GSS, input into the Disclosure automated inventory management database and electronically assigned to the field Disclosure office.
- (12) Requests from IRS compliance employees seeking information from state tax agencies are not controlled as IRC 6103(d)(1) requests by the Disclosure office. Employees should complete Form 8796, *Request for Return/Information (Federal/State Tax Exchange Program - IRS Use Only)*, sections A, B and C. An authorized IRS representative must sign the form (section C, box 3) before the state tax agency can process the request. Disclosure maintains a list of authorized IRS employees the state tax agency recognizes. See IRM 11.3.41.5.5, **Two-way Memorandum Between the IRS and State Tax Agencies**.
- (13) IRS employees should not use Form 8796 when seeking information from sources other than state tax agencies. IRS employees seeking information from non-tax agencies must follow their business unit's procedures for requesting information.
- (1) When processing requests made pursuant to IRC 6103(d), initial analysis and ordering records must be completed at the earliest opportunity but no later than 10 business days of case assignment. Plan and schedule timely actions to order and review records and move case toward closure within 30 business days of receipt. If a request is made pursuant to IRC 6103(d) cannot be closed within 30 business days, an interim response or status update to include an anticipated final response date is required every 30 business days until the case is closed.

11.3.41.5.2
(12-08-2022)
**Case Timeliness
Expectations IRC
6103(d)**

11.3.41.5.3
(12-08-2022)
Secure Data Transfer (SDT)

- (1) Secure Data Transfer (SDT) allows Disclosure employees to securely transmit returns and return information to state and local stakeholders under IRC 6103(d). An SDT request is identified by the letters “SDT” in the description of the field in the inventory management system.

Note: Review the information on the ART section of the Disclosure SharePoint site for information on how to map to the SDT network and access the SDT folder for a specific Disclosure office.

- (2) The state agency will input the incoming SDT naming convention on the Form 8796-A, *Request for Return/Information (Federal/State Tax Exchange Program - State and Local Government Use Only)*. If the incoming SDT naming convention is not provided, or is not legible, contact the requesting agency official. The outgoing SDT naming convention is a re-configuration of the incoming SDT naming convention. If the outgoing SDT file isn't named correctly it will not transmit. The naming convention is composed of 5 parts that add up to 23 characters. Example: SS###F8796AP***MMDDYYYY

- SS### - The state agency identifier which is the two-letter state abbreviation plus the three-digit accounting code of the state agency.
- F8796A – The document name.
- P – The File Type, short for PDF. (Note: if File Type is Z that indicates a Zip file).
- *** - Sequence Number from 001 to 999. The first document transmitted each day from each agency will be 001, the second request of the day is 002, and so on. The sequence number is assigned on the state agency's side of the process.
- MMDDYYYY – Date the request was sent.

Example:

Incoming = CA123F8796AP00101012010
Outgoing = F8796APCA12300101012010

- (3) Process your request normally following all steps for initial analysis, search, review, and edit. The SDT process will be used in preparing and sending your final response. The outgoing SDT response file must contain all responsive records and correspondence.
- (4) The caseworker will export the final response letter, incoming Form 8796-A and sealed responsive records to the local SDT folder on their desktop computer, pertaining to the caseworker's office.
 - For PDF response - Open the local SDT folder and “select” all files that make up the final response, right click on the records and choose “combine supported files in Acrobat...” to create one .pdf file. Save the combined .pdf file using the appropriate outgoing naming convention.
 - For zip file response - For large SDT response files you should “select” all files that make up the final response, right click on the records and choose “SecureZIP Add to New Archive” to create a zip file. Save the zip file using the appropriate outgoing naming convention, making sure to change the “P” to a “Z.”

Note: If SecureZIP asks for a passphrase, click the “skip” button since the SDT process is already encrypted.

There is no specific rule for determining when a file should be saved as a PDF vs. a SecureZIP file. Discuss any issues with the DM.

- (5) The final step in SDT transmission is to copy the final responsive document from the local SDT folder into the relevant Disclosure office's folder on the SDT server. This is a copy and paste process so it may take some time depending on the size of the file.
- (6) About an hour after placing the file on the SDT server the caseworker should confirm the file was successfully transmitted. Review the "reject" folder in the Disclosure office's SDT folder. If there is nothing in this folder then the information was successfully transmitted. If there is a file in this folder then the caseworker must delete the file from the reject folder and resubmit it following the steps in (4) and (5). The caseworker must check again in about an hour to make sure the information was successfully transmitted. Once transmission is successful the case can be closed in the inventory management system.

Note: Some offices may have another employee review the "reject" folder and notify the caseworker of any issues. Discuss reject procedures with the DM.

- (7) Do not place the SDT response file into the inventory management system. All components of the SDT response file should already be in the assigned case in the inventory system. However, the caseworker should retain the SDT response file for 30 days. There have been a few instances when a successfully transmitted SDT file was unable to be opened by the state agency. After 30 days, delete the SDT response file from the local SDT folder.

11.3.41.5.4 (12-08-2022)

Continuing Disclosures

- (1) Disclosure of federal tax returns and return information on a continuing basis are carefully and thoroughly screened and evaluated to ensure that the tolerances and criteria established by written agreement are observed.
- (2) Disclosure managers must have a written document in place describing the procedures, tolerances, and criteria to be used by IRS personnel when releasing information to state tax agencies.

Example: The written document may be an inter- or intra-functional procedural memo.

- (3) When the DM has federal tax returns and/or return information, which will not be transmitted to the state tax agency under other processes, but which may be evidence of any inadvertent or intentional understatement of any state tax, the DM shall contact the agency liaison official and, without disclosing identifying information, describe the federal tax returns and/or return information in sufficient detail to ascertain the agency's need and potential use for the federal tax returns and/or return information. If, in the judgment of the DM, the agency has a need and use for the federal tax returns and/or return information they shall have the liaison formally request the information via Form 8796-A, and then transmit the federal tax returns and/or return information to the agency.
- (4) The Disclosure office may periodically perform quality reviews of other IRS functions releasing documents to ensure that the provisions of the implementing or other agreements are being met, the restrictions imposed by IRM 11.3.32.15, *Restrictions on Disclosure of Federal Tax Returns and Return Information*, are being followed, and the necessary accountings for disclosure are

made. Both pre- and post- disclosure reviews can be conducted as appropriate as determined by the AD, Disclosure.

11.3.41.5.5
(12-08-2022)
**Two-way Memorandum
Between the IRS and
State Tax Agencies**

- (1) State tax agency or IRS compliance employees may, under specific circumstances, wish to discuss specific returns or return information directly with each other. This could occur, for example, if each agency is engaged in collection, examination or criminal investigation work independently of each other, at or near the same time. Typically, the taxpayer would alert either or both agencies of this situation. Allowing both the IRS and state tax agency employees to discuss their respective findings can facilitate efficient tax administration, reduce taxpayer burden, provide consistent development and application of the facts, and effectively leverage resources.
- (2) The general rule under IRC 6103(d) authorizes the IRS, absent any impairment to tax administration or identification of a confidential informant, to disclose federal tax returns and return information to state tax agencies upon written request. This includes oral disclosures. Section 5 of the basic agreement introduces these types of cooperative activities. If the state agency has signed an implementing agreement, section IV, paragraph 01 also provides guidance for how a state tax agency requests two-way discussions.
- (3) A state tax agency employee must submit a written request if they want to engage in a discussion with an IRS employee about a specific taxpayer. They would use Form 8796-A, *Request for Return/Information (Federal/State Tax Exchange Program - State and Local Government Use Only)*, or similar written document to request a meeting or a continuous dialog with an IRS employee.
- (4) The Disclosure office, through the GSS, will process all requests from the state tax agency seeking a dialog with an IRS employee. See paragraph (7), below for exceptions.
 - a. IRS employees who directly receive verbal or written requests from a state employee must not disclose any federal tax returns or return information until Disclosure provides written authorization. All state agency inquiries must be in writing and directed to Disclosure through routine case processing.
 - b. In addition to all other requirements (authorized requester, valid purpose, need and use justification, specified taxpayer identity information and tax periods), the written request must affirm they are seeking permission to discuss and/or exchange specific returns or return information with an IRS employee. The state employee's name is required. Knowing the IRS employee's name is preferable but not required.
 - c. If the request is valid, the Disclosure employee will research, locate and contact the IRS employee to determine if they are willing to engage in a discussion with the state tax agency employee and any terms or limitations to consider.
 - d. If the IRS employee, with concurrence and approval from their supervisor, does not want to discuss the case with the state employee, the Disclosure employee will document why and determine if providing relevant documents will suffice. This includes ascertaining if there is an impairment to disclosing this information, or the employee no longer

- controls the case. Functional employee availability or business unit case processing time constraints for engaging in this discussion may also be a factor.
- e. If the IRS employee accepts the invitation, Disclosure will prepare a response memorandum authorizing the IRS employee to engage in a discussion, provide instructions regarding the extent, scope and limitations of the disclosure authorization, and specify a reasonable timeframe for the exchange based on the facts and circumstances. Disclosure will also prepare a response letter to the agency.
 - f. A reasonable timeframe is 30 to 90 days. Any request over 90 days must be documented in the response. Disclosure will not grant an unlimited authorization or one that extends beyond any reasonable examination or investigation cycle. If more time is needed, subsequent written requests may be submitted for review and approval.
 - g. The IRS employee granted permission under this section must keep a copy of the authorization memo in the taxpayer administrative file and document all contacts with and a general explanation of the information disclosed to the state tax agency employee.
 - h. Disclosure will close their case when the response memorandum and letter are issued.
- (5) If an IRS employee wants to initiate a discussion with a state tax agency employee about a specific taxpayer, a written request is required. Use Form 8796, *Request for Return/Information (Federal/State Tax Exchange Program - IRS Use Only)*. Although only asking for information about a taxpayer from a third party (in this case a state tax agency employee) is generally an investigative disclosure under IRC 6103(k)(6), the IRS employee should still submit a written request using this form. See IRM 11.3.21, *Disclosure of Returns and Return Information for Tax Administrative Purposes under IRC 6103(k)*, for additional information on IRC 6103(k)(6).
- a. State tax agencies have a responsibility to protect disclosure of state tax information even to the IRS, so it needs a legal justification to disclose their protected information. Furthermore, the Form 8796 must be countersigned by someone the state tax agency recognizes from the IRS authorization list before the state tax agency will allow disclosure to the IRS.
 - b. If the disclosure is intended to be one-way, that is only from the state tax agency to the IRS, and the Disclosure office receives the request, it does not require a separate authorization memorandum and is not logged into Disclosure's inventory management system. In this situation, the purpose for an IRS employee asking to speak to a state employee is to gather information and not disclose more than is allowed under the investigative disclosure rules. The Disclosure employee will countersign the authorization and forward the form to *or* return it to the IRS employee to send to the state tax agency.
 - c. If the IRS employee intends to dialog and mutually exchange federal and state tax information, the request must conform to IRC 6103(d), and the basic and/or implementing agreements must be in place with that agency. It is possible the state tax agency employee is not aware of facts and circumstances the IRS possesses but that may be relevant to their state tax administration duties. In this situation, the state tax agency must meet the statutory requirements for disclosure. See paragraph (4), above.
 - d. The Form 8796 will provide the scope, purpose and limitations on disclosure.

- e. If a two-way discussion is requested and approved, Disclosure will prepare the memorandum for the IRS employee and letter to the state tax agency authorizing the verbal disclosure.
- f. If the state does not agree to the terms of the authorization, no dialog or disclosure is allowed.
- g. If during the course of the verbal discussion, if not already covered in the authorization memorandum and letter, the state tax agency requests copies of IRS documents, the IRS employee should contact Disclosure for guidance before providing records. This may require recordation of additional accountings for disclosure, which are completed by the office making the disclosure.

- (6) The IRS employee making the disclosure - who discusses taxpayer information – with a state tax agency employee is responsible for completing Form 5466-B, *Multiple Records of Disclosure*, in order to make an accounting for the disclosure. Refer to IRM 11.3.37, *Recordkeeping and Accounting for Disclosures*. Disclosure employees may provide guidance to the IRS employee if requested.
- (7) There is one exception to submitting requests directly to Disclosure for verbal discussions between the IRS and state tax agency employees. The IRS business unit, function or group may enter into a written memorandum of understanding (MOU) with the state tax agency that contemplates an exchange of tax information. Discussions with GLDS, Chief Counsel and the appropriate Business Unit are necessary. See IRM 11.4.1, *Governmental Liaison Operations*. If the MOU contemplates a streamlined disclosure of written or verbal tax information under IRC 6103(d) and is signed by a person authorized to make the disclosure under Delegation Order 11-2, found in IRM 1.2.2.12.2, *Delegation Order 11-2 (Rev. 4), Authority to Permit Disclosure of Tax Information and to Permit Testimony or the Production of Documents*, IRS employees can rely on the terms of the MOU when seeking to verbally exchange return information with a state tax agency partner. If the MOU is not signed by a person authorized by Delegation Order 11-2 to disclose federal tax returns or return information to a state tax agency, IRS and state tax agency employees must follow the guidance in the paragraphs above to submit a written request and receive a written authorization from Disclosure. Unless the MOU designates a specific individual responsible for preparing and submitting the disclosure accounting, the IRS employee making the disclosure is responsible for preparation of the Form 5466-B or narrative accounting memo.

11.3.41.5.6
(12-08-2022)
Release of Tax Information Relating to State Tax Employees for Conduct Investigations or Employee Checks

- (1) State tax administration, as defined in Section 2.13 of the basic agreement, includes ongoing or potential conduct-related investigations of state tax agency employees. This definition also includes tax compliance-type checks related to suitability or background investigations of employees and prospective employees of state tax agencies. The management and supervision of a state's internal revenue laws includes verification that its tax employees are free from conflicts of interest that could undermine the integrity of the state's tax system. The standards for disclosures of this type are different from those for revenue compliance purposes.

- (2) When a state tax agency wants tax information for a purpose described in (1) above, a specific written request is submitted. Normal processing calls for these requests to be logged in to the inventory management system as a 6103(d) case.
- (3) In order to meet the need and use standards of IRM 11.3.32.8(4)(c), *Authorized Disclosures pursuant to IRC 6103(d)(1)*, the request must include the following:
 - a. Specific documentation regarding the particular conduct-related reason why disclosure of returns and return information is necessary.
 - b. Specific documentation why the requested return(s) and/or return information is, or may be, relevant to the inquiry.
 - c. Where applicable, copies of, or reference to specific rules of conduct, regulations, personnel directives, etc.
- (4) State requests for conduct-related disclosures are addressed in Section V of the implementing agreement.
- (5) After DM approval, the state can access the TDS to conduct their compliance check.
- (6) The IRS may initiate conduct-related disclosures when the state is eligible to receive the information and has shown a state tax administration need for that category of information even though it has not identified a particular employee. In such cases, the DM will follow the procedures set forth in Section VI of the implementing agreement.
- (7) When the DM has federal returns and/or return information that have not been requested by the state tax agency and therefore will not be transmitted to the agency under other processes, but the DM believes there may be evidence of any violation, suspected violation, or potential violation by an employee of the state tax agency of federal or state tax law or statutes, regulations, or rules governing the conduct of state tax employees that could damage the integrity of the tax administration system or, if known to the general public, could decrease public trust in the state tax agency, the DM will contact the state tax agency liaison official. Without disclosing identifying information, the DM will describe the return and/or return information in sufficient detail to ascertain the agency's need and potential use of the return and/or return information. If, in the judgment of the DM, the agency has a need and use of the federal tax returns and/or return information, they shall have the agency liaison formally request the information via Form 8796-A, and then transmit the federal tax returns and/or return information to the agency.

11.3.41.5.7
(02-26-2024)
**IRC 6103(d) requests for
Internet Provider (IP)
Address**

- (1) State agencies may request information on the IP Address associated with an electronically filed tax return or other electronic transmission to the IRS. To request this information send an email to the point of contact on the RRR and include the following:
 - Identify that it is a request from an authorized state agency
 - Explain the specific information needed, i.e, IP Address used by XXX when doing YYY
 - Provide identifying information (TINs, access method, etc.) from the request to use for the search.

Note: If the request is large, send the identifying information as an attachment or send the request itself.

11.3.41.5.8
(02-26-2024)
Narrative Record of Accounting

- (1) Submit a narrative record of accounting for disclosures made pursuant to IRC 6103(d) using the Share Point tool. Processing of the Form 5466-B, Multiple Records of Disclosure, places a Transaction Code on the taxpayer's account that can be requested and/or released on a transcript of account. A narrative record of accounting avoids the potential for taxpayer notification that their information was disclosed.

Note: Disclosing to the state that there is a "lack of record" is a disclosure that must be accounted for using the narrative record of accounting.

- (2) A Narrative Record of Accounting site has been added to Disclosure's 6103 Public Channel on TEAMS, to efficiently capture IRC 6103(d) disclosures. A link has also been added to the home page of the Disclosure Share Point site.
- (3) At the time of IRC 6103(d) disclosures, use the site to record the following items:
 - a. Case Number
 - b. Caseworker Name
 - c. Disclosure Office Number
 - d. Date disclosed
 - e. The statutory authority or Purpose Code
 - f. The Agency Code
 - g. The total number of Disclosures (i.e., The number of tax periods (i.e., 941) or tax years (i.e., 1040)
 - h. Save and submit

See IRM 11.3.37, *Recordkeeping and Accounting for Disclosures*, for additional information on Purpose and Agency Codes.

- (4) A notation must be placed in the electronic inventory management system's history notes indicating the completion of a Narrative Record of Accounting. A copy of the Narrative Record of Accounting may also be placed in the case file but is not required.

11.3.41.5.9
(12-08-2022)
Disclosure of Tax Return Preparer Information Pursuant to IRC 6103(k)(5)

- (1) IRC 6103(k)(5) permits the disclosure of limited information to state agencies with licensing, registration, or regulation of tax return preparers. The state agency responsible for these rules may or may not be the state tax agency.
- (2) The written request must be signed by the head of the agency, body or commission designating the officers or employees to whom such information is to be furnished.
- (3) The IRS may only disclose the following information under IRC 6103(k)(5) and only for the state or local agencies use in licensing, registering, or regulation of tax return preparers:
 - Name
 - Mailing Address
 - TIN

- Information as to whether any penalty has been assessed against such preparer under IRC 6694, 6695, or 7216
- (4) The state or local agency need not specifically list the names of return preparers for whom the information is requested. The state or local agency could request information with respect to any preparer who was assessed a penalty under any of the Code sections listed above.
 - (5) Written requests are submitted to the GSS and worked in Disclosure.
 - (6) The IRS may not disclose information regarding preparer penalties under IRC 6694, 6695, or 7216 to a state tax agency under IRC 6103(d)(1) because IRC 6103(d)(1) only authorizes disclosure of return information under specified IRC Chapters and these three penalty sections are not within the scope of the Chapters listed in IRC 6103(d)(1). A state tax agency can only receive information regarding preparer penalties under IRC 6694, 6695 or 7216 if the state tax agency is responsible for tax return preparer licensing, registration or regulation and it follows the procedures for disclosure under IRC 6103(k)(5).

Note: This does not preclude a state tax agency requesting or receiving returns and return information for which the agency has established a need and use for return preparers or the taxpayers for whom they prepared returns so long as the request is for tax information covered by one of the IRS Chapters listed in IRC 6103(d)(1).

- (7) Disclosures pursuant to IRC 6103(k)(5) are subject to the accounting requirements of IRC 6103(p)(3)(A).

11.3.41.6

(02-26-2024)

**Internal Revenue Code
(IRC) 6103(e)**

- (1) Overview: IRC 6103(e) allows disclosure of returns and return information to persons having material interest. IRC 6103(e) provides a listing of persons who may request and receive returns and return information. IRC 6103(e)(1)-(6) and IRC 6103(e)(10) concern disclosure of "returns." IRC 6103(e)(7) through (e)(9) as well as (e)(11) refer to disclosure of "return information." Return information may be disclosed under IRC 6103(e)(7) to the extent such disclosure would not seriously impair federal tax administration. Requests for tax returns must be made in writing, requests for return information may be done verbally. Disclosures made under IRC 6103(e) must align with Delegation Order 11-2, found in IRM 1.2.2.12.2, *Delegation Order 11-2 (Rev. 4), Authority to Permit Disclosure of Tax Information and to Permit Testimony or the Production of Documents*. Additional procedures relating to IRC 6103(e) disclosures can be found in IRM 11.3.2, *Disclosure to Persons with a Material Interest*. For information on Disclosure casework processing procedures see IRM 11.3.41.3, *General Disclosure Case Processing Procedures*. This section will provide specific casework guidance pertaining to IRC 6103(e) requests. See Exhibit 11.3.41-4, *IRC 6103(e) Case Processing Checklist*, for case processing guidance.
- (2) CAP
 - **Code** - IRC 6103(e)
 - **Authority** - *Delegation Order 11-2*
 - **Procedures** - IRM 11.3.41.6 and IRM 11.3.2
- (3) Related Terms/Definitions. Review the following terms/definitions in Exhibit 11.3.41-1, *Terms/Definitions/Acronyms*.

- Attorney-in-fact
- Delegation of Authority
- Material Interest
- Power of Attorney
- Principal

11.3.41.6.1
(02-26-2024)
**General Case
Processing for
Disclosure to Person
Having Material Interest
Pursuant to IRC 6103(e)**

- (1) Written requests for returns and return information must include:
 1. The name, mailing address and identifying number of the taxpayer, or any combination thereof.
 2. A description of the information requested, including type of tax and taxable period.
 3. Sufficient evidence to establish that the requester is entitled to receive the requested information.
- (2) The IRS personnel processing requests for returns and return information must be reasonably satisfied that the requester is who they claim to be. If there are doubts about a person's identity, IRS employees must request additional identity information. Disclosure employees are required to ensure that returns and return information are protected from unauthorized disclosure. They are responsible for verifying the identity and authority of the recipient to receive tax information prior to making any disclosure.
- (3) Persons described in IRC 6103(e) always have access to the appropriate return as specified in IRC 6103(e)(1) through IRC 6103(e)(6), subject to the limitations in IRC 6103(e)(10) for partnership, estates, trust or Subchapter S returns. Generally, these persons authorized under 6103(e)(1) through (e)(6) may also have access to return information. IRC 6103(e)(7) provides that return information will be disclosed if the IRS determines that disclosure would not seriously impair federal tax administration. Return information will be denied under this provision only if disclosure will impair an imminent or ongoing tax administration function in some significant way or have an adverse impact on the IRS's ability to administer the tax laws.
- (4) Casework in Disclosure will generally involve the following persons who may have access to returns and return information pursuant to IRC 6103(e):
 - Individuals – The return of a person shall be open to disclosure to that individual, or in the case of an income tax return filed jointly, either of the individuals with respect to whom the return is filed.
 - Partnership – In the case of the return of a partnership, any person who was a member of such partnership during any part of the period covered by the return.
 - Corporation or Subsidiary – Any corporate officer authorized by the corporation in accordance with applicable state law to legally bind the corporation, any person designated by resolution of the board of directors or other similar governing body of the corporation; any officer or employee of such corporation upon written, signed request by any principal officer and attested to by the secretary or any other officer, any bona fide shareholder of record owning 1 percent or more of outstanding stock of the corporation; for an S Corporation, any person who was a shareholder during any part of the period covered by such return during which an election was in effect; or if the corporation has been

dissolved, any person authorized by applicable state law to act for the corporation or any person who the Secretary finds to have a material interest.

- Estate – In the case of an estate, the administrator, executor or trustee of such estate; and any heir at law, next of kin, or beneficiary under the will, if such person has a material interest.
- Trust – Trustee or trustees, jointly or separately; and any beneficiary of such trust if such beneficiary has a material interest.
- Incompetent - Information of any individual who is legally incompetent may be disclosed to the committee, trustee, or guardian of their estate.
- Decedent – To the administrator, executor, or trustee of the estate; and any heir at law, next of kin, beneficiary under the will, or a donee (recipient) of property if such persons have a material interest.
- Attorney-in-fact – Representative, duly authorized in writing subject to Conference and Practice Requirements.
- Disclosure of Collection Activities with Respect to Joint Returns - In the case of tax deficiencies assessed with respect to persons who have filed jointly but are no longer married or no longer reside in the same household, certain limited collection information regarding one spouse shall be disclosed to the other spouse, upon written request under section 6103(e)(8), relative to such tax deficiencies.
- Person subject to penalty under section 6672 – In the case of persons who have been assessed the trust fund recovery penalty under section 6672, certain limited information shall be disclosed to such persons, upon written request, about other persons assessed the penalty for the same underlying tax.

- (5) For information on specific access and authentication requirements under IRC 6103(e) see IRM 11.3.2, *Disclosure to Persons With a Material Interest*.
- (6) IRC 6103(e) does not authorize implied consents. On occasion, Disclosure caseworkers may receive a request that is signed by both spouses. The presence of both spouses' signatures does not establish an implied consent by the requesters to receive each other's tax information. Disclosure employees must obtain an IRC 6103(c)/(e) consent prior to discussing or providing tax information to these individuals. For additional information on implied consents see IRM 11.3.41.3.10.4, *Implied Consent*.

11.3.41.6.2
(08-26-2021)
**Case Timeliness
Expectations IRC
6103(e)**

- (1) When processing requests made pursuant to IRC 6103(e) initial analysis and ordering records must be completed at the earliest opportunity but no later than 10 business days of case assignment. Timely plan and schedule actions to order and review records and move the case toward closure within 30 business days of receipt. If a request made pursuant to IRC 6103(e) cannot be closed within 30 days, an interim response to include an anticipated final response date is required every 30 days until the case is closed.

11.3.41.6.3
(02-26-2024)
**Disclosure of Collection
Activities with Respect
to Joint Returns
Pursuant to IRC
6103(e)(8)**

- (1) IRC 6103(e)(8) provides for disclosures pertaining to deficiencies assessed with respect to persons who have filed jointly but are no longer married or no longer reside in the same household. Under IRC 6103(e)(8) certain limited collection information regarding one spouse must be disclosed to the other spouse relative to tax deficiencies with respect to a jointly filed return.

Note: The disclosure rules are the same whether the information is found in a joint account or a mirrored account. See IRM 5.19.1.6.7, *Mirroring Accounts*.

- (2) Information provided pursuant to IRC 6103(e)(8) is available to either spouse due to IRC 6103(e)(1), and to the extent IRC 6103(e)(7) does not prohibit release, a written request is required. Written requests can be signed by either spouse or their duly authorized attorney-in-fact.
- (3) Any employee delegated the authority to make disclosures pursuant to IRC 6103(e) by Delegation Order 11-2, found in IRM 1.2.2.12.2, *Delegation Order 11-2 (Rev. 4), Authority to Permit Disclosure of Tax Information and to Permit Testimony or the Production of Documents*, may make disclosures pursuant to IRC 6103(e)(8). Operationally, Collection employees will provide a response to an IRC 6103(e)(8) request. These requests should be forwarded to Collection. Generally, if the case is assigned to a RO, they will provide the relevant information to the requesting spouse or their duly authorized attorney-in-fact. If the case is not assigned to a RO, Collection Advisory will obtain the information and send a response to the requester. See IRM 5.1.22.4, *Disclosure of Joint Returns - Divorced or Separated Spouses*, and IRM 11.3.2.4.1.1, *Disclosure of Collection Activities with Respect to Joint Returns* for additional information.

11.3.41.6.4
(08-26-2021)
**Disclosure of
Information to Person
Subject to Trust Fund
Recovery Penalty (TFRP)
Pursuant to IRC
6103(e)(9)**

- (1) IRC 6103(e)(9) provides for certain disclosures to persons who have been **assessed** the TFRP pursuant to IRC 6672. IRC 6103(e)(9) allows one responsible person to obtain certain limited information about other persons **assessed** the penalty for the same underlying tax.
- (2) Disclosures pursuant to IRC 6103(e)(9) shall be made only upon receipt of a written request. The request must be signed by a person actually assessed the TFRP or their duly authorized attorney-in-fact.
- (3) Any employee delegated the authority to make disclosures pursuant to IRC 6103(e) by Delegation Order 11-2, found in IRM 1.2.2.12.2, *Delegation Order 11-2 (Rev. 4), Authority to Permit Disclosure of Tax Information and to Permit Testimony or the Production of Documents*, may make disclosures pursuant to IRC 6103(e)(9). Operationally, Collection employees will provide a response to an IRC 6103(e)(9) request. These requests should be forwarded to Collection. Instructions for Collection personnel are found in IRM 5.1.22.5, *Disclosure of Trust Fund Recovery Penalty Payment Information*. They provide that if the case is not assigned to a RO, Collection Advisory will obtain the information and send it to the taxpayer. Appeals also has procedures in IRM 8.25.1, *Trust Fund Recovery Penalty (TFRP) Overview and Authority*.
- (4) See IRM 11.3.40, *Disclosure Involving Trust Fund Recovery Penalty Assessments*, for additional disclosure guidance when TFRPs are involved.

11.3.41.6.5
(02-26-2024)
**Limitation on
Disclosures Pursuant to
IRC 6103(e)(10) for
Partnerships,
Subchapter S
Corporations, Estates,
and Trusts**

- (1) Persons described in IRC 6103(e) may have access to the appropriate return and return information as specified in IRC 6103(e), subject to the **limitations** in IRC 6103(e)(10) for partnership, estates, trust or Subchapter S returns.
- (2) IRC 6103(e)(10) limits the disclosure of certain information attached to tax returns. IRC 6103(e)(10) provides that information to be disclosed cannot include any supporting schedule, attachment, or list that contains third-party taxpayer identifying information other than that of the individual making the request for access.

Note: Any information in transcript form or in administrative files that may include other third-party information extracted from or attached to the partnership, estate, trust or Subchapter S return, must also be evaluated in accordance with IRC 6103(e)(10).

(3) See *IRM Exhibit 11.3.2-2, Release of Documents/Schedules related to Forms 1065 pursuant to IRC 6103(e)(10)*, and *IRM Exhibit 11.3.2-3, Release of Documents/Schedules related to Forms 1120S pursuant to IRC 6103(e)(10)*, for detailed guidance about IRC 6103(e)(10) limitations on information that can be released to requesters seeking access to tax returns, including schedules that must be restricted or sanitized prior to release.

11.3.41.6.5.1
(02-26-2024)
**IRC 6103(e)(1)(C) -
Partnerships**

(1) For servicewide guidance on partnership returns and return information authority, access, and IRC 6103(e)(10) limitations, see IRM 11.3.2.4.2, *Partnerships*. For guidance on Tax Equity and Fiscal Responsibility Act (TEFRA) and Bipartisan Budget Act (BBA) Partnerships see IRM 11.3.41.6.5.1.1, *Tax Equity and Fiscal Responsibility Act (TEFRA) and Bipartisan Budget Act (BBA) Partnerships*.

(2) When responding to a FOIA request for a partnership administrative file from any direct partner for the year under audit, other third-party information (e.g., Schedule K-1) should be withheld citing (b)(3)/26 USC 6103.

(3) When responding to an IRC 6103(e) material interest request for a partnership administrative file from any direct partner for the year under audit, other third-party information should be withheld.

Example: A requesting partner cannot receive any Form K-1 or other attachments that include identifying information of other partners or other individuals. The partner can receive only the Form K-1 that pertains to their interest in the partnership. All rules in IRC 6103(e)(10) relating to the restrictions of the disclosure of third-party tax information apply to the power of attorney as well.

11.3.41.6.5.1.1
(02-26-2024)
**Tax Equity and Fiscal
Responsibility Act
(TEFRA) and Bipartisan
Budget Act (BBA)
Partnerships**

(1) For service wide guidance on TEFRA and BBA partnership returns and return information authority, access, and IRC 6103(e)(10) limitations, see IRM 11.3.2.4.2, *Partnerships*.

(2) A TEFRA administrative file can be requested by any direct or indirect partner for the year under audit. A BBA administrative file can be requested by any direct partner from the year under audit, the partnership representative, the POA of the partnership, or the POA of the partnership representative. See table for specific information on who can request the partnership administrative file.

Type of Entity	Who Can Request the Partnership Administrative File
Investor Level Statute Control (ILSC)	<ul style="list-style-type: none"> • Any direct partner from the year under audit • For issues dealing with special allocations or issues involving allocations between specific partners. Those documents are only the return information of those partners.
BBA Partnership	<ul style="list-style-type: none"> • BBA Partnership Representative - can be requested by a POA of the partnership representative from the year under audit or a POA of the partnership • Any direct partner from the year under audit
TEFRA Partnership	<ul style="list-style-type: none"> • Any direct or indirect partner from the year under audit

Caution: If the request is for the partnership return only, IRC 6103(e)(10) applies.

- (3) IRC 6103(e)(10) extends to a request made for a partnership return, (Form 1065 only) and does not extend to a request made under IRC 6103(e)(1)(C), FOIA or Treasury Regulations 301.9000 for access to IRS administrative file record(s) pertaining to a TEFRA or BBA partnership, made by any partner or partnership representative. Therefore, partner(s) or a partnership representative, for a TEFRA or BBA partnership, are entitled to request and receive administrative file record(s) containing partnership returns and return information, without application of IRC 6103(e)(10).
- (4) When responding to a FOIA or IRC 6103(e) request for a TEFRA or BBA administrative file, the partnership return, as well as other third-party information (e.g., Schedule K-1) found within the file, generally would be considered partnership return information and would be released without application of IRC 6103(e)(10).

11.3.41.6.5.1.2
(02-26-2024)
IRC 6103(e)(1)(D)(iv) - Subchapter S Corporation

- (1) For service wide guidance on small business corporation under Subchapter S of Chapter 1 returns and return information authority, access, and IRC 6103(e)(10) limitations, see IRM 11.3.2.4.3, *Corporations*.
- (2) When responding to a FOIA request for a Subchapter S administrative file, other third-party information (e.g., Schedule K-1) should be withheld citing (b)(3)/26 USC 6103.
- (3) When responding to an IRC 6103(e) material interest request for Subchapter S administrative file, other third-party information should be withheld.

- 11.3.41.6.5.1.3
(02-26-2024)
IRC 6103(e)(1)(E) - Estates
- (1) For service wide guidance on estate returns and return information authority, access, and IRC 6103(e)(10) limitations, see IRM 11.3.2.4.7, *Estates*.
 - (2) When responding to a FOIA request for an estate return administrative file, other third-party information (e.g., Schedule K-1) should be withheld citing (b)(3)/26 USC 6103.
 - (3) When responding to an IRC 6103(e) material interest request for an estate administrative file, other third-party information should be withheld.
- 11.3.41.6.5.1.4
(02-26-2024)
IRC 6103(e)(1)(F) - Trusts
- (1) For service wide guidance on trust returns and return information, authority and access, and IRC 6103(e)(10) limitations see IRM 11.3.2.4.8, *Trusts*.
 - (2) You may receive FOIA requests for trust information (whether legitimate or abusive) from a person claiming to be a trustee or other qualified IRC 6103(e) requester, but lacking documentation necessary to establish trustee relationship, such as copies of the trust instrument. A requester's attestation of trusteeship or other status is not sufficient. Assuming that the incoming request is not imperfect for other reasons, you may conduct internal research to establish identity and right to access.
 - (3) Ordinarily, use IDRS to perform preliminary research for these types of requests.
 - a. If there is open compliance activity, contact the compliance function. If the compliance function has established the requester's right of access (i.e., through the process of initiating and conducting Examination activity), then Disclosure personnel can rely on that determination.
 - b. If there is open compliance activity, but compliance has made no determination or has specifically determined the requester has no right to access, close the FOIA request as a full denial citing FOIA exemption (b)(3)/26 USC 6103.
 - c. If there is closed compliance activity, consult that function concerning identity and right to access.
 - d. If there is no indication of compliance activity, but IDRS specifically lists the FOIA requester as an IRC 6103(e) person (i.e., the trust entity module has the requester as trustee and the requester's address is the same as the trust's), you may make disclosures of the trust tax information consistent with regular FOIA processing requirements and exemptions.
 - (4) When responding to a FOIA request for a trust administrative file, other third-party information (e.g., Schedule K-1) should be withheld citing (b)(3)/26 USC 6103.
 - (5) When responding to an IRC 6103(e) material interest request for a trust administrative file, other third-party information should be withheld. Ensure that you don't take a different position from the compliance function in allowing IRC 6103(e) access.
- 11.3.41.7
(08-26-2021)
Internal Revenue Code (IRC) 6103(h)
- (1) Overview: IRC 6103(h) allows disclosure of returns and return information to certain federal officers and employees for purposes of tax administration. IRC 6103(h)(1) authorizes the disclosure of returns or return information to Treasury employees, including IRS employees, whose official duties require such inspection or disclosure for tax administration purposes (i.e., disclosure is

permitted when employees have a "need to know" the information for their tax administration duties). Requests for tax returns or return information may be done in writing or verbally. Disclosures made under IRC 6103(h) must align with Delegation Order 11-2, found in IRM 1.2.2.12.2, *Delegation Order 11-2 (Rev. 4), Authority to Permit Disclosure of Tax Information and to Permit Testimony or the Production of Documents*. Additional procedures relating to IRC 6103(h) disclosures can be found in IRM 11.3.22, *Disclosure to Federal Officers and Employees for Tax Administration Purposes under IRC 6103(k)*.

(2) CAP

- **Code** - IRC 6103(h), 26 CFR 301.6103(h)(2)-1 and 26 CFR 301.6103(h)(4)-1
- **Authority** - *Delegation Order 11-2*
- **Procedures** - IRM 11.3.41.7 and IRM 11.3.22

(3) Related Terms/Definitions. Review the following terms/definitions in Exhibit 11.3.41-1, *Terms/Definitions/Acronyms*:

- Judicial and Administrative Tax Proceeding
- Related Statute
- Tax Administration

11.3.41.7.1
(02-26-2024)
Re-disclosures of returns and return information by State Agencies pursuant to IRC 6103(h)(4)

- (1) IRC 6103(h)(4) allows state and local tax agencies to disclose returns and return information obtained pursuant to IRC 6103(d) in a state judicial or administrative tax proceeding but only after IRS verification that disclosure will not impair federal tax administration. Normal processing calls for these requests to be logged into the inventory management system as a 6103 "Other" case with the governing statutory provision entered as IRC 6103(h)(4).
- (2) Many states submit pro forma letters seeking this clearance and routinely receive responses approving the use of the returns and return information in the identified proceeding. Processing includes the caseworker conducting IDRS research for the year or years in question and reviewing for the presence of an open/ongoing civil or criminal case that may be evidence of potential impairment. Absent any such indications, the state is given clearance to use the information in its state tax proceeding.
- (3) Disclosure will use the following chart to determine if clearance is required:

If	Then
Any data element or elements obtained by the state agency via the Governmental Liaison Data Exchange Program (GLDEP) extract program	No clearance is required
Any TDS transcript obtained by the state agency	No clearance is required

If	Then
Any agreed revenue agent report received via the Examination Operational Automation Data store (EOAD) process or from IRS Appeals, or obtained through an ad hoc request	No clearance is required
Any information from a closed examination or collection case file	No clearance is required
Any information received as a result of an ad hoc request to Disclosure	No clearance is required
Information provided routinely through an Implementing Agreement or MOU	No Clearance is required
If the state agency is introducing the federal tax information in a state criminal tax proceeding, regardless of the source or type of data	Clearance is required

- (4) If clearance is required, the caseworker must research to determine if there are any open compliance indicators that may be indicative of potential impairment. The IRS has rarely, if ever, denied state agencies the use of returns and return information in these proceedings and impairment issues should be uncommon. Use appropriate pattern language to respond to the requester and close the case in the inventory management system.
- (5) If clearance is not required the caseworker should contact the state employee and provide them guidance on when clearance is needed and close the case in the inventory management system.
- (6) States can request certification of records for use in a judicial or administrative proceeding. Follow the guidance in IRM 11.3.6, *Seals and Certifications*, to provide certified copies to state and local agencies.
- (7) States can submit their 6103(h)(4) requests seeking clearance via SDT. Even though many states submit pro forma letters seeking this clearance, not a Form 8796-A, the same SDT naming convention used with 6103(d) requests is used to send a 6103(h)(4) request or response via SDT. See IRM 11.3.41.5.3, *Secure Data Transfer (SDT)*, for additional information.

11.3.41.7.2
(12-08-2022)
**Disclosures to Alcohol
and Tobacco Tax and
Trade Bureau**

- (1) The Treasury Alcohol and Tobacco Tax and Trade Bureau (TTB) is responsible for administering and enforcing specific tax administrant functions. See IRM 11.3.22.2.3.1, *Alcohol and Tobacco Tax and Trade Bureau (TTB)*.
- (2) When returns and return information relating to taxes administered by the IRS (such as income tax returns) are needed by TTB employees for tax administration purposes, written requests should be submitted to HQ PPO who will work with Disclosure field for processing and responding.

- (3) Requests from TTB should be signed by an official not lower than a special agent in charge (SAC), and should include:
 - a. Name, address and identification number (SSN or EIN) of the taxpayer.
 - b. Description of the tax information needed.
 - c. Type of tax and taxable period.
 - d. Explanation of the tax administration use of the information.
- (4) The Disclosure employee will process the requests and transmit the material to the requester or the designee. The DM must review the request prior to release. The Disclosure employee processing the request should:
 - a. Review the request to confirm the tax administration need. If necessary, contact the requester for additional information.
 - b. Ask the affected offices (e.g., W&I, SB/SE) whether disclosure would interfere with an open examination or investigation. If disclosure could jeopardize an ongoing investigation, the DM should attempt to reconcile the needs of the IRS/TTB. If necessary, the disclosure should be postponed until it does not impair the IRS's investigation.
 - c. Secure the requested material.
 - d. Determine whether any material should not be disclosed. Any relevant data, whether from the IRS investigative files, third party witnesses, or the taxpayer may be disclosed. If there is doubt as to the relevancy of the information requested, or the extent of information needed, the requester, or the designee, should be contacted for clarification.
 - e. Reproduce the pertinent documents and prepare a transmittal letter. The transmittal letter should advise the recipient of the penalties in IRC 7213, IRC 7213A, and IRC 7431.
- (5) In emergency situations, telephone requests may be made by TTB officials authorized to initiate written requests. A telephone request must be confirmed in writing by TTB within 24 hours. Telephone requests will be processed expeditiously; however, nothing should be disclosed until the written confirmation is received.

11.3.41.7.3
(08-26-2021)
Casework
Considerations for
Routine Agency
Procedures

- (1) IRC 6103(h)(4) permits disclosure of returns and return information in federal and state judicial or administrative tax proceedings under specified conditions. A routine agency procedure to consider when working a request for information is to determine if the requester can receive the information, pursuant to IRC 6103(h)(4) by working directly with the BU employee working on the compliance activity. For example, if the requester wants a copy of the examination administration file, and there is a current audit being conducted, the case-worker should work with the requester and the examiner to determine if a release of the information from the examiner is possible.
- (2) A direct release under IRC 6103(h)(4) will be done by the BU employee working the compliance case when agreed upon by the requester. If the requester does not agree to receiving the records from the BU employee, Disclosure will still be required to work the request and IRC 6103(h)(4) will not apply. The Disclosure employee will only release records pursuant to IRC 6103(e) and specific material interest.
- (3) The information that can be disclosed pursuant to IRC 6103(h)(4) is as follows:

- IRC 6103(h)(4)(A) - The return or return information relates to a taxpayer who is a party to the proceeding, or the proceeding arose out of, or in connection with, determining the taxpayer's civil or criminal liability, or the collection of such liability in respect of any tax imposed under the IRC;
- IRC 6103(h)(4)(B) - The treatment of an item reflected on such return is directly related to the resolution of an issue in the proceeding; or
- IRC 6103(h)(4)(C) - Such return or return information directly relates to a transactional relationship between a person who is a party to the proceeding and the taxpayer which directly affects the resolution of an issue in the proceeding.
- IRC 6103(h)(4)(D) - To the extent required by order of a court pursuant to 18 USC 3500, or rule 16 of the Federal Rules of Criminal Procedure, such court being authorized in the issuance of such order to give due consideration to congressional policy favoring the confidentiality of returns and return information as set forth in this title.

11.3.41.8
(08-26-2021)

**Internal Revenue Code
(IRC) 6103(i)(1)**

- (1) Overview: IRC 6103(i)(1) allows disclosure of returns and return information to federal officers or employees for administration of federal laws not relating to tax administration for use in criminal investigations. Requests under this statute are made pursuant to and upon the grant of an ex parte court order by a federal district court judge or magistrate judge. Returns and return information shall not be disclosed under IRC 6103(i)(1) if it is determined that such disclosure would seriously impair a civil or criminal tax investigation or identify a confidential informant. Disclosures made under IRC 6103(i)(1) must align with Delegation Order 11-2, found in IRM 1.2.2.12.2, *Delegation Order 11-2 (Rev. 4), Authority to Permit Disclosure of Tax Information and to Permit Testimony or the Production of Documents*. Additional procedures relating to IRC 6103(i)(1) disclosures can be found in IRM 11.3.28, *Disclosure to Federal Agencies for Administration of Non-Tax Criminal Laws*. For information on Disclosure casework processing procedures see IRM 11.3.41.3, *General Disclosure Case Processing Procedures*. This section will provide specific casework guidance pertaining to IRC 6103(i)(1) requests. See Exhibit 11.3.41-5, *IRC 6103(i)(1) Case Processing Checklist*, for case processing guidance.

(2) CAP

- **Code** - IRC 6103(i)(1) and 26 CFR 301.6103(i)-1
- **Authority** - *Delegation Order 11-2*
- **Procedures** - IRM 11.3.41.8 and IRM 11.3.28

(3) Related Terms/Definitions. Review the following terms/definitions in Exhibit 11.3.41-1, *Terms/Definitions/Acronyms*:

- Return Information (Other than Taxpayer Return Information)
- Taxpayer Identity
- Taxpayer Return Information

Note: IRC 6103(i) is the only code section where it may be necessary to distinguish between taxpayer return information and return information other than taxpayer return information (i.e., information obtained from a source other than the taxpayer or the taxpayer's representative).

11.3.41.8.1
(02-26-2024)
**General Case
Processing for
Disclosure to
Department of Justice
Under an Ex Parte Court
Order Pursuant to IRC
6103(i)(1)**

- (1) An ex parte court order issued pursuant to IRC 6103(i)(1) must:
 1. Be granted and/or signed by a federal district court judge or magistrate,
 2. Include sufficient identifying information (for example, name, TIN, address and/or date of birth (DOB)) of the taxpayer to whom the return or return information relates so that proper records can be secured, and
 3. Specify the tax years involved.

Note: Some court jurisdictions approve ex parte orders with an electronic signature in lieu of an ink signature. If the court has a practice whereby the judge or magistrate uses an electronic signature, the order is valid and should be worked (assuming the order meets all other requirements).
- (2) On occasion, the appropriate official will notify the IRS Disclosure Office in advance when a determination is made to apply for an ex parte court order. This advance notification allows the IRS to expedite efforts to obtain and review returns and return information prior to receipt of the court order. Disclosure Offices will start processing procedures upon receipt of advance notice that application for an ex parte court order is being made. If advance notice is received, take immediate action to research for and order responsive documents. The possibility that an application may be rejected by the U.S. District Court is not a reason for inaction.
- (3) When there is a short deadline for receipt of the documents (usually 15 business days or less), the DOJ will often contact their local Disclosure Office to advise of the pending order. If an application for an ex parte court order sent to the GSS is assigned to a Disclosure office and the short deadline applies, contact the local office to determine if the case should be reassigned to their office (e.g., the DOJ has already contacted the local office to discuss what is needed). It is imperative to take action upon receipt of the advance notice rather than wait for the actual court order. Beginning the processing prior to receipt of the actual ex parte court order will help ensure all documents are received and forwarded to the US Attorney in a timely manner. Upon receipt of the ex parte court order application, to avoid duplicate cases, the Disclosure caseworker must contact the AUSA within 24 hours to ensure that they mail or fax the court order to the caseworker and not the GSS. The Disclosure caseworker should also discuss alternative products that are available.
- (4) A valid court order pursuant to IRC 6103(i)(1), does not need to repeat the information provided in the application and/or oral testimony of the prosecuting attorney. However, if the order doesn't specify the criminal violations being investigated or prosecuted, contact the requesting official to obtain the information. Caseworkers may accept oral or written confirmation of the statutes.
- (5) Ex parte court orders and written requests for disclosure that contain imperfections will be processed as if the request met the conditions of the statute. In these cases, the caseworker will immediately contact the requester and obtain an amended order or request, if required, while taking the necessary steps to obtain clearances and screen the requested files or returns. Requests that cannot be honored because they do not fall within the scope of the IRC 6103(i) process will also be discussed with the requester and the reason(s) for non-processing will be clearly communicated. The case history of the inventory

management system must also contain notes concerning problems with requests and any actions taken to correct these problems.

- a. Any order or request made under IRC 6103(i)(1) citing only a possible Title 26 (tax) violation is considered invalid. The caseworker will contact the requesting official and advise that the ex parte process cannot be used for any possible tax violations, so the order is invalid. Refer the requester to IRC 6103(h) as the correct access statute if there are true tax violations being pursued.
- b. If a possible tax violation (Title 26) is cited in conjunction with other non-tax statutes, the caseworker will contact the requesting official and advise that we cannot provide any information in response to the possible tax violation. If the requesting official advises that the reference to Title 26 was in error, request that a written withdrawal of the possible tax violation on DOJ letterhead be forwarded to the caseworker. Use of fax is permitted. Document this contact in the electronic inventory management system's case history. Continue processing the request, since the information is available through the ex parte process for the other non-tax violations. Make no disclosure of tax information prior to the receipt of the written withdrawal. Ensure the response letter reflects the withdrawal of the possible tax violation.
- c. Title 18 USC 1956(a)(1)(A)(ii) is one of a number of Title 18 and Title 31 code sections that have tax implications. Carefully review the order and research any code section listed that is not further described in the order to ensure that there are not tax violations included.

Note: The caseworker may need to call the AUSA to confirm that no tax violations are included.

Note: When state and local personnel are named in the ex parte order there are 3 requirements listed in IRM 11.3.28.4(20), *Disclosures in Conformity with an Ex Parte Court Order*, that need to be met in order for them to have access to federal tax information. During the initial contact with the AUSA this needs to be discussed to verify if they meet the status of a federal employee for Disclosure purposes. If they do not meet this status, a discussion needs to be held with the AUSA advising they cannot have access to the federal tax information. Document the results of the discussion in the electronic inventory management system.

- (6) Do not delay processing requests for information pending the receipt of a perfected order or written request. Make no disclosures, however, until you receive the required written request that meets all statutory requirements and until you have secured the DM authorization.
- (7) An amended order will not be required if the TIN is not provided since IRC 6103(i)(1) does not require the TIN. The Disclosure caseworker should attempt to secure the TIN from the U.S. Attorney and should disclose the returns and/or return information **only** if certain that they pertain to the taxpayer named in the order or request. In some cases, the order may indicate that the name of the taxpayer is unknown and substitute a dummy name such as "John Doe." As long as sufficient other information (TIN, DOB, address, etc.) is provided, the order can be honored. In such a case, it is still necessary for Disclosure personnel to be sure that the tax information being released is covered by the order.

- (8) Ex parte court orders issued pursuant to IRC 6103(i)(1) should be as detailed as possible. If an ex parte order requests information concerning classes or groups of individuals (e.g., all investors in X Corporation located in the state of X, without identifying each individual by name), the disclosure caseworker should do sufficient research to try and identify all relevant individuals. Contact with the AUSA should be made if additional information is needed. The DM, as the delegated authority, will determine if the circumstances outlined in the order warrant release of the information without requiring specific identification of each individual or other entity covered by the order. The DM may consider the following in determining how to respond to the Order:
1. Verify that the Order covers the requested information.
 2. Identify the purpose for the information and whether the AUSA can narrow the scope of records.
 3. Determine the resources needed by the disclosure office to meet the request within the time frames provided. Discuss potential for interim responses and alternate time frames with the AUSA.
- (9) Caseworker will ensure all research is completed and relevant records are obtained. If there are periods with open collection, examination, CI or other compliance activity, the Disclosure Office will obtain clearances from the applicable functions before releasing any return information pertaining to those periods. Maintain documentation of clearances in the electronic inventory management system and notate in the case history.
- (10) IRC 6103(i)(1) permits the disclosure of tax information to the DOJ in the investigation and prosecution of a non-tax criminal violation. If the non-tax violation listed in the order is identity theft (i.e., 18 USC 1028(a)), tax returns and/or return information may be released in full without redaction, including returns or return information that indicate identity theft.
- (11) If the non-tax violation listed in the order is something other than identity theft the Disclosure caseworker, after receiving an approved Authorization memo, must contact the AUSA and alert them to the ID theft issue. If the AUSA determines they want an un-redacted copy of the information, it will be provided in an un-redacted form. The Disclosure employee must inform the AUSA that it must seek approval from the IRS prior to disclosing the un-redacted information under IRC 6103(i)(4)(C).

Note: Delegation Order 11-2, found in IRM 1.2.2.12.2, *Delegation Order 11-2 (Rev. 4), Authority to Permit Disclosure of Tax Information and to Permit Testimony or the Production of Documents*, authorizes the area manager to approve disclosure of information under IRC 6103(i)(4). The disclosing official must be contacted and must approve the disclosure if the AUSA requests the information be disclosed.

Note: Use the appropriate pattern letter for the circumstances present in your case.

- (12) If after contacting the AUSA it is determined that the AUSA wants the information in a redacted form then the employee must redact the information to protect the identity of the victim and/or alleged ID thief (whoever is the party not named in the Order). The Disclosure employee must use pattern language to inform the AUSA that the redactions were applied as there is an ID theft marker on the account and to protect the un-named party.

Note: The DM holds the delegated authority to make the impairment determination on whether the identity theft information will be redacted. If the caseworker discovers identity theft indicators or any indication that a fraudulent tax return exists, they should discuss the matter with their DM.

Note: No certification of the tax return can be done where the IRS redacted the return provided in response to the ex parte court order.

Reminder: Case notes must reflect all actions taken, determinations made to release or withhold and any other relevant information documenting what was provided to the AUSA. The DM will ensure any information prohibited from disclosure is edited accordingly.

- (13) Unless otherwise provided in the ex parte order, disclosure will be limited to those returns and return information in the IRS's possession on the date of the order.
- (14) Returns or related return information subsequently received or developed for the years authorized by the order may be disclosed only if the order provides for further disclosures and designates a specific cut off period.

Example: An order may state that the IRS disclose information as may come into its possession subsequent to the date of the order, and for a period no longer than xx number of days thereafter. Generally, the order will specify a 30, 60 or 90-day cutoff. When no cut off is given, the date of the order is the cutoff date.

Note: The end of the extended time frame of the order (e.g., 90 days) does not mean that all disclosures in response to the order must stop. If a return that was received by the IRS prior to the end of the cutoff date (e.g., order date plus 90 days in this case) of the order is finally obtained from files after the cutoff date, it should be furnished to the requester. The determining factor is that the IRS must receive the responsive data prior to the end of the cutoff date of the order. The fact that the responsive data has not been obtained by the Disclosure Office prior to the cutoff date does not change the fact that the data was in the IRS's possession prior to the cutoff date.

- (15) In no case will the cutoff date exceed 90 days, even if the order specifies a cutoff date that exceeds the 90-day limit. This 90-day period is incorporated in the *U.S. Attorney's Manual*. Certification of Form 3050 must apply to non-filing only for the time frame covered by the ex parte court order. See IRM 11.3.41.3.10.3, *Certification*, for information on how to address the cutoff date of the Order when completing the Form 3050.
- (16) If an IRC 6103(i)(1) order (after coordination with the requesting agency under (5) above) is determined to include tax documents (e.g., wage histories, letters to employers regarding incorrect SSNs submitted on Forms W-2), in the possession of the SSA, the case should be processed by Disclosure, who will obtain the necessary responsive documents from the SSA. The SSA has no statutory authority to provide tax documents to the requesting agency pursuant to an IRC 6103(i) request, only the Disclosure Office can release tax documents in such cases. The SSA will refer requesters who contact them for these records to the Disclosure Office. See IRM 11.3.41.8.6, *Ex Parte Court Orders for SSA Records*, for additional information.

- (17) After clearance actions and review of returns and return information are complete, the Disclosure caseworker will prepare a response letter using the appropriate pattern letter for the signature of the DM or acting DM.
- (18) Some offices may have procedures in place for the DM to approve the disclosures separately from the response letter process. In this situation, the authorization memo pattern letter(s) must be used to obtain the DM or acting DM authorization. This is acceptable as long as the written approval record is maintained in the electronic inventory management system.
- (19) Once the initial response letter authorized by the official designated by Delegation Order 11-2, found in IRM 1.2.2.12.2, *Delegation Order 11-2 (Rev. 4), Authority to Permit Disclosure of Tax Information and to Permit Testimony or the Production of Documents*, is sent to the AUSA, the Disclosure caseworker assigned to work the court order may make subsequent disclosures of information.

Note: If necessary, consider providing the AUSA with an interim response rather than waiting until a complete response can be made. This provides better customer service.

- (20) Accountings for disclosures of tax returns and return information must be made in accordance with IRC 6103(p)(3)(A). Accounting for disclosures made under IRC 6103(i)(1) require a narrative record of accounting. See IRM 11.3.41.8.3, *Narrative Record of Accounting*.
- (21) An ex parte court order case may be closed only when all requested documents have been provided or all required special search efforts are exhausted. If a caseworker is unable to locate the requested records, they must notify the requesting official that the records cannot be retrieved and offer to provide alternative products. This contact must be noted in the inventory management system's case history and confirmed in writing in the response letter to the requesting official.

Note: Time should be charged to a closed case if a previously requested return is subsequently received, a return was filed after the court order was initiated, but before the order expires, or the certification of documents previously provided is needed.

- (22) Subsection (e)(8) of the PA requires that agencies "...make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record." See IRM 11.3.41.14.5, *Notifying Individuals That Their Records Were Made Available Under a Compulsory Legal Process*. If disclosure is made in response to an ex parte court order pursuant to IRC 6103(i)(1), notice will not be given until the ex parte court order becomes a matter of public record. If the ex parte court order does not indicate whether it is a matter of public record, the issuing authority will be asked to advise the IRS if the matter becomes public so that the required notice may be issued. This procedure will be carried out by the DM or under their direction.

11.3.41.8.2
(12-08-2022)
**Case Timeliness
Expectations IRC
6103(i)(1)**

- (1) When processing Court Orders, initial analysis must be completed at the earliest opportunity but no later than 3 business days of assignment, along with preparing and submitting the authorization memo to the DM for signature.
- (2) The Disclosure caseworker assigned to process the order will contact the requesting official, usually the AUSA named on the order and acknowledge receipt of the IRC 6103(i)(1) ex parte court order. Discussion with the AUSA must take place within 7 business days of assignment. If no AUSA is specifically named in the order, a verbal statement from the United States Attorney indicating the name of the AUSA assigned to the case is acceptable. The contact must be documented in the case history of the inventory management system. Actions to be taken include:
 - Acknowledge receipt of the ex-parte court order
 - Verify returns/return information needed
 - Determine the court date
 - Determine whether Form 3050 is needed for non-filed returns
 - Determine whether transcripts or alternative product in lieu of returns are acceptable
 - Discuss need for original signatures and that Electronic Filing System (ELF) returns do not include signatures
 - Document specific actions and results of the discussion with AUSA in case notes
 - Continued discussion with AUSA with progress at least once every 30 business days

Note: Contacts with the requesting official will not include any discussion of fact of filing or other return information until such disclosures are approved by the DM.

- (3) Order the returns/return information needed within 14 business days of assignment. Documents should be reviewed and delivered to the AUSA as soon as possible but no later than the cutoff date in the court order, not to exceed 90 days. Voluminous court orders may take longer to process and close with DM approval, which should be documented in case notes, and should include documented consideration for rolling productions. Court orders with imminent court dates must be processed expeditiously and closed by the date needed by the AUSA. Status reports must be provided to the AUSA at least once every 30 business days until the case is closed.
- (4) After receipt of a court order, and until the request has been satisfied, the caseworker must maintain contact with the requesting official regarding the status of the order, the estimated date all actions will be completed and any other pertinent information. Where agreements with requesting officials are in effect regarding contacts, timeframe expectations, etc., document the agreements in the case notes and maintain the agreements in the case file.

Note: DMs will ensure that the timeliness actions required by (2) and (3) have been taken, when reviewing cases.

11.3.41.8.3
(02-26-2024)
Narrative Record of Accounting

- (1) Submit a narrative record of accounting for ex parte court orders that are sealed or not a matter of public record. Processing of the Form 5466-B, *Multiple Records of Disclosure*, places a Transaction Code on the taxpayer's account that can be requested and/or released on a transcript of account. A narrative record of accounting avoids the potential for taxpayer notification that their information was disclosed, prior to the order being made a public record.

Note: All IRC 6103(i)(1) orders should be considered sealed in the absence of a clear and unambiguous indication they are unsealed.

Note: Disclosing to the AUSA that there is a "lack of record" is a disclosure that must be accounted for using the narrative record of accounting.

- (2) A Narrative Record of Accounting site has been added to Disclosure's 6103 Public Channel on TEAMS, to efficiently capture IRC 6103(i)(1) disclosures. A link has also been added to the home page of the Disclosure Share Point site.
- (3) At the time of IRC 6103(i)(1) disclosures, use the site to record the following items:
 - a. Case Number
 - b. Caseworker Name
 - c. Disclosure Office Number
 - d. Date disclosed
 - e. The statutory authority or Purpose Code
 - f. The Agency Code
 - g. The total number of Disclosures (i.e., The number of tax periods (i.e., 941) or tax years (i.e., 1040)
 - h. Save and submit

See IRM 11.3.37, *Recordkeeping and Accounting for Disclosures*, for additional information on Purpose and Agency Codes.

- (4) A notation must be placed in the electronic inventory management system's history notes indicating the completion of a Narrative Record of Accounting. A copy of the Narrative Record of Accounting may also be placed in the case file but is not required.

11.3.41.8.4
(12-08-2022)
Certification

- (1) Disclosure employees will generally not provide certified copies of returns or lack of record with an initial response. The AUSA may request certified copies at a later date if needed for presentation in court. Upon request by the AUSA, the caseworker should provide certified copies of a return or lack of record as soon as possible, generally within 2 business days.
- (2) All certification of tax returns by Disclosure employees in response to an IRC 6103(i)(1) court order is primarily done through the use of a certification stamp and embossed seal affixed to the first page of the document itself. Care must be taken to avoid covering important data, such as entity information, received date stamp, income reported, taxpayer signature, etc. Occasionally, there may be exceptions to Disclosure's method of certifying documents this way in response to a Court Order. Any exception to the certification stamp process should be handled on a case-by-case basis. See IRM 11.3.6, *Seals and Certifications*, for additional information on certification procedures.

- (3) When the MF indicates no record of filing, the Disclosure Office will certify lack of any record using Form 3050, *Certification of Lack of Record*, or equivalent (see IRM 11.3.6, *Seals and Certifications*). The Form 3050 must clearly indicate that the lack of record does not extend beyond any disclosure cut-off date in the order. To do this, add the following language to the Form 3050 in the “Description of Information Sought” section:

“As of MM/DD/YYYY, the Internal Revenue Service shows no return(s) filed for the following [tax year(s) or tax period(s)] pertaining to the [individual or business entity] described above.”

The MM/DD/YYYY date entered in the pattern language should be the cutoff date of the Order. Case documentation should support that all information being provided to the AUSA is within the time frames of the Order.

Note: Prepare Form 3050 when there is no record of a **return** being filed. This includes situations where the taxpayer does not have a filing requirement or where the taxpayer should have filed a return but didn’t. Do not prepare Form 3050 when the due date of the return has not yet passed. In these instances, document the electronic inventory management system’s case history and specifically address the fact that a return was not yet due to be filed in the response letter.

Note: Do not prepare Form 3050 for any other requested documents, for example when there are no transcripts on the account.

- (4) The Form 3050 or certification of a tax return may be sent with the initial response to the AUSA. If the Form 3050 is not provided with the initial response, the final response letter must provide sufficient information to alert the AUSA to the lack of a filed return. If certification of a tax return or lack of record is subsequently requested by the AUSA the caseworker will create and provide the requested certification. The caseworker must include the pattern language referenced in (3) above and must ensure the cutoff date provided is within the timeframes of the order.
- (5) The existence of a transaction code on a transcript for an SFR doesn’t mean an actual paper SFR was prepared. See IRM 11.3.6, *Seals and Certifications*, for details on certifying SFRs.

11.3.41.8.5
(12-08-2022)

**Bank Secrecy Act (BSA)
Records**

- (1) The Bank Secrecy Act (BSA) provisions found in Title 31 of the USC require that certain currency transactions and other financial information be reported to the Secretary of the Treasury. The Financial Crimes Enforcement Network (FinCEN) has jurisdiction over these reports. They are:
- a. *FinCEN Form 101, Suspicious Activity Report by the Securities and Futures Industries*
 - b. *FinCEN Form 102, Suspicious Activity Report by Casinos and Card Clubs*
 - c. FinCEN Form 103, Currency Transaction Report by Casinos (CTRC)
 - d. FinCEN Form 103-N, Currency Transaction Report by Casinos Nevada (CTRC-N)
 - e. FinCEN Form 104, Currency Transaction Reports (CTR)
 - f. FinCEN Form 105, Report of International Transportation of Currency or Monetary Instruments (CMIR)
 - g. FinCEN Form 107, Registration of Money Services Business (RMSB)
 - h. *FinCEN Form 110, Designation of Exempt Person (DOEP)*

- i. *FinCEN Form 111, Suspicious Activity Report (SAR)*
- j. *FinCEN Form 112, Currency Transaction Report (CTR)*
- k. *FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR)*
- l. TD F 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR)
- m. TD F 90-22.47, Suspicious Activity Report (SAR) for Depository Institutions
- n. TD F 90-22.53, Designation of Exempt Person
- o. TD F 90-22.56, Suspicious Activity Report by Money Services Business, and
- p. *Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business*

- (2) The IRS will not process ex parte court order requests for BSA records. Should Disclosure receive an ex parte court order requesting BSA records, contact the requesting official and advise that per the December 22, 2011, DOJ memorandum, United States Attorneys are required to submit all requests for copies of BSA records to FinCEN. FinCEN will process all requests for BSA records (31 USC 5311).
- (3) For CTR data that is on an IRMF transcript, the order does not have to specifically require the release of BSA data. There must, however, be an indication, either by language in the order or by agreement between the Disclosure Office and the U.S. Attorney's Office that IRMF transcripts will be provided in the response to ex parte court orders. Preferably, the order should contain language such as "including information returns" or "including Information Returns Master File data." Providing IRMF transcripts may be a routine part of a Disclosure Office's response to ex parte court orders and, thus, they are expected by the U.S. Attorney's Office. In this case, the case file must contain a note documenting this practice. If receipt of the IRMF data is anticipated in response to the court order, BSA information on the IRMF transcript may be released. This discussion must be documented in the electronic inventory management system's case history.
- (4) When releasing BSA information found on an IRMF transcript in response to an (i) Order, as described above, the caseworker must include the "BSA Warning Statement" pattern language in their final response. See Appendix II of the BSA Redissemination guidelines on the Disclosure SharePoint site for additional information.

11.3.41.8.6
(02-26-2024)
**Ex Parte Court Orders
for SSA Records**

- (1) The United States Attorney (USA) must follow appropriate procedures to secure an ex parte court order for the requested records. When the SSA receives ex parte court orders for records that contain federal tax information, they must make a referral to the IRS. Requests are typically received as a referral from SSA, however they can be sent directly from the DOJ to the IRS. Only the IRS can determine if release under the provisions of IRC 6103(i) is appropriate and authorize release of the records.
- (2) On occasion, the appropriate official will notify the IRS Disclosure Office in advance when a determination is made to apply for an ex parte court order. This advance notification allows the IRS to expedite efforts to obtain and review returns and return information prior to receipt of the court order. Disclosure Offices will start processing procedures upon receipt of advance notice that application for an ex parte court order is being made. If advance notice is

received, take immediate action to research for and order responsive documents. The possibility that an application may be rejected by the U.S. District Court is not a reason for inaction.

- (3) The most commonly requested records are Detailed Earnings Query (DEQY). DEQYs summarize earnings for a given individual for the periods requested or, if requested, for the individual's earning history. DEQYs contain IRC 6103 earnings information shared by the IRS with SSA for purposes of administering their programs. The IRS is not part of the billing or payment process – that is a matter handled between DOJ and the SSA.
- (4) Review the referral and accompanying ex parte order received from the SSA or DOJ to ensure that the requirements for release under 6103(i) are met as outlined in IRM 11.3.41.8, *Internal Revenue Code (IRC) 6103(i)(1)*.
- (5) Obtain any necessary functional clearances. Prepare required correspondence:
 1. Authorization letter for DM's signature (Pattern Correspondence).
 2. SSA Form 7050 - Request the records using SSA Form 7050. Routine processing of the request for records usually requires 45 days, though in some instances, processing may require three to six months.
 3. SSA approval letter (Pattern Correspondence).
 4. Maintain an accurate case history, documenting all significant activities taken on the case on an ongoing basis.
- (6) Receive and prepare documents, ensure the documents match the Order. Requested records will be returned by the servicing SSA office to the requesting Disclosure caseworker. Review the received records for accuracy and completeness – if there is a problem contact the SSA immediately to take corrective action. Copy or import responsive documents as necessary. Review for any information that should not be released. Refer to IRM 11.3.41.8.1, *General Case Processing for Disclosure to Department of Justice Under an Ex Parte Court Order Pursuant to IRC 6103(i)(1)*, for information to be withheld.
- (7) Prepare appropriate pattern correspondence to transmit records requested. With previous authorization from the DM, the appropriate Disclosure employee(s) can sign transmittal letters. Follow proper mail handling procedures in delivering the records to the proper recipient.
- (8) Properly document all disclosures utilizing the Narrative Record of Accounting located on the Disclosure SharePoint site. Document the inventory management system to show accountings have been made. See IRM 11.3.41.8.3 for more information.
- (9) Ensure all actions have been properly documented. Be sure copies of functional clearances, authorization letters, transmittal letters, and documentation of accounting for disclosures are included.

11.3.41.8.7
(08-26-2021)
**Mutual Legal Assistance
Treaties Ex Parte Court
Order Procedures**

- (1) Processing ex parte court orders from foreign countries under Mutual Legal Assistance Treaties (MLAT) do not differ greatly from the ex parte court order procedures normally followed by Disclosure caseworkers. See the table in (7) for the at-a-glance similarities and differences.
- (2) Upon the receipt and assignment of an MLAT ex parte court order, the Disclosure caseworker will review the order for validity. Caseworkers will also calculate the order's expiration date.

- (3) With all valid ex parte court orders, the authority in Delegation Order 11-2, found in IRM 1.2.2.12.2, *Delegation Order 11-2 (Rev. 4), Authority to Permit Disclosure of Tax Information and to Permit Testimony or the Production of Documents*, for disclosing confidential tax information pursuant to IRC 6103(i)(1) is delegated to the DM. In order to accomplish this, the DM signs an authorization memo prepared by the assigned caseworker.
- (4) With the release authorized, the assigned caseworker will send the signed DM Authorization to the LB&I, Exchange of Information (EOI), Competent Authority by secure message, advising of the expiration date of the order. The LB&I employee will research IDRS and request and secure the tax returns and transcripts.
- (5) The assigned LB&I employee will certify/notarize all documents and prepare the attestation, Form 3210, **Document Transmittal**, Form(s) 3050, **Certification of Lack of Record** and Narrative of Accounting. LB&I will provide Disclosure with a copy of the attestation, the completed Form 3210, and the research conducted. The Disclosure caseworker will compare what information LB&I will provide against what is authorized in the order and IDRS research performed to ensure conformity with the order. Information to be reviewed includes, but is not limited to taxpayer identity, tax periods/years, the existence of no open functional controls, and information being released was received by the IRS before the expiration date of order. Email the LB&I employee with review findings (okay to be released or errors/issues found).
- (6) Import the attestation, IDRS research and Form 3210 reviewed into the case and notate whether LB&I can send the information to the treaty partner.
- (7) Similarities and differences:

Attribute	DOJ Ex Parte Court Orders	MLAT Ex Parte Court Orders	Processing Considerations
Statutes	IRC 6103(i)(1) IRC 6103(i)(2) IRC 6103(i)(7)	IRC 6103(i)(1) IRC 6103(i)(2) IRC 6103(i)(7)	None
Is Order Classified	No	No	None
Is Order Sealed	Yes – treat as sealed even if not stated in order	Yes – treat as sealed even if not stated in order	None
Indexed in Inventory Management System	Yes - case type 6103(i)(1)	Yes - case type 6103(i)(1)	None
Case Assignment	Field (SDS)	Field (SDS)	Field (SDS)
Order Requested By	DOJ on behalf of federal agency	DOJ Office of International Affairs on behalf of foreign country	None
Order Received From	DOJ, United States Attorney's Office	LB&I Competent Authority	None

Attribute	DOJ Ex Parte Court Orders	MLAT Ex Parte Court Orders	Processing Considerations
Expedite Processing	Yes, but only with imminent hearing or discovery date	Yes, but only with imminent hearing or discovery date	None
Purpose	Federal non-tax criminal violation	Foreign country non-tax criminal violation	None
Can Tax Violations be included	No – criminal and civil tax violations of US tax statutes are processed under IRC 6103(h)(2)	No – criminal and civil tax violations of foreign tax statutes are processed under IRC 6103(k)(4)	LB&I Competent Authority processes IRC 6103(k)(4)
Point of Contact	DOJ AUSA	LB&I Competent Authority ONLY – employee assigned to case or their manager	None
DM Authorization Required	Yes	Yes	Yes
Pattern letter used for DM Authorization	Yes	Yes	Yes
Research/Search	IDRS, Automated Non Master File (ANMF), Special Search, FRCs, BU Point Of Contacts (POC)	IDRS, Special Search and FRCs	LB&I Competent Authority will do research
Information Provided	Tax Returns and Income Transcripts (unless other items are specifically requested)	Tax Returns and Income Transcripts	LB&I Competent Authority will secure returns and transcripts
CD or Paper	Either	Paper only	None
Certifications Due at Initial Response	No	Yes - All returns and Form 3050	LB&I Competent Authority will certify
Notarizations Needed	No	No – except for Canada or other country identified by LB&I	LB&I Competent Authority will notarize, if needed
Pattern Letters	Yes	No	None
Employee Attestation	No	Yes, template available	LB&I Competent Authority will complete Attestation
Transmittal Needed	Included in Pattern Letter	Use Form 3210	LB&I Competent Authority will complete Form 3210
Mail Instructions	Use UPS or FedEx for tracking. Overnight, if expedite	Use UPS or FedEx for tracking. Overnight to LB&I in all situations	LB&I Competent Authority will forward documents

Attribute	DOJ Ex Parte Court Orders	MLAT Ex Parte Court Orders	Processing Considerations
Use of eFax or Secure Email	Not necessary	May send Employee Attestation as notification that response is coming	Between Disclosure Field and LB&I Competent Authority
Accountings Required	Yes	Yes	LB&I Competent Authority will complete Accounting
Accounting process	Narrative	Narrative	LB&I Competent Authority will complete Narrative Accounting

11.3.41.8.8
(02-26-2024)
IRC 6103(i)(1) requests for Internet Provider (IP) Address

(1) You may receive an Ex Parte request asking for information on the IP Address associated with an electronically filed tax return or other electronic transmission to the IRS. To request this information send an email to the point of contact on the RRR and include the following:

- State that the request is a Court Order
- Explain the specific information needed, i.e, IP Address used by XXX when doing YYY
- Provide identifying information (TINs, access method, etc.) from the request to use for the search.

Note: If the request is large, send the identifying information as an attachment or send the request itself.

11.3.41.8.9
(02-26-2024)
Miscellaneous

(1) On occasion, the IRS receives ex parte court orders seeking tax information and any FOIA requests that the subject of the order may have submitted to the IRS along with any documents provided under the FOIA.

(2) IRC 6103(i)(1) permits the disclosure of tax information to the DOJ in the investigation and prosecution of a non-tax criminal violation. However, FOIA case files are protected under the PA. FOIA case files include the original request, history notes, coversheets, response letter, search memo or Form 2275, responsive documents, etc.

(3) Under the PA, there are two conditions of disclosure that may allow for the disclosure of the FOIA case file pursuant to an Ex Parte Court Order:

- 5 USC 552a(b)(7) - For civil and criminal law enforcement activities
- 5 USC 552a(b)(11) - Pursuant to an order of a court of competent jurisdiction

See IRM 11.3.41.14, *Privacy Act (PA)*, for information on PA conditions of disclosure.

a. 5 USC 552a(b)(11) allows for the disclosure pursuant to an order of a court of competent jurisdiction. In most cases, a court with jurisdiction to

grant an order under IRC 6103(i) will also have jurisdiction to grant an order under PA section (b)(11). However, the ex parte process does not meet the (b)(11) requirements unless the PA authority is specifically cited in the order.

- b. 5 USC 552a(b)(7) allows for the disclosure pursuant to a written request from the head of another federal agency for use in a civil or criminal law enforcement activity. The court must cite the PA as its authority to order the release of the FOIA case file information.
- (4) If the ex parte court order includes appropriate language citing the PA, process the order to include the complete FOIA case file as part of the response.
 - (5) If the ex parte court order does not contain appropriate language about the PA, before providing records, contact the AUSA and secure a letter signed by the U.S. Attorney requesting the disclosure of the FOIA case information pursuant to 5 USC 552a(b)(7). The requirements for such a letter are that it must:
 - a. Be made in writing;
 - b. Specify the particular portion of the individual's FOIA records desired;
 - c. State the information is for civil or criminal law enforcement activities or investigation of those activities AND must specify the law enforcement purpose for which the record is sought; and
 - d. Be made by the "head of agency" for this purpose. The U.S. Attorney who signed the ex parte court order application can make this request.
 - (6) The Uniform Code of Military Justice (UCMJ) is a federal statute and investigations/actions involving criminal violations of the UCMJ meet the requirements of the IRC 6103(i). If a military branch needs information under IRC 6103(i)(1), IRC 6103(i)(5) or IRC 6103(i)(7)(C), it should apply for the order through one of the DOJ employees listed in IRC 6103(i)(1)(B) or IRC 6103(i)(7)(C)(ii), as appropriate. One of the listed individuals must authorize the application and a federal district court judge or magistrate must grant the order. A military court judge cannot grant an IRC 6103(i)(1), IRC 6103(i)(5), IRC 6103(i)(7)(C) or IRC 6103(i)(7)(D) order.

11.3.41.9
(08-26-2021)
**Internal Revenue Code
(IRC) 6103(i)(2)**

- (1) Overview: IRC 6103(i)(2) allows disclosure of return information (other than taxpayer return information) to federal officers or employees for administration of federal laws not relating to tax administration for use in criminal investigations. Requests under this statute are made pursuant to written requests from the head of any federal agency and/or the Inspector General of the agency, or any one of the named officials in IRC 6103(i)(2)(A). Return information shall not be disclosed under IRC 6103(i)(2) if it is determined that such disclosure would seriously impair a civil or criminal tax investigation or identify a confidential informant. Disclosures made under IRC 6103(i)(2) must align with Delegation Order 11-2, found in IRM 1.2.2.12.2, *Delegation Order 11-2 (Rev. 4), Authority to Permit Disclosure of Tax Information and to Permit Testimony or the Production of Documents*. Additional procedures relating to IRC 6103(i)(2) disclosures can be found in IRM 11.3.28, *Disclosure to Federal Agencies for Administration of Non-Tax Criminal Laws*. For information on Disclosure casework processing procedures see IRM 11.3.41.3, *General Disclosure Case Processing Procedures*. This section will provide specific casework guidance pertaining to IRC 6103(i)(2) requests. See Exhibit 11.3.41-6, *IRC 6103(i)(2) Case Processing Checklist*, for case processing guidance.

(2) CAP

- **Code** - IRC 6103(i)(2) and 26 CFR 301.6103(i)-1
- **Authority** - *Delegation Order 11-2*
- **Procedures** - IRM 11.3.41.9 and IRM 11.3.28

(3) Related Terms/Definitions. Review the following terms/definitions in Exhibit 11.3.41-1, *Terms/Definitions/Acronyms*:

- Head of Federal Agency
- Return Information (Other than Taxpayer Return Information)
- Taxpayer Identity
- Taxpayer Return Information

11.3.41.9.1
(12-08-2022)
**General Case
Processing for
Disclosure to Head of
Federal Agency for
Administration of
Federal Non-Tax Laws
Pursuant to IRC
6103(i)(2)**

(1) IRC 6103(i)(2) provides that, upon receipt of a written request from the head of a federal agency, or the Inspector General thereof, or, in the case of the DOJ, the Attorney General, Deputy Attorney General, the Associate Attorney General, any Assistant Attorney General, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, any U.S. Attorney, any special prosecutor (independent counsel) appointed under 28 USC 593, or any attorney in charge of an organized crime strike force established pursuant to 28 USC 510, return information (other than taxpayer return information) shall be disclosed to certain officers and employees of such agency. Taxpayer identity information for this purpose is not considered taxpayer return information. This provision limits disclosure to officers and employees who are personally and directly engaged in:

1. Preparation for any judicial or administrative proceeding pertaining to the enforcement of a specifically designated federal criminal statute (not involving tax administration) to which the United States or such agency is or may be a party, or pertaining to the case of a missing or exploited child,
2. Any investigation which may result in such a proceeding, or
3. Any federal grand jury proceeding pertaining to enforcement of such a criminal statute to which the United States or such agency is or may be a party, or to such a case of a missing or exploited child.

Note: This information will be disclosed to these officers and employees solely for their use in such preparation or investigation or grand jury proceedings as noted above.

Note: IRC 6103(i)(2) does not permit disclosure of returns or return information, only other than taxpayer return information. See IRM 11.3.28.1.5.2, *Examples of Other than Taxpayer Return Information*, for records considered other than taxpayer return information.

(2) A valid request must be made in writing and contain the follow elements:

- a. The name and address of the taxpayer to whom the requested return information relates;
- b. The taxable period or periods to which such return information relates;
- c. The statutory authority under which the proceeding or investigation is being conducted; and

- d. The specific reason or reasons why such disclosure is, or may be, relevant to such proceeding or investigation.
- (3) The fact that IRS records indicate a specific taxpayer filed or failed to file a return is other than taxpayer return information.
 - (4) An amended written request will not be required if the TIN is not provided since IRC 6103(i)(2) does not require the TIN. The Disclosure caseworker should attempt to secure the TIN from the requesting official and should disclose the other than taxpayer return information only if certain that they pertain to the taxpayer named in the order or request. In some cases, the request may indicate that the name of the taxpayer is unknown and substitute a dummy name such as "John Doe". As long as sufficient other information (DOB, address, etc.) is provided, the request can be honored. In such a case, it is still necessary for Disclosure personnel to be sure that the other than taxpayer return information being released is covered by the request.
 - (5) The caseworker will ensure all research is completed and relevant records are obtained. If there are periods with open collection, examination, CI or other compliance activity, the Disclosure Office will obtain clearances from the applicable functions before releasing any return information, other than taxpayer return information, pertaining to those periods. Maintain documentation of clearances in the electronic inventory management system and notate in the case history.
 - (6) Seek approval by the designated official per Delegation Order 11-2, found in IRM 1.2.2.12.2, *Delegation Order 11-2 (Rev. 4), Authority to Permit Disclosure of Tax Information and to Permit Testimony or the Production of Documents*, prior to releasing any information. The authorization memo pattern letter(s) must be used to obtain the DM authorization.
 - (7) Some offices may have procedures in place for the DM to approve the disclosures separately from the response transmittal process. In this situation, the authorization memo pattern letter(s) must be used to obtain the DM authorization. This is acceptable as long as the written approval record is maintained with the case.
 - (8) Transmit the requested information, after approval by the designated official per Delegation Order 11-2, using the appropriate pattern letter.

Note: If necessary, consider providing the requester with an interim response rather than waiting until a complete response can be made. This provides better customer service.

- (9) Accountings for disclosures of other than taxpayer return information must be made in accordance with IRM 11.3.37, *Recordkeeping and Accounting for Disclosures*. Accounting for disclosures made under IRC 6103(i)(2) are done by completing a narrative record of accounting. See IRM 11.3.41.9.3, **Narrative Record of Accounting**.

11.3.41.9.2
(12-08-2022)
**Case Timeliness
Expectations IRC
6103(i)(2)**

- (1) When processing IRC 6103(i)(2) requests, initial analysis must be completed at the earliest opportunity but no later than 3 business days of assignment, along with preparing and submitting the authorization memo to the DM for signature.
- (2) The Disclosure caseworker assigned to process the written request will contact the requesting official and acknowledge receipt. Discussion with the requester

must take place within 7 business days of assignment. The contact must be documented in the case history of the inventory management system. Actions to be taken include:

- a. Acknowledge receipt of and clarify what is needed in response to the request.
- b. Inquire whether there are any impending actions which may necessitate expedite processing.
- c. Confirm information requested is other than taxpayer return information.

Note: Contacts with the requesting official will not include any discussion of fact of filing or other than taxpayer return information until such disclosures are approved by the DM.

- (3) Secure the other than taxpayer return information within 14 business days of assignment. Then, review and deliver documents to the requester as soon as possible. Voluminous documents may take longer to process and close. Ensure case notes support any extended case processing timelines and reflect DM approval. Case notes should also document consideration for rolling productions. Status reports must be provided to the requester at least once every 30 business days until the case is closed.
- (4) After receipt of a written request, and until the request has been satisfied, the caseworker must maintain contact with the requesting official regarding the status of the request, the estimated date all actions will be completed and any other pertinent information. Where agreements with requesting officials are in effect regarding contacts, timeframe expectations, etc., document the agreements in the case notes and maintain the agreements in the case file.

Note: DMs will ensure that the timeliness actions required by (2) and (3) have been taken, when reviewing cases.

11.3.41.9.3 (02-26-2024) **Narrative Record of Accounting**

- (1) Submit a narrative record of accounting for IRC 6103(i)(2) requests. Processing of the Form 5466-B, Multiple Records of Disclosure, places a Transaction Code on the taxpayer's account that can be requested and/or released on a transcript of account. A narrative record of accounting avoids the potential for taxpayer notification that their information was disclosed, prior to the order being made a public record.

Note: Disclosing to the AUSA or head of a federal agency that there is a "lack of record" is a disclosure that must be accounted for using the narrative record of accounting.

- (2) A Narrative Record of Accounting site has been added to Disclosure's 6103 Public Channel on TEAMS, to efficiently capture IRC 6103(i)(1) disclosures. A link has also been added to the home page of the Disclosure Share Point site.
- (3) At the time of IRC 6103(i)(2) disclosures, use the site to record the following items:
 - a. Case Number
 - b. Caseworker Name
 - c. Disclosure Office Number

- d. Date disclosed
- e. The statutory authority or Purpose Code
- f. The Agency Code
- g. The total number of Disclosures (i.e., The number of tax periods (i.e., 941) or tax years (i.e., 1040)
- h. Save and submit

See IRM 11.3.37, *Recordkeeping and Accounting for Disclosures*, for additional information on Purpose and Agency Codes.

- (4) A notation must be placed in the electronic inventory management system's history notes indicating the completion of a Narrative Record of Accounting. A copy of the Narrative Record of Accounting may also be placed in the case file but is not required.

11.3.41.10
(08-26-2021)
**Internal Revenue Code
(IRC) 6103(i)(3)**

- (1) Overview: IRC 6103(i)(3) allows disclosure of return information, and in some instances other than taxpayer return information, concerning non-tax criminal violations to apprise appropriate federal officials of criminal or terrorist activities or emergency circumstances. Return information shall not be disclosed under IRC 6103(i)(3)(A) or (C) if it is determined that such disclosure would seriously impair a civil or criminal tax investigation or identify a confidential informant. Disclosures under this statute are made at the discretion of the Secretary or the delegated official under Delegation Order 11-2, found in IRM 1.2.2.12.2, *Delegation Order 11-2 (Rev. 4), Authority to Permit Disclosure of Tax Information and to Permit Testimony or the Production of Documents*. Additional procedures relating to IRC 6103(i)(3) disclosures can be found in IRM 11.3.28, *Disclosure to Federal Agencies for Administration of Non-Tax Criminal Laws*. For information on Disclosure casework processing procedures see IRM 11.3.41.3, *General Disclosure Case Processing Procedures*. This section will provide specific casework guidance pertaining to IRC 6103(i)(3) requests. See Exhibit 11.3.41-7, *IRC 6103(i)(3)(A) Case Processing Checklist*, for case processing guidance.
- (2) CAP
 - **Code** - IRC 6103(i)(3) and 26 CFR 301.6103(i)-1
 - **Authority** - *Delegation Order 11-2*
 - **Procedures** - IRM 11.3.41.10 and IRM 11.3.28
- (3) Related Terms/Definitions. Review the following terms/definitions in Exhibit 11.3.41-1, *Terms/Definitions/Acronyms*:
 - Head of Federal Agency
 - Return Information (Other than Taxpayer Return Information)
 - Taxpayer Identity
 - Taxpayer Return Information

11.3.41.10.1
(08-26-2021)
**General Case
Processing for
Disclosure to Head of
Federal Agency for
Administration of
Federal Non-Tax Laws
Pursuant to IRC
6103(i)(3)**

- (1) IRC 6103(i)(3)(A) permits the Commissioner or their delegate to disclose in writing, return information (other than taxpayer return information) that may constitute evidence of a violation of a federal non-tax criminal statute. Disclosures can be made to the extent necessary to apprise the head of the appropriate federal agency charged with enforcement responsibility. The head of the requesting agency may re-disclose that information to officers and employees of the agency to the extent necessary to enforce the law. Information will not be disclosed if disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation. Information that merely indicates a violation may have occurred is adequate to warrant referral to the appropriate federal agency. The information must sufficiently identify the specific criminal act or event or statute to which it relates. For referrals made under IRC 6103(i)(3)(A), when return information (other than taxpayer return information) that may constitute evidence of a violation of a non-tax federal criminal law is disclosed, the identity (name, address, SSN and DOB) of the taxpayer may also be disclosed. The taxpayer identity information is treated as return information, other than taxpayer return information, in this instance. However, taxpayer identity information may not be disclosed by itself under IRC 6103(i)(3)(A).
- (2) IRC 6103(i)(3)(B)(i) permits the Commissioner or their delegate to disclose return information (including taxpayer return information) to the extent necessary to apprise appropriate officers or employees of any federal or state law enforcement agency of the circumstances involving an imminent danger of death or physical injury to any individual. The source of information detailing the threat of imminent harm is irrelevant. The IRS makes its own determination whether an emergency situation exists. These disclosures are limited to federal or state law enforcement agencies and cannot be made to **local** law enforcement agencies such as county or city police departments. Disclosures under IRC 6103(i)(3)(B) are not subject to the confidential informant and tax impairment determinations required under IRC 6103(i)(6). However, it is IRS policy never to release the identity of confidential informants.
- (3) Disclosure personnel will give expedited assistance or technical guidance, when sought, to CI personnel considering disclosures under IRC 6103(i)(3)(B)(i). In situations involving imminent danger of death or physical injury, special agents are the only non-supervisors having the authority to make an immediate determination and subsequent disclosure. When disclosure is authorized, the DM or other function may provide the information by telephone to the appropriate officer or employee of the federal or state law enforcement agency that could take action on the imminent situation.
- (4) IRC 6103(i)(3)(B)(ii) permits the Commissioner or their delegate to disclose return information (including taxpayer return information) to the extent necessary to apprise appropriate officers or employees of any federal law enforcement agency in circumstances involving the imminent flight of any individual from federal prosecution. This provision is intended to cover individuals who could be prosecuted for flight from prosecution, as a separate federal offense, and circumstances where an individual has attempted to change identity or intends to flee from the country. Special agents do not have the authority to make a disclosure in imminent flight situations. However, SACs may make these disclosures. Disclosures under IRC 6103(i)(3)(B) are not

subject to the confidential informant and tax impairment determinations required under IRC 6103(i)(6). However, it is IRS policy never to release the identity of confidential informants.

- (5) IRC 6103(i)(3)(C)(i) allows the IRS on its own to disclose in writing return information (other than taxpayer return information) that may be related to a terrorist incident, threat, or activity to the extent necessary to apprise the head of the appropriate investigating or responding federal law enforcement agency. This authority is exercised by officials having Delegation Order 11-2 authority, found in IRM 1.2.2.12.2, *Delegation Order 11-2 (Rev. 4), Authority to Permit Disclosure of Tax Information and to Permit Testimony or the Production of Documents*. Taxpayer identity information for this purpose is **not** considered taxpayer return information. The head of the agency may re-disclose the information received to officers and employees of that agency to the extent necessary to investigate or respond to the terrorist incident, threat, or activity.
- (6) IRC 6103(i)(3)(C)(ii) permits the disclosure of returns and taxpayer return information to the Attorney General to the extent necessary to prepare an application under IRC 6103(i)(7)(D). Generally, processing of IRC 6103(i)(3)(C) (and IRC 6103(i)(7)(A), IRC 6103(i)(7)(B), and IRC 6103(i)(7)(C)), requests are handled by Disclosure PPO and will parallel processing of IRC 6103(i)(1), IRC 6103(i)(2), and IRC 6103(i)(5) requests. Disclosures under the authority of IRC 6103(i)(3)(C) are subject to a determination by the IRS that they will not identify a confidential informant or seriously impair a civil or criminal tax investigation.

Note: Any correspondence marked "Classified," "Secret" or "Top Secret" should be immediately forwarded, **unopened**, to the PPO SDA.

- (7) IRM 11.3.34, *Disclosure for Non-Tax Criminal Violations*, provides instructions for instances when IRS employees receive non-tax information about a possible non-tax violation of federal, state or local criminal laws.
 - (1) When processing IRC 6103(i)(3) requests, initial analysis must be completed at the earliest opportunity but no later than 3 business days of assignment.
 - (2) The Disclosure caseworker assigned to process the referral will contact the IRS employee, confirm receipt of the referral, and discuss the specifics of the request. Discussion with the IRS employee must take place within 7 working days of assignment. The contact must be documented in the case history of the inventory management system. Actions to be taken include:
 - a. Acknowledge receipt of and clarify source of information.
 - b. Confirm the proposed non-tax violation.
 - c. Confirm information being referred is other than taxpayer return information and does not need corroboration from IRS records.
 - d. Discuss which federal agency has jurisdiction and the appropriate official at the agency who should receive the referral.
 - (3) Information should be reviewed, and a referral letter provided to the appropriate federal agency as soon as possible.
 - (4) After receipt of a written referral, and until the request has been satisfied, the caseworker must maintain contact with the IRS employee regarding the status of the request, the estimated date all actions will be completed and any other

11.3.41.10.2
(08-26-2021)
**Case Timeliness
Expectations IRC
6103(i)(3)**

pertinent information. Where agreements with the IRS employees are in effect regarding contacts, timeframe expectations, etc., document the agreements in the case notes and maintain the agreements in the case file.

Note: DMs will ensure that the timeliness actions required by (1) and (2) have been taken, when reviewing cases.

11.3.41.11
(08-26-2021)
**Internal Revenue Code
(IRC) 6103(i)(7)**

- (1) Overview: IRC 6103(i)(7) allows disclosure of return information (other than taxpayer return information), for purposes of administering federal laws not related to tax administration, to federal officers or employees of any federal law enforcement agency who are personally and directly engaged in responding to or investigating any terrorist incident, threat or activity, and to certain federal officers or employees who are personally and directly engaged in the collection or analysis of intelligence and counterintelligence information or investigation concerning any terrorist, threat, or activity. Requests under this statute are made pursuant to a written request from certain specified persons identified in the statute. Return information shall not be disclosed under IRC 6103(i)(7) if it is determined that such disclosure would seriously impair a civil or criminal tax investigation or identify a confidential informant. Disclosures made under IRC 6103(i)(7) must align with Delegation Order 11-2, found in IRM 1.2.2.12.2, *Delegation Order 11-2 (Rev. 4), Authority to Permit Disclosure of Tax Information and to Permit Testimony or the Production of Documents*. Additional procedures relating to IRC 6103(i)(7) disclosures can be found in IRM 11.3.28, *Disclosure to Federal Agencies for Administration of Non-Tax Criminal Laws*. For information on Disclosure casework processing procedures see IRM 11.3.41.3, *General Disclosure Case Processing Procedures*. This section will provide specific casework guidance pertaining to IRC 6103(i)(7) requests.
- (2) CAP
 - **Code** - IRC 6103(i)(7) and 26 CFR 301.6103(i)-1
 - **Authority** - *Delegation Order 11-2*
 - **Procedures** - IRM 11.3.41.11 and IRM 11.3.28
- (3) Related Terms/Definitions. Review the following terms/definitions in Exhibit 11.3.41-1, *Terms/Definitions/Acronyms*:
 - Head of Federal Agency
 - Return Information (Other than Taxpayer Return Information)
 - Taxpayer Identity
 - Taxpayer Return Information

11.3.41.11.1
(08-26-2021)
**General Case
Processing for
Disclosure to Head of
Federal Agency for
Administration of
Federal Non-Tax Laws
Pursuant to IRC
6103(i)(7)**

- (1) IRC 6103(i)(7)(A) allows the IRS to disclose return information (other than taxpayer return information) to officers and employees of any federal law enforcement agency who are personally and directly engaged in responding to or investigating any terrorist incident, threat, or activity. A written request signed by the head of the federal law enforcement agency or their delegate is required. The written request must set forth the specific reason(s) why disclosure may be relevant to a terrorist incident, threat, or activity. Taxpayer identity information for this purpose is not considered taxpayer return information. Limited re-disclosure is allowed to state or local law enforcement employees personally and directly engaged as a part of a team with the federal law enforcement agency in the response or investigation.

- (2) IRC 6103(i)(7)(B) allows the IRS to disclose return information (other than taxpayer return information) upon the written request of an officer or employee of DOJ or Treasury who is appointed by the President with the advice and consent of the Senate or who is the Director of the U.S. Secret Service, if that individual is responsible for the collection and analysis of intelligence and counterintelligence concerning any terrorist incident, threat, or activity. Taxpayer identity information for this purpose is not considered taxpayer return information. The written request must set forth the specific reason(s) why disclosure may be relevant to a terrorist incident, threat, or activity. Disclosures under IRC 6103(i)(7)(B) may be made to those officers and employees of DOJ, Treasury, and other federal intelligence agencies who are personally and directly engaged in the collection or analysis of intelligence and counterintelligence information or investigation concerning any terrorist incident, threat, or activity. These disclosures shall be made solely for the use of the officers and employees in the investigation, collection, or analysis.
- (3) IRC 6103(i)(7)(C) creates an ex parte court order process similar to IRC 6103(i)(1). It provides that, upon grant of an ex parte order by a federal district court judge or magistrate, returns and return information with respect to a specified period(s), shall be disclosed to officers and employees of any federal law enforcement or federal intelligence agency who are personally and directly engaged in any investigation, response to, or analysis of intelligence and counterintelligence information concerning any terrorist incident, threat, or activity. These disclosures shall be solely for the use of such officers and employees in the investigation, response, or analysis, and, subject to IRC 6103(i)(4) provisions, in any judicial or administrative proceeding pertaining to the terrorist incident, threat, or activity.
- (4) IRC 6103(i)(7)(D) allows the IRS Commissioner to authorize an application for an ex parte order described in IRC 6103(i)(7)(C). In granting the order, the U.S. District Court judge/magistrate must determine that, on the basis of the facts submitted by the applicant, there is a reasonable cause to believe the return or return information may be relevant to a matter relating to the terrorist incident, threat, or activity. The facts submitted by the applicant must be based upon information believed to be reliable. Information may be disclosed pursuant to IRC 6103(i)(7)(D) only to the extent necessary to apprise the head of the appropriate federal law enforcement agency responsible for investigating or responding to a terrorist incident, threat, or activity. Information so disclosed shall be used solely in a federal investigation, analysis, or proceeding concerning a terrorist incident, threat, or activity. The head of the agency may re-disclose the information to officers and employees of that agency to the extent necessary to investigate or respond to the terrorist incident, threat, or activity. IRS disclosures to DOJ to make an application for the ex parte order described in IRC 6103(i)(7)(D) are authorized under IRC 6103(i)(3)(C)(ii). Disclosure PPO coordinates the IRC 6103(i)(7)(D) process.
- (5) Disclosures under the authority of IRC 6103(i)(7) are subject to a determination by the IRS that they will not identify a confidential informant or seriously impair a civil or criminal tax investigation.
- (6) IRC 6103(i)(7)(A) and IRC 6103(i)(7)(B) disclosures will be handled like IRC 6103(i)(2) requests.
- (7) IRC 6103(i)(7)(C) ex parte orders will be handled like IRC 6103(i)(1) ex parte orders.

Note: These ex parte court orders are worked by field Disclosure employees.

- (8) Subsection (e)(8) of the PA requires that agencies "...make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record." See IRM 11.3.41.14.5, *Notifying Individuals That Their Records Were Made Available Under a Compulsory Legal Process*. If disclosure is made in response to an ex parte court order pursuant to IRC 6103(i)(7)(C), notice will not be given until the ex parte court order becomes a matter of public record. If the ex parte court order does not indicate whether it is a matter of public record, the issuing authority will be asked to advise the IRS if the matter becomes public so that the required notice may be issued. This procedure will be carried out by the DM or under their direction.
- (9) GLDS, in close coordination with CI, will prepare and obtain approval for ex parte applications under IRC 6103(i)(7)(D).
- (10) Questions concerning IRC 6103(i)(7) issues should be directed to the PPO policy analyst liaison to CI.
- (11) Any correspondence marked "Classified," "Secret" or "Top Secret" should be immediately forwarded, **unopened**, to the PPO SDA.

11.3.41.11.2
(08-26-2021)
Case Timeliness Expectations IRC 6103(i)(7)

- (1) IRC 6103(i)(7)(A) and 6103(i)(7)(B) requests are handled like IRC 6103(i)(2) requests. Refer to the case timeliness expectations in IRM 11.3.41.3.7, *Case Timeliness Expectations*, and IRM 11.3.41.9.2, **Case Timeliness Expectations IRC 6103(i)(2)**, when working these types of requests.
- (2) IRC 6103(i)(7)(C) Court Orders are handled like IRC 6103(i)(1) Court Orders. Refer to the case timeliness expectations in IRM 11.3.41.3.7, *Case Timeliness Expectations*, and IRM 11.3.41.8.2, **Case Timeliness Expectations IRC 6103(i)(1)**, when working these types of requests.

Note: DMs will ensure that the appropriate timeliness actions required have been taken, when reviewing cases.

11.3.41.12
(02-26-2024)
Internal Revenue Code (IRC) 6103(l)(1)

- (1) Overview: IRC 6103(l) allows disclosure of returns and return information for purposes other than tax administration to various specially identified federal, state and local agencies for specifically identified purposes. Request under the various provisions of this subsection are made generally pursuant to written request from the authorized agency. Disclosures made under IRC 6103(l) must align with Delegation Order 11-2, found in IRM 1.2.2.12.2, *Delegation Order 11-2 (Rev. 4), Authority to Permit Disclosure of Tax Information and to Permit Testimony or the Production of Documents*. Additional procedures relating to IRC 6103(l) disclosures can be found in IRM 11.3.22, *Disclosure to Certain Federal Officers and Employees for Tax Administration Purposes under IRC 6103(h)*, and IRM 11.3.29, *Disclosure to Government Agencies for Administration of Nontax Laws*. For information on Disclosure casework processing procedures see IRM 11.3.41.3, *General Disclosure Case Processing Procedures*. This section will provide specific casework guidance pertaining to IRC 6103(l)(1)(A) requests.

- (2) CAP

- **Code** - IRC 6103(l) and 26 CFR 301.6103(l)-1
- **Authority** - *Delegation Order 11-2*
- **Procedures** - IRM 11.3.41.12, IRM 11.3.22 and IRM 11.3.29

11.3.41.12.1
(02-26-2024)

**General Case
Processing for
Disclosure to Social
Security Administration
Pursuant to IRC 6103
(l)(1)(A)**

- (1) IRC 6103(l)(1)(A) provides that the IRS may disclose specified tax information to the SSA for SSA's administration of the Social Security Act. More specifically, upon written request from SSA, the IRS may provide returns and return information with respect to taxes imposed by IRC chapter 2, Tax of Self Employment; chapter 21, Federal Insurance Contributions Act (FICA) taxes; and chapter 24, Collection of Income Tax at Source on Wages including copies of self-employment schedules, unreported tip returns, and other information used to ensure the accuracy of wage, tip and self-employment postings to the earnings records for Social Security Administration. Normal processing calls for these requests to be logged in as a 6103 "Other" case with the governing statutory provision entered as 6103(l)(1)(A). In addition to Memorandums Of Understanding's disclosure does process ad hoc requests for SSA. Below are the procedures for processing such requests.
- (2) To be valid, a request from SSA must:
 - Be in writing on SSA letterhead,
 - Provide the TIN and name of the claimant,
 - Be signed by an authorized official of the SSA, (see listing of SSA officials on the RRR and (3) below),
 - Indicate that the information will be used to administer the Social Security Act, and
 - List what specific information is needed, using the IRC 6103(l)(1)(A) Request Template (see Exhibit 11.3.41-16, *IRC 6103(l)(1)(A) Request Template*).
- (3) Only certain SSA officials are authorized to sign a request for information pursuant to IRC 6103(l)(1)(A). See the listing of SSA officials on the RRR. If not signed by the appropriate delegated official, return the request and advise the originator of the signature requirements.

Note: The signature of the appropriate delegated official can be stamped, written, electronic or by another approved method.

- (4) IRC 6103(l)(1)(A) does not permit disclosure of complete tax returns or transcripts. Do not give SSA a complete copy of the return or a complete copy of a transcript. SSA will use Form 4506, *Request for Copy of Tax Return*, (IRC 6103(c) consent request) to secure tax information they need beyond their IRC 6103(l)(1)(A) authority. Under no circumstances should Disclosure Offices process 6103(c) requests for tax information from SSA.
- (5) The IRS can provide documents reflecting self-employment income or the computation of self-employment tax filed with Form 1040, *U.S. Individual Income Tax Return*.
- (6) Releasable transcript information should be provided whenever possible. SSA must ensure earnings records are accurate with respect to wages and self-employment income, so only relevant portions of tax returns or information return transcripts should be provided. If SSA requests a copy of Schedule C, E, F, H or SE from a tax return, and these schedules are determined to contain

self-employment income and are therefore responsive, provide a print using either the RTVUE or RTFTP command code of only those particular schedules (if those prints are available).

- (7) Form 4137, *Social Security and Medicare Tax on Unreported Tip Income*, or Form 8919, *Uncollected Social Security and Medicare Tax on Wages*, that show the total unpaid Social Security and Medicare tax should be secured using IDRS Command Code RTVUE with definer U1.
- (8) The IRS can provide amended income tax returns that reflect changes to the above referenced schedules or if that amended return relates to changes that impact self-employment income or tax. Do not disclose a *Form 1040X, Amended U.S. Individual Income Tax Return*, that does not include changes to self-employment tax, even if requested.
- (9) Audit results may be disclosed only if the audit adjusted self-employment income (net) or self-employment tax. Restrict the audit results to items related to SE income or tax. Sanitize other changes. SSA understands that ordering audit files requires additional processing time. SSA should only request this information if there is reasonable belief that the IRS adjusted the SE income or tax.
- (10) If records determined to be responsive indicate that other types of tax returns, such as a partnership return (Form 1065, *U.S. Return of Partnership Income*) or employment tax returns, including Form 94X series returns, were filed, they can also be requested separately if needed. Form 940, *Employer's Annual Federal Unemployment (FUTA) Tax Return*; Form 941, *Employer's Quarterly Federal Tax Return*; and Form 942, *Employer's Quarterly Tax Return for Household Employees*, employment tax returns do not include the names of the individuals earning wages, so they may be of limited value. Partnership income specific to the claimant should be reflected on *Schedule E of Form 1040* and should be requested only if there is a question about the accuracy of the amount claimed.
- (11) The IRS can also provide Forms 1099, Series, and FICA amounts and taxes withheld reflected on Form W-2, *Wage and Tax Statement*. Caseworkers will provide relevant portions of available Information Returns using IDRS Command Code IRPTR. Only those schedules that reflect self-employment earnings, can be provided. For example, the following can be disclosed:
 - Total wages, SSA wages, and tip income subject to Social Security Taxes
 - A copy of the IRPTR print for Forms 1099, Series, where self-employment income appears (but not 1099-R information)
 - A copy of the IRPTR print for Form W-2 data for the year in question

If you are providing a copy of Form W-2, include only line items 1, 3, 4, 5, 6, 7 and 8. Leave all identifying information for the taxpayer or the employer in parts a through f but redact all other line items on the form. Do not provide any information on interest, dividends or similar information contained on IRP documents, especially Title 31 or CTR information.

- (12) Other Forms>Returns, that can be provided include:

- Form SS-8, *Determination of Employee Work Status for Purposes of Federal Employment Taxes and Income Tax Withholding*. This form is filed by a claimant to ask the IRS for an opinion regarding their status as either a contract employee subject to self-employment tax or an employee subject to wages/withholding. It is only available if filed by the claimant. Refer to the RRR for the current SS-8 point of contact.
 - Form 4361, *Application for Exemption from Self-Employment Tax for Use by Ministers, Members of Religious Orders and Christian Science Practitioners*. Note, the claimant is required to maintain a copy of this form, but it can be obtained from the IRS if needed.
- (13) On request, the IRS can disclose whether a return was filed (fact of filing) that reflected self-employment income and/or self-employment taxes paid.
- (14) Responding to Requests - Limit your response to only the information identified by SSA in the signed request and request template. Because the information provided is subject to penalties for unauthorized access or disclosure, ensure the approved penalty paragraph is included in the final response letter.
- (15) Rejecting Requests - If a request from SSA uses Form SSA 7057-U3 or some other invalid form, prepare a response that includes the following language: "We are returning your Form SSA 7057-U3 used to request information from the IRS. The IRS and SSA have a negotiated process to be used whenever SSA needs information to verify the accuracy of earnings files. We have enclosed an explanation of those procedures. Please resubmit your request using the enclosed template in accordance with the agreed upon process. If you have any questions, please contact (name of Disclosure caseworker) at: xxx-xxx-xxxx or write to: xxxxxxx. Please refer to case number xxxxxx."

Reject any request that seeks IRP information that is more than 10 years old or tax returns or tax return information more than 7 years old. Indicate in your response that the information requested has been destroyed in accordance with guidelines located in Document 12990, Records Control Schedules (RCS). Even if the possibility exists that an older tax return might be available in an administrative file or elsewhere, IRS and SSA have agreed that disclosure of tax returns or tax return information will be limited to the 7 most recent years.

- (16) IRC 6103(l)(1)(A) disclosures do not require IRC 6103(p)(3)(A) accounting but are subject to IRC 6103(p)(4) safeguard requirements.
- (1) When processing requests made pursuant to IRC 6103(l)(1)(A) initial analysis and ordering records must be completed at the earliest opportunity but no later than 10 business days of case assignment. Plan and schedule timely actions to order and review records and move case toward closure within 30 business days of receipt. If a request is made pursuant to IRC 6103(l)(1)(A) and cannot be closed within 30 days, an interim response to include an anticipated final response date is required every 30 business days until the case is closed. Provide SSA with the requested information as quickly as possible, considering their need for timely information and our requirement to effectively manage overall inventory.

11.3.41.12.2
(12-08-2022)
**Case Timeliness
Expectations IRC
6103(l)(1)**

11.3.41.13
(08-26-2021)
Freedom of Information Act (FOIA)

- (1) Overview: The FOIA, 5 USC 552, as amended, provides for public access to records and information maintained by federal agencies. This IRM deals primarily with processing requests pursuant to Section (a)(3) of the Act for reasonably described records maintained by the IRS which are not required to be published or otherwise made available under Sections (a)(1) or (a)(2) of the Act. Disclosing records requires a caseworker to determine if one of the nine FOIA exemptions or three exclusions applies to any information within the records. Requests must be made in writing and comply with the requirements of the FOIA. Disclosures made under FOIA must align with Delegation Order 11-7, **Authority for Initial Determinations with Respect to Written Requests for Records Pursuant to 5 USC 552, Freedom of Information Act**, found in IRM 1.2.2.12.6 .

Note: Any disclosure of tax information under the FOIA must also comply with IRC 6103 provisions and Delegation Order 11-2, found in IRM 1.2.2.12.2, *Delegation Order 11-2 (Rev. 4), Authority to Permit Disclosure of Tax Information and to Permit Testimony or the Production of Documents*.

Additional procedures relating to FOIA disclosures can be found in IRM 11.3.13, *Freedom of Information Act (FOIA)*. For information on Disclosure casework processing procedures see IRM 11.3.41.3, *General Disclosure Case Processing Procedures*. This section will provide specific casework guidance pertaining to FOIA requests. See Exhibit 11.3.41-8, *Freedom of Information Act Case Processing Checklist*, for case processing guidance.

- (2) CAP
 - **Code** - 5 USC 552, 31 CFR Part 1 Appendix B, 26 CFR 601.702
 - **Authority** - *Delegation Order 11-7*
 - **Procedures** - IRM 11.3.41.13 and IRM 11.3.13 (requests for tax information IRM 11.3.41.3 and IRM 11.3.2)
- (3) Related Terms/Definitions. Review the following terms/definitions in Exhibit 11.3.41-1, *Terms/Definitions/Acronyms*:
 - Discretionary Disclosure
 - Privilege
 - Rule of 3
 - Tolling

11.3.41.13.1
(02-26-2024)
General Case Processing for Disclosure Pursuant to the Freedom of Information Act (FOIA) 5 USC 552

- (1) The Disclosure office is responsible for operational casework related to requests for access to and disclosure of IRS information pursuant to the FOIA. The Disclosure office will control and process written FOIA requests. The Disclosure Office has the delegated authority to make FOIA determinations regarding the release of IRS agency records (See Delegation Order 11-7, **Authority for Initial Determinations with Respect to Written Requests for Records Pursuant to 5 USC 552, Freedom of Information Act**, found in IRM 1.2.2.12.6).
- (2) Requests under the FOIA are indexed as FOIA case types in the inventory management system.

Note: Cases assigned to the tax law specialist group are generally indexed as FOIA-TLS case type.

11.3.41.13.2
(02-26-2024)

Receipt and Control

- (1) Paper requests must be date stamped or be marked by hand with the date received in the local Disclosure office or when received by the GSS. Receipts received electronically will be identified by the date they are electronically provided to the GSS, or the next business day if received on a weekend, holiday or after normal business hours (6:00 A.M. to 6:00 P.M. EST, Monday through Friday). This establishes the receipt date for the request and allows an accurate computation of the statutory 20-day period for a response or a request for extension. The received date for requests faxed or received through an online portal is the date of the fax or online portal submission date unless it falls on a weekend, holiday or after normal business hours in which case the received date will be the next business day. See IRM 11.3.41.3.1, *Receipt and Control*, for additional information.

11.3.41.13.3
(02-26-2024)

Initial Analysis

- (1) The assigned caseworker must analyze each FOIA request following general initial analysis guidance. Additionally, the FOIA, as implemented through regulations found at 26 CFR 601.702, requires that a request:

1. Be made in writing and signed by the person making the request.

Note: When an authentication or signature required to establish identity and process the request is missing, such as for requests for records protected by specific statutes (i.e., IRC 6103 protected tax records), contact the requester to have them send the caseworker any needed documentation.

Note: The IRS will waive the signature requirement for FOIA requests if the request is seeking records that are not protected by a specific statute such as IRC 6103 and do not have privacy concerns, such as requests for contracts.

Note: If a request is received from third parties which seek records protected by specific statutes (i.e., IRC 6103 protected tax records), regardless of the method they were received such as mail/fax or the FOIA online portal, and the request contains the authorization document which meets the requirements of 26 CFR 601.702(c)(5)(iii)(C), IRS accepts the signature applied to the authorization document as having met the signature requirement of the FOIA. CFINK cannot be used to meet the FOIA signature requirement. Do **not** imperfect third-party requests which meet these requirements unless the request is also missing information required to perfect a request per 26 CFR 601.702.

Note: A stamped signature is not sufficient to establish a requester's identity or right to obtain access to records the disclosure of which is restricted by statute or other authority. A FOIA request for such records under 5 USC 552(a)(3) must, therefore, be physically signed by the requester. Any such request for (a)(3) records that is "signed" with a stamped signature will be rejected as imperfect. When FOIA correspondence appears to have a stamped or electronic signature, the caseworker should contact the GSS through the DM to request the original correspondence be pulled and sent to the assigned caseworker. The caseworker must review the original signature and respond appropriately.

Note: The IRS does not accept digital signatures for FOIA requests for access to tax records but will accept an email that contains a scanned version of the original request bearing the signature of the requester or authorized representative. The IRS will accept a digital signature, such as that sent with an email, for most FOIA requests involving records other than those subject to IRC 6103 or the PA.

2. State that it is made pursuant to the FOIA or its regulations.
3. Be mailed or faxed to the GSS, or hand delivered to the Disclosure office having jurisdiction for the records, this is the office serving the state where the requester resides.
4. Reasonably describe the records sought.
5. Provide an address for making a response.
6. State whether the requester wishes to inspect the records or have copies made without prior inspection.
7. State the requester's agreement to pay for search, review, and reproduction charges as applicable.
8. Furnish an attestation under penalty of perjury as to the status of the requester, unless the requester is an "other" requester. Valid categories of requesters include commercial use, media, noncommercial, scientific, educational, or other.

Note: The caseworker may challenge the status of the requester, on a case-by-case basis, if sufficient information is not provided to determine the category of requester. This challenge is considered an adverse determination and the requester is granted appeal rights.

- (2) Further analysis may be needed to determine if a response is appropriate under the FOIA. Analysis of the correspondence may reveal the following:
 1. The request may be imperfect under the FOIA.
 2. The information requested may be under the jurisdiction of another agency or office.
 3. The request may be directed to multiple offices, requiring a review of the request in the inventory management system to determine if it is a duplicate.
 4. The request may be unclear as to the statute under which access is sought.
 5. The information requested may be available outside of the FOIA under other provisions of the law or under routine established agency procedures.
- (3) The initial review of any request must include an analysis of the content of the request to determine if it complies with FOIA regulations or, if not, whether the information could be provided under another provision of law or under established agency procedures, as appropriate.

Caution: Correspondence received seeking "confidential treatment" under the FOIA (or similar language) but does not ask for any specific agency records are often referred to as a reverse FOIA. If correspondence is received that asks for confidential treatment but does not appear to ask for any records it must not be considered a FOIA request. Do not control the correspon-

dence as a FOIA or other case type in the inventory management system. Send the reverse FOIA correspondence to the function that has jurisdiction over the records.

- (4) If reassignment to another agency outside the IRS is appropriate, DMs must ensure the request is reassigned to the correct agency within 10 business days. The OPEN Government Act provides that agencies have 10 business days to route a request to the correct agency FOIA office, after which the statutory response time begins.
- (5) When a request seeks tax records of a taxpayer other than the requester, it must include proof that the requester is authorized to obtain the records sought. This authority may be proven:
 - a. By a properly completed Form 8821, *Tax Information Authorization*, or equivalent enclosed with the request. The IRS must receive the authorization within 120 days of the date the taxpayer signed and dated the document and the document must comply with all of the other requirements of 26 CFR 301.6103(c)-1. Caseworkers must analyze the form carefully to ensure that the authorization covers the requested material. To compute the 120-day limitation, day 1 is the day after the taxpayer signed the authorization. The IRS must receive the authorization on or before the 120th day after the taxpayer signed the authorization.
 - b. By a properly completed Form 2848, *Power of Attorney and Declaration of Representative*, or equivalent enclosed with the request. The 120-day rule for Form 8821 authorizations does not apply to Form 2848 authorizations. Caseworkers must analyze the form carefully to ensure that the authorization covers the requested material.
 - 1.) Part II of the Form 2848 must be completed, or the information provided in an equivalent document. If this information is not provided, the document is incomplete and the FOIA request is considered denied in full citing FOIA exemption (b)(3)/26 USC 6103.

Note: In March 2004, the IRS stopped accepting Form 2848 as authority to disclose tax information to a designee if the designee was not eligible to practice before the IRS (see Instructions to Form 2848). Thus, the designee must complete Part II of the Form 2848, or provide the Part II information in an equivalent document. If the designee is ineligible to complete Part II, the taxpayer must use Form 8821, or an equivalent, to authorize disclosure of returns or return information to that designee. Designees who cannot use a Form 2848 include organizations and individuals who are not eligible to practice before the IRS (see 26 CFR 601.501 through 508).

- 2.) The receipt of Form 2848, attached to a FOIA request, indicating **only** "FOIA" in the tax matters description item, is valid if the FOIA request is signed by a first party requester, but would not be valid if the FOIA request is signed by a third-party requester.
- 3.) Disclosure personnel should not forward Form 2848 received in connection with a FOIA request to the Centralized Authorization File (CAF) unit for input.
- 4.) Generally, the receipt of a properly executed Form 2848 is sufficient to establish the representative's identity and right to access the requested information. However, where the DM or staff has reason to question the

validity of the information submitted, additional proof of an individual's identity and right to access may be requested. The caseworker must document the case history to explain why additional verification was necessary.

- c. By documentation demonstrating the relationship between the taxpayer and the requester meets the applicable provision of IRC 6103(e) if the taxpayer is an entity. See IRM 11.3.2, *Disclosure to Persons with a Material Interest*.

- (6) If the request does not meet other regulatory provisions, treat the request as imperfect and advise the requester.
- (7) For requests where inspection is desired, contact the requester and advise that we will provide all responsive documents in an electronic format. Explain the fee structure as stated in IRM 11.3.5, *Fees*. Records involving open compliance files may be obtained by submitting a request to the IRS employee with the records under IRC 6103. If applicable, this option should be explained to the requester for obtaining requested records involving open compliance files. If the requester insists on inspecting records, contact the FOIA policy analyst.

11.3.41.13.3.1 (12-08-2022) FOIA Acknowledgement

- (1) Caseworkers must send requesters acknowledgment correspondence upon receipt of all perfected FOIA requests. Acknowledgement correspondence should be provided to requesters in accordance with FOIA initial analysis timeframes set in Exhibit 11.3.41-15, *Case Type Timeliness* (i.e., 3 business days after assignment).
- (2) The following types of situations, which should be identified during initial analysis whenever possible, do not require the use of acknowledgement correspondence as existing correspondence letter(s) are available to address these situations while also acknowledging receipt of the FOIA request, when necessary:
 - a. If the request is improper, the caseworker should send notification to the requester of the improper request and the need to obtain any information required to perfect the request.

Note: If a request requires an IRS record holder's assistance to determine if requested records are described reasonably enough to allow a proper search (i.e., it is unclear if the request is perfected or improper upon receipt), and it is anticipated that a response from the record holder may take longer than 3 business days, caseworkers should provide the requester the acknowledgment correspondence to confirm receipt of the FOIA request. If, after receiving information that the request is improper, improper FOIA request correspondence may still be provided to the requester as necessary.

- b. The request is an exact duplicate of a request already received (i.e., a request received via fax, mail and the FOIA portal would result in one FOIA request to be worked and two duplicate requests); in which case, only one acknowledgment letter is required for the first request received.
- c. Requests for records which are not under the control of the IRS (i.e., requests for "non-agency records" or records belonging to another agency).

11.3.41.13.3.2
(12-08-2022)

Expedite Processing

- (1) The FOIA provides for expedited processing if the requester asks in writing and demonstrates a compelling need for the information.
 - (2) A compelling need may exist when:
 - a. Failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;
 - b. The information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged federal Government activity; or

Note: See 26 CFR 601.702 for additional information about who qualifies as an individual primarily engaged in disseminating information and what situations may meet the compelling need requirement.

 - c. Failure to obtain the records quickly could cause a loss of substantial due process rights.

Note: The term **substantial due process rights** is not clearly defined by statute or regulation, and may involve a number of scenarios where a requester's life, liberty, or property could be in jeopardy. If a FOIA request seeks expedited processing on this basis, caseworkers should discuss with the DM.

Example: If an individual's eligibility to avoid or reduce a prison sentence is dependent (fully or partially) on that individual's recent compliance with their tax obligations, expedited processing of the individual's FOIA request for records that demonstrate that individual's tax compliance would be appropriate.

Note: Expedited processing is generally not available if the requester seeks the documents for use in a pending civil judicial proceeding, or to prepare to be a witness in a trial.
 - (3) A request for expedited processing must include a detailed explanation of the circumstances creating the compelling need. The explanation must be sufficient to enable Disclosure personnel to determine whether the asserted need meets the statutory or regulatory requirements. The requester must certify that the statement of compelling need is true and correct to the best of their knowledge and belief. A requester may ask for expedited processing at the time of the initial request for records or at any later time.
- Note:** A request that does not contain a compelling need or certification of the need is not an "invalid" request for expedited processing. If the request for expedited processing does not have a compelling need or certification as required, the request for expedited processing may be denied and the requester must be provided the required notification with appeal rights.
- (4) Requests for expedited FOIA processing should be noted in the case history and notice of the determination to grant or deny expedite processing must be provided within 10 calendar days after receipt of the request. Caseworkers should send the appropriate grant/deny expedite letter after making a determination. If the request for expedite processing is denied, Notice 393, *Information on an IRS Determination to Withhold Records Exempt From The Freedom of Information Act – 5 U.S.C. 552*, must be provided with the letter. The letter

must be signed by the DM or another individual with authority to sign FOIA denials under Delegation Order 11-2, found in IRM 1.2.2.12.2, *Delegation Order 11-2 (Rev. 4), Authority to Permit Disclosure of Tax Information and to Permit Testimony or the Production of Documents*. The caseworker will take all required steps to identify the expedite review and approval in the inventory management system.

- (5) If a caseworker will close a case before the 10-calendar day requirement, the determination to grant or deny expedited processing is moot and no determination to grant or deny the expedited processing is required to be made. Pattern language should be used to advise requesters that the request for expedited processing was not considered.

Note: If a caseworker is unsure if a case will close before the 10-calendar day requirement, the request should be treated as if it will go beyond the 10-calendar days and a grant or denial response should be sent to the requester.

11.3.41.13.3.3 (12-08-2022) Fee Waiver

- (1) The FOIA allows agencies to furnish records without charge, or at a reduced charge, when the agency determines that waiver or reduction of the fee is in the public interest and is not primarily in the commercial interest of the requester.
- (2) The application of various disclosure statutes may sometimes overlap, so that requests made pursuant to PA or IRC provisions may also appear to have FOIA aspects. Waive fees regardless of the statute cited in the disclosure request or the procedure under which the case is controlled and processed if the services provided are substantially similar to those performed in response to FOIA requests.
- (3) Apply the most appropriate fees for any services provided. If varying fees appear to be equally applicable to a situation, DMs may exercise discretion to apply the lowest appropriate fee. The IRS will only consider written fee waiver or reduction requests.
- (4) The requester must provide the rationale and any required evidence to support a fee waiver or reduction request. Under some circumstances, the appropriateness of waiving fees may be self-evident and may warrant action at the initiative of the DM even in the absence of a written request for a waiver. For instance, requests from charitable organizations, educational institutions and news media organizations where releasing the records would obviously benefit the general public do not generally incur fees even though the requester did not specifically ask for a waiver. DMs may also waive fees when the requester demonstrates that release of the records serves a humanitarian purpose or when the DM determines that a waiver of fees is equitable and contributes to efficient government operations.

Caution: If fees are applicable to the request and the requester asks for a fee waiver, the fee waiver must be addressed even if they do not provide a support or rationale for the fee waiver request. The fee waiver should not be considered “invalid” if they do not provide the support statement or evidence. If they fail to provide evidence or support for their fee waiver request, the fee waiver should be denied.

- (5) Where a request contains both a firm commitment to pay fees and a request for a fee waiver, consider both statements and interpret the request to be a firm promise to pay fees if the fee waiver is not granted. Send an acknowledgment letter.
1. If granting the fee waiver, process the request and indicate in the response letter that the waiver was granted. Extend appeal rights for any records denied.
 2. If denying the fee waiver, but no fees accrue, process the request and state in the response letter that a fee waiver was not considered because there was no fee.
 3. If denying the fee waiver, and fees are expected, address both the fee waiver denial and any denial of the records at issue in the response. Grant appeal rights for both the denial of records and the denial of the fee waiver. If the fee waiver denial is reversed and the requester has not yet paid the fee, remove the fee from the electronic case processing system and notify the requester to ignore any invoice that may have been issued. If the requester has paid the invoice, issue a refund.
- (6) Where a request asks for a fee waiver, but includes no firm commitment to pay fees, send an acknowledgment letter and make the fee waiver determination before processing the request.
1. If granting the fee waiver, process the request.
 2. If denying the fee waiver, but there are no fees, process the request and indicate in the response that a fee waiver was not considered because there were no fees.
 3. If denying the fee waiver and there are fees, do not process the request. Indicate in the response letter that the requester must resubmit the request with a commitment to pay any fees due before processing will continue. Grant appeal rights for the denial of the fee waiver and close the case as a denial.
 4. If the fee waiver denial is reversed on appeal, the IRS will re-open and process the request. The 20 workday period begins to run from the date the copy of the appeal determination letter is received by the Disclosure office.
- (7) Requests for a fee waiver should be noted in the case history of the inventory management system with a recommendation made to waive, or not waive. The caseworker will take all required steps to identify the fee waiver review and approval in the inventory management system. Caseworkers should send the appropriate fee waiver grant/deny letter after making a determination. If the request for a fee waiver is denied, Notice 393, *Information on an IRS Determination to Withhold Records Exempt from the Freedom of Information Act - 5 U.S.C 552*, must be provided with the letter. The letter must be signed by the DM or another individual with authority to sign FOIA denials under Delegation Order 11-2, found in IRM 1.2.2.12.2, *Delegation Order 11-2 (Rev. 4), Authority to Permit Disclosure of Tax Information and to Permit Testimony or the Production of Documents*.

11.3.41.13.3.4
(12-08-2022)
Tolling

- (1) FOIA permits agencies to toll, or “stop the clock,” on the 20-day statutory time period to respond to perfected FOIA requests under two circumstances:
1. Make one attempt to obtain information from the requester, or
 2. Obtain information to clarify issues regarding fee assessments.

Note: Caseworkers MUST provide written notification that the request is being tolled in order to advise the requester what clarifying information is needed to continue processing a request, what date the information is needed to avoid closing the request with no further actions, and to advise the requester that their request is being tolled and the statutory time frame to respond is being suspended. Caseworkers should use the date of the written notification when determining the date to stop the clock.

- (2) The standard to use for tolling is limited to situations where the IRS has reasonably requested information needed from the requester. There is only one opportunity to toll the 20-day statutory time period to obtain reasonably requested information. Caseworkers must ensure to ask all their informational questions during this one-time attempt.

Note: While caseworkers can only toll a request one time to receive reasonably requested information, they are not prohibited from contacting requesters as many times as needed to facilitate processing of the request.

Example: A valid request seeking an examination administrative file produces a large volume of responsive records which include records provided by the taxpayer. Contact is made with the requester to re-scope the request in an attempt to remove records previously requested by the taxpayer since they already have those records. Caseworkers may contact the requester as many times as needed to obtain "reasonably requested" information but may only toll (stop the clock) the 20-day period once.

- (3) Tolling also applies when necessary to clarify requester issues pertaining to fee assessments. There is no statutory limit on the number of times an agency may toll for this purpose.

Example: The 20-day statutory time period was suspended to obtain a commitment to pay \$100. During processing of the request, it is determined there will be additional fees incurred. Caseworkers may contact the requester to obtain a new fee commitment and suspend the 20-day statutory timeframe again.

- (4) In either of the two circumstances cited above, the agency's receipt of the requester's response ends the tolling period and the response time clock resumes.

Note: Requesters have 35 calendar days to respond, in writing, from the date of notification that additional information is needed (i.e., additional fee commitment letter) or the request will be closed.

11.3.41.13.3.5 (12-08-2022) Identity of Requester

- (1) Establishing the identity of the requester is an important part of determining if protected records (e.g., PA protected records or tax records) can be provided to a requester or if the request should be denied with certain redactions. This is necessary prior to releasing any records which would be available to the requester only, such as tax or personnel records. It is not required when providing records that are available to the general public.

Example: A request is received seeking a copy of a Public Information Listing (PIL) for an employee and the request is not signed by the requester. Since PIL information is available to the public, a signature is not required on the request and there is no need for the requester to establish identity.

- (2) If contact is in-person, the requester may establish their identity by presenting either one official document bearing a photograph (such as a passport, driver's license, or identification badge) or two items of identification which do not bear a photograph, but do bear both a name and signature.

Note: Do not accept expired identification documents.

- (3) If contact is by mail, establish identity by the combination of signature, address, and one other identifier (such as a photocopy of a valid driver's license) bearing the requester's signature.

Caution: Do not accept expired identification for contacts made by mail.

Caution: Do not invalidate a request that contains a driver's license marked with restrictions such as "Federal Limits Apply," "Not for Federal Identification," or similar language. These identification markings are for the purposes of the "REAL ID Act" which is currently only for the purposes of boarding federally regulated aircraft and entry into federal buildings.

- (4) An individual may also establish identity by presenting a notarized statement swearing to or affirming their identity.

- a. The notarized statement need not meet all the requirements of state law, so long as it appears to be adequate to establish the requester's identity.

Note: For factors to consider when determining whether to accept the notarized statement, see (7) below.

- b. The notarized statement need not be on the same sheet of paper as the request or bear the same date, as long as it is consistent with the request and is adequate to allow access to the records requested. The notary seal must be on the same page as the sworn statement.

Note: If the notarized statement is on a page separate from the FOIA request, the requester's signature on the notarized statement is sufficient to meet the regulatory signature requirement.

Note: Do not accept an expired notary seal.

- c. If the notarization does not swear to or affirm the requester's identity, then it does not meet the FOIA identification standard. The following is an example of a valid notary statement.

Example: Mr. John Maple, known to me to be the person who executed the foregoing instrument and having acknowledged to me that he executed the same as their free act and deed.

- d. After consideration of all the factors, Disclosure personnel must exercise sound judgment in determining whether the requester has proven their identity. The notarized statement must be sufficient to reasonably assure an employee that the requester is the taxpayer whose records are sought. Notarizations meeting that standard suffice to establish the re-

requester's identity and the validity of the FOIA request. If reasonable doubt persists, deny the records citing FOIA exemption (b)(3)/26 USC 6103, if the FOIA request is valid, and seek additional identity verification. If the FOIA request is not valid, does not meet the FOIA requirements, treat the request as imperfect.

- (5) A sworn statement as to identity, under penalty of perjury, is acceptable in lieu of a notarized statement. The sworn statement must meet the requirements of 28 USC 1746. If the declaration is sworn **within** the United States, its territories, possessions, or commonwealths, the sworn statement must include the following language:
"I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date)."
If the declaration is sworn **outside** the United States, the sworn statement must include the following language:
"I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date)."
- (6) The DM may require additional proof of an individual's identity if it is necessary to verify the requester's right of access.
- (7) Caseworkers must consider the consistency of names, addresses, SSNs, and other identifying information in the request with similar items in the records requested. Copies of notices, correspondence, and other records which the requester received from the IRS can help to establish identity, especially when the records requested are closely related to the subject matter of the record presented. See IRM 11.3.41.13.3.11, *Requests for All Records Concerning Me*.
- (8) Persons requesting records pertaining to another person must provide adequate proof of the legal relationship under which they assert the right to access the requested records. Requests for tax records must be consistent with the provisions of IRC 6103(c), or IRC 6103(e). A valid Form 2848, *Power of Attorney and Declaration of Representative*, is sufficient authorization. A Form 8821, *Tax Information Authorization*, meeting the standards of 26 CFR 301.6103(c)-1(b) is also sufficient authorization.
- (9) If there are multiple requests, separate documentation of identity for each request is unnecessary. Once a caseworker establishes the identity of the requester, the identification will suffice for a continuing series of requests, as long as the key elements of the requests such as the address and the signature of the requester remain constant.

Example: A single envelope contains six specific requests for information from the same requester. One of the requests does not establish identity when the remaining five are adequate. Do not consider the one request imperfect for this reason alone.

Example: You receive requests routinely from the same requester and have received sufficient identifying information in past requests. A new request does not adequately identify the requester. To the extent that all other information is consistent, do not consider the new request imperfect for this reason alone.

Note: The inventory management system allows caseworkers to research the electronic versions of prior requests. However, because a Form 8821, Form 2848, or equivalent can be revoked by the taxpayer, Disclosure caseworkers are expected to make reasonable efforts to confirm their continued validity.

Note: If the reason for accepting the requester's identity is not readily apparent, document the case history notes to explain your determination.

- (10) A valid FOIA request that asks for records protected under IRC 6103 but does not contain sufficient identification or authorization pursuant to IRC 6103 must be responded to indicating a denial of records under FOIA exemption (b)(3)/26 USC 6103(a). Appeal rights must be provided to the requester. Take the following actions:
1. Attempt to contact the requester to secure missing identification/ authorization documents.
 2. If unable to obtain the missing documents, then close the request as a full denial citing FOIA exemption (b)(3)/26 USC 6103.
 3. Provide appeal rights with Notice 393, *Information on an IRS Determination to Withhold Records Exempt from the Freedom of Information Act - 5 U.S.C. 552*.
 4. Use appropriate pattern letter language to respond to these requests.

Caution: Do not close a FOIA request as a full denial if portions of the request can be processed (i.e., routine agency procedures, records requested that do not require identification or authorization).

11.3.41.13.3.6
(08-26-2021)
**Substitution of
Representative**

- (1) Occasionally, you may receive a request to substitute a representative with respect to a FOIA request seeking returns or return information. The taxpayer may submit a written statement authorizing another person to receive the FOIA response on their behalf. The written statement must:
- a. Specifically state the taxpayer's request to have the FOIA response sent directly to the new person.
 - b. Meet all of the requirements of IRC 6103(c) or IRC 6103(e). See IRM 11.3.2, *Disclosure to Persons with a Material Interest*, or IRM 11.3.3, *Disclosure to Designees and Practitioners*.
- (2) If a person submitting a valid Form 2848, *Power of Attorney and Declaration of Representative*, made the request on behalf of the taxpayer, the request must be processed unless that person no longer has the authority to receive the taxpayer's information. Among the ways the representative may no longer be authorized to receive the information are:
- a. The underlying taxpayer rescinds the authority.
 - b. The representative informs the IRS that they no longer represent the taxpayer.
 - c. The underlying taxpayer notifies you that they no longer want the information.
- (3) If the underlying taxpayer notifies you that the representative is no longer authorized to receive return information, take one of the following actions, as appropriate:

- a. If the notification is verbal, ask if the requester wishes to withdraw the request. If so, send a letter to the taxpayer to confirm your conversation and close the case as withdrawn.
 - b. If the notification is written and includes a withdrawal of the request, close the case as withdrawn. No further action is necessary.
 - c. If you receive written notification that does not indicate whether the request is withdrawn, send a letter to the taxpayer stating you will consider the request withdrawn unless you receive written notification to the contrary within 10 days. After 10 days close the case, however, maintain any responsive records for at least 30 days in case the taxpayer asks to receive them or substitutes a new representative.
 - d. If the taxpayer asks you to process the FOIA request, send the response directly to the taxpayer or a properly substituted representative.
- (4) If the representative notifies you that they are no longer authorized to receive return information, take one of the following actions, as appropriate:
- a. If the notification is verbal, ask if the representative wishes to withdraw the request. If the representative withdraws the request, send a letter to the taxpayer confirming your conversation with the representative and close the case as withdrawn.
 - b. If the notification is written and includes a withdrawal of the request, close the case as withdrawn. No further action is necessary.
 - c. If you receive written notification that does not include a withdrawal of the request, send a letter to the taxpayer confirming your understanding that the representative no longer represents the taxpayer and state that you will consider the request withdrawn unless you receive written notification to the contrary within 10 days. After 10 days close the case, however, maintain any responsive records for at least 30 days in case the taxpayer asks to receive them or substitutes a new representative.
- (5) The FOIA does not require a response to multiple individuals. If a requester asks a caseworker to send a duplicate response to another individual, inform the requester that one response will be provided, and the requester may copy the records to provide them to other individuals.

11.3.41.13.3.7
(12-08-2022)
Imperfect Requests

- (1) The FOIA requires requesters to reasonably describe the records sought. While compliance with the procedural regulations is also required, Disclosure personnel must take care not to read a request so strictly that the requester is denied information the agency knows exists. However, if the request is not specific enough to process or it is too broad in scope, including language such as "I request all records concerning me," or otherwise lacks specificity, it is imperfect and must be closed accordingly after taking reasonable attempts to perfect the request.
- (2) In the interest of customer service, attempts to perfect the request should be taken. Actions taken to re-scope, revise or otherwise perfect the request must be received in writing, if applicable, and case notes must document all actions taken.

Note: Contact with the requester could include a phone call or email communication, as long as all disclosure, privacy and security procedures are followed. Employees must protect the privacy of all IRS sensitive information, including

emails, and must follow the Privacy Principles found in IRM 10.5.1.3.2, *IRS Privacy Principles*. Also see IRM 10.8.1.3.19.2.1, *Electronic Mail (Email) Security* and IRM 10.5.1.6.8, *Email*.

- (3) After reasonable attempts have been made to perfect a request that does not meet all requirements of the FOIA, caseworkers must use suggested pattern letter language to notify the requester of the items that do not meet the requirements of the FOIA and that more information is needed before the request can be processed. The letter must point out the specific deficient item(s) to the requester. Close requests that do not comply with FOIA regulations as imperfect. A new case should be created upon receipt of the perfected request. Subsequent correspondence pertaining to a previously closed imperfect request will be assigned to the Disclosure office that determined the initial request was imperfect. See IRM 11.3.41.3.2, *Initial Analysis*. Address requests deemed to be imperfect as soon as possible.

Note: Do not include Notice 393, *Information on an IRS Determination to Withhold Records Exempt From The Freedom of Information Act – 5 USC 552*, with responses to imperfect requests because no appeal rights are available to such requests. Include a statement that the 20-day statutory response time does not begin until a perfected request is received.

- (4) Requests are not imperfect because they lack an agreement to pay fees if, based upon the information requested, it appears no fee would be charged. See IRM 11.3.5.3.2.1, *Commitment to Pay*.

Note: However, if the requester has an outstanding unpaid bill for any request(s) previously processed by the IRS, attempt to contact the requester to secure payment. If unable to secure the outstanding FOIA fee due, close any current request and notify the requester that the IRS will process no further requests until the balance due is paid in full. See IRM 11.3.5, *Fees*.

- (5) Fees in excess of \$250 require advanced payments. A request for advance payment of fees is not an assessment of FOIA fees. Caseworkers will document case notes describing how the fees were calculated, the location of the responsive records and any special coordination needed to retrieve the records. Prepare the appropriate pattern letter response then close the case as imperfect, fee-related reason. Once the advanced payment is received, a new case is created. Import the original correspondence from the prior case into the new case, then work the new case following established procedures. If the actual fees incurred to process the request were less than the advanced payment received, follow the guidelines on the Disclosure SharePoint site for issuing refunds. If fees were more than the advanced payment received, notify the requester. For more information see IRM 11.3.5.3.2.3, *Requests Involving Extensive Efforts*.
- (6) You may clarify the request verbally and ask for missing information necessary to process the request. Document all verbal communications in the case history notes. Obtain additional information in writing, to perfect the request, if applicable.
- (7) Assist the requester in perfecting the request, by advising:
 - a. The IRS does not maintain central administrative or compliance files,

- b. Access to tax records or records covered by the PA (i.e., personnel records) require proof of identity,
- c. Requests expected to generate fees require a firm commitment to pay, or
- d. Other items missing from the request are needed in order to continue processing.

(8) In some instances, it may be necessary to inform a requester that the FOIA does not require agencies to answer questions, enter into doctrinal discussions, create records, or perform research. See IRM 11.3.41.13.3.13, *Pseudo Requests*, for more information about responding to interrogatories.

Note: Transferring data into or out of electronic format, including printing information retrieved from IDRS through input of a command code, does not constitute creating a new record.

(9) Inform requesters when appropriate about the types of records maintained by the IRS, (i.e., records concerning Examinations of returns, Collection actions, and Criminal Investigations). Inform the requester that perfected requests for tax records must include a specific reference to the types of records and tax years requested.

(10) When a requester submits information necessary to perfect a request or makes a payment eliminating an unpaid balance, process the request promptly. For related actions concerning fees, see IRM 11.3.5, **Fees**. Open a new case file rather than reopen the imperfect case. Refer to both the newly supplied information and the previously imperfect request to ensure that all elements of the request have been accounted for.

Caution: Avoid making further demands on the requester if reference to previous correspondence provides enough information to process the request.

11.3.41.13.3.8
(08-26-2021)

**Requests Addressed to
More than One
Disclosure Office**

(1) Disclosure employees may receive requests, other than imperfect requests (see IRM 11.3.41.13.3.7, *Imperfect Requests*), which appear to be duplicates of other requests. For example, requests having a primary address other than that of the receiving office, those addressed to multiple offices, photocopies, and those that have no original signature may be duplicates. Always research the inventory management system for potential duplicate requests during initial case analysis and in other circumstances as necessary, such as when an office receives multiple requests or when the caseworker becomes aware of similar requests during case processing.

(2) If the request is a true duplicate (that is, the request is identical in every aspect), close the case following inventory management system procedures. If the request is not a true duplicate, but seeks the same information as another request, contact the caseworker(s) controlling the other case(s) to determine whether to consolidate the request(s) to eliminate repetitive work and to decide which office will process the request. Offices other than the office that will process the case will close their cases as duplicates.

11.3.41.13.3.9
(12-08-2022)

**Requests for Records of
Other Treasury
Components or Other
Agencies**

- (1) There are times when IRS files may contain records of other non-IRS Treasury components and/or non-Treasury agencies. The files may also contain records which other components and/or agencies have an interest in prior to their release. These records must either be referred to the appropriate non-IRS component and/or other agency if they are records originating outside the IRS or a consultation must be conducted to receive release recommendations if they have an interest in the records prior to the records being released.

Example: An administrative tax file is received from an IRS record holder which contains copies of SSA forms and case histories indicating discussions were had with Federal Bureau of Investigation (FBI) agents on an FBI criminal investigation. The SSA records should be referred to the SSA FOIA office and a consultation should be sent to the FBI FOIA office to get release recommendations on the FBI discussions and agent names prior to releasing the records.

Note: Requests seeking records clearly under the control of non-Treasury agencies (i.e., requests seeking non-IRS forms or emails for other agency employees) do not require communications with non-Treasury FOIA contacts. Disclosure caseworkers may refer requesters to the non-Treasury agencies using pattern correspondence and process FOIA requests for documents maintained by the IRS.

Reminder: Requests received by the IRS for other Treasury component records (i.e., emails for Treasury employees) must be sent to the appropriate Treasury component by the IRS within 10 business days of receipt. Caseworkers receiving these requests should follow the instructions in IRM 11.3.13.3.6, *Records of Other Treasury Components or Other Agencies*, (2) through (5).

- (2) Disclosure caseworkers must discuss records involving potential referrals and/or consultations with their DM prior to making any releases.
- (3) If the DM agrees with the potential referral and/or consultation request, they must discuss the referral and/or consultation with a FOIA policy analyst.
- (4) The FOIA policy analyst will reach out to non-IRS Treasury component and non-Treasury agency FOIA contacts, if appropriate.

Caution: In order to prevent potential unauthorized and inadvertent disclosures as well as inappropriate FOIA case closures, caseworkers may not reach out directly to the non-IRS FOIA contacts. FOIA policy analysts will complete all communications with non-IRS contacts.

- (5) Following an agreement from the non-IRS FOIA contacts to accept the consultation and/or referral, the Disclosure caseworker may take any appropriate actions needed to forward records to the appropriate contacts and continue processing the IRS FOIA request as necessary.
- (6) The referral of a record to another federal agency does not constitute a denial of access to such record. No appeal rights will be afforded the requester solely because a record has been referred to another agency.

11.3.41.13.3.10
(08-26-2021)

IRS Records Located in Other Agencies or Other Treasury Components

- (1) IRS information is sometimes included in the files of other federal agencies. When a FOIA request seeking access to those records is received by another federal agency or Treasury component, the agency or component will refer the records to the GSS for case assignment.

Note: If Disclosure personnel receive any correspondence marked “Confidential,” “Secret,” or “Top Secret,” the employee must immediately contact their manager who will then contact the Disclosure PPO manager for additional guidance. The Disclosure employee(s) must not open any envelopes and/or transfer any records to their computer which are marked “Confidential,” “Secret,” or “Top Secret.”

- (2) Other federal agencies may request IRS involvement in FOIA requests they have received for two reasons - referrals or consultations.
 - a. A referral occurs when another agency identifies IRS documents in records responsive to their agency request. Employees of that agency will forward the records to the IRS and ask the IRS to respond directly to the requester. Disclosure personnel will control a referral on the inventory management system as a FOIA request. All the statutory and procedural requirements of FOIA apply (20-day response time, extension letters, backlog counts, etc.). If the referred request is assigned as a miscellaneous case and the caseworker determines it needs to be controlled as a FOIA case, the case type must be changed in the inventory management system. For a referral, the requester should be the party who initiated the original FOIA request, ensure the requester is properly identified in the inventory management system.
 - b. A consultation occurs when another agency has responsive records that originated in that agency, but which contain items of information that were furnished by (or perhaps are of special interest to) the IRS. Disclosure personnel will control a consultation on the inventory management system using the appropriate, designated case type allowed by the inventory management system. Consultations must be handled expeditiously because they affect the statutory processing of another federal agency. If the consultation request is assigned as a FOIA and the caseworker determines it should be controlled as a different case type, the case type must be changed in the inventory management system to the appropriate case type appropriate to that system.
 - c. For a request that contains both referred and consultation documents, a FOIA and a consultation case need to be controlled and processed. If you are assigned the FOIA case and you cannot locate an associated consultation case in the inventory management system, it needs to be created - and vice-versa.

11.3.41.13.3.10.1
(08-26-2021)

Referrals and Consultations

- (1) When another federal agency or Treasury component locates responsive records which either originated with another agency, or which contain information that is of interest to another agency, the long-standing practice is to refer the requested record to the originating agency to process or consult with the other agency that has equity in the documents to get their recommendations prior to making a disclosure determination.
- (2) When referring the records to the IRS, the other federal agency will include the responsive records they located with their incoming correspondence. These

responsive records need to be exported from the incoming correspondence and imported into the responsive document section of the case.

Note: Prior to importing the responsive records into the inventory management system it is necessary to review the records in their entirety to determine whether the referral and/or consultation records have been properly segregated. For instance, the FBI will place all referred info under Index A and the consulted info under Index B. This segregation cannot be relied upon and needs to be independently confirmed.

Note: Occasionally records are erroneously referred that did not originate in the IRS. When this occurs, the records shall be referred back to the originating agency. The caseworker should contact the originating agency to let them know the FOIA will be referred back to them, and why. If the requester was notified of the transfer to the IRS, a letter shall be prepared informing the requester that an error was made and that the records are being returned for the consideration of the original agency.

- (3) All inter-agency requests should have a cover sheet. This cover sheet should inform the caseworker of the assigned employee in the originating agency; whether the requester has been notified of the referral/consultation; and if the IRS is to directly respond to the requester, whether the originating agency would like a courtesy copy of the response. This cover sheet could also include: the number of records or pages included in the package; whether the submission contains a referral and/or consultation; and may contain background information as to how the originating agency handled the request.
- (4) Records sent to the IRS as a referral were created by the IRS and need to be reviewed in their entirety. The IRS issues the appeal rights in any case resulting in less than a full grant, in effect, this is an IRS Disclosure FOIA request.
- (5) Records sent to the IRS as a consultation have been identified as having content that may contain IRS equities. The originating agency will usually, but not always, bracket the IRS equity contained within their record. The caseworker must read all information in the documents provided in the event the originating agency overlooked portions that should have been bracketed for review. The additional un-bracketed information is there to provide background into the case. The caseworker must use discretion in explaining in the case notes why information is being withheld. If a bracketed area is to be released without redaction, a statement as to why no withholding determination was made is necessary to be included in the case notes. Any identified IRS equity outside of the bracketed area should be reviewed.
- (6) Commonly, federal tax information or PA protected information is present in files requested by third parties, therefore PA and IRC 6103 regulations must be followed when reviewing and determining whether to release or withhold records. Rarely will requests be made by first-party requesters, however, if they are the caseworker must apply IRC 6103 and PA guidance as you would in any other situation where a person is seeking their own records.
- (7) The source of the record being reviewed must be considered in determining the applicability of IRC 6103 and/or the PA. A record is ordinarily protected if

its source was from the IRS. A record sourced to a party other than the IRS or a party that the IRS entrusted with the record may or may not need to be protected.

- (8) Disclosure personnel may need to contact the business function that has jurisdiction over the documents referred from another agency to obtain redaction recommendations. Make contact with business functions on a case-by-case basis as needed in order to review records for release. This contact shall be made expeditiously.
- (9) Caseworkers should ensure case documentation provides all relevant case actions and withholding/release determination explanations.
- (10) A referral response letter, created using approved pattern language, is issued by the IRS disclosure employee, directly to the FOIA requester or their designated recipient. Sometimes the originating agency will request a courtesy copy of what is sent to the requester.
- (11) A consultation response letter, created using approved pattern language, is issued only to the originating agency. The IRS recommendations for withholding or releasing information are also sent to the originating agency. The originating agency will take steps to remove the relevant content, will release the records to the requester and will provide appeal rights if applicable. The response letter sent to the originating agency should provide explanation for exemptions unique to the IRS such as the use of (b)(3) with supporting statute of IRC 6103. It is not necessary to explain common exemptions.

Note: If an appeal is received from a requester attempting to appeal the IRS withholdings in another agency's records, refer the requester to the originating agency. The originating agency has responsibility for processing an appeal pertaining to their agency records.

11.3.41.13.3.11
(08-26-2021)
**Requests for All
Records Concerning Me**

- (1) Usually, requests for "all records concerning me" or "all records containing my name" are not specific enough to process because they do not reasonably describe the records in sufficient detail to allow an IRS employee to conduct an appropriate search. Requests for "all records" will be rejected as imperfect, after making an attempt to obtain clarification from the requester. This also includes requests for records where the description of the records request is extremely broad. For example, "any and all email records containing the key words..." which is not specific enough to process. However, see IRM 11.3.41.13.3.7(7), *Imperfect Requests*, (concerning clarifying the request); IRM 11.3.41.13.3.11(5) (concerning requests that do not specify tax years); and IRM 11.3.41.13.3.11(6) (concerning requests where there is no open case or ongoing activity).
- (2) Review these requests thoroughly as they may contain minor references to records or enforcement actions that help to identify specific records.
- (3) Process any request containing enough information to permit a reasonable identification of records sought.

Example: The information could include the function where the records may be found, the tax year or years involved, the type of tax, or the type and/or location of any investigation conducted by the IRS.

- (4) Requesters may attach copies of IRS notices, correspondence or other records to their requests.
 - a. Carefully examine attachments as they may be helpful in processing the request.
 - b. In the absence of any indication to the contrary, assume that the requester seeks access to underlying files related to the attachment.
 - c. Requesters need not provide their tax identification numbers, or specify the type of tax, tax year, or location of the records if such information can be determined from the attachments.

- (5) If the request is not otherwise imperfect and does not specify tax years, then Disclosure personnel will consider the last three tax years when responding. If the request is otherwise imperfect, see IRM 11.3.41.13.3.7, **Imperfect Requests**.

Note: Where a response to a request is based on an analysis of the requester's letter, any documents attached to the request, or it is based on assumptions authorized under this section, the response letter will include an explanation of how the scope of the request was determined. For example: "Your request did not clearly indicate the type of tax or tax year for which you are seeking information. Based on the notices you submitted with your request, we are providing information regarding xxxx for the years yyyy through zzzz."

- (6) If research reveals there is no open case or ongoing activity, the response shall state that a search of IRS records indicates that there is no open Examination, Collection, or Criminal Investigation case concerning the requester and consequently no records responsive to their request exist.
- (7) If research reveals that an open case or ongoing activity exists, the response will generally state that no record maintained by the IRS appears to be specifically responsive to the descriptions in the request, but that an open case concerning the requester has been identified.

Note: If IDRS research identifies either open or closed compliance activity, follow the procedures in IRM 11.3.41.13.3.7(8) through (10). If there is open CI activity, contact the special agent prior to notifying the requester to determine whether disclosing the fact of investigation could harm ongoing activity.

Note: Depending upon the type of request, prior experience with requests from the requester, and other circumstances, the response will either provide or withhold, as appropriate, the records identified. If not, the requester will be advised of the existence of files and how they may be requested if that is the requester's intent. Whether the availability of the case files is considered immediately or delayed until receipt of a further request will depend upon an analysis of the requester's intent, the adequacy of the request to extend to existing case files, and whether the anticipated costs would significantly exceed the requester's commitment to pay fees.

- (8) When a request is received for records that do not exist because the record requested is one that is generated pursuant to a regulation or procedure that is not applicable to the requester, a general response will be provided to explain why no responsive records exist.

Note: In the situations described in paragraphs (6), (7), and (8) above, Notice 393 will be enclosed. See IRM 11.3.41.3.6, *Case Documentation*.

11.3.41.13.3.12
(12-08-2022)

Multiple or Repeat FOIA Requesters

- (1) Disclosure office personnel commonly receive multiple requests for information from the same individual(s) over a short period of time or a large number of requests for information from the same requester at the same time.
- (2) These types of requests typically have one or more of the following characteristics:
 - a. They begin with requests for transcript information, followed by multiple requests for tax information specific to most or all of the DLNs found on those transcripts.
 - b. They seek various forms (each request seeking a different form) found in Examination, Collection, or CI administrative files.
 - c. They request multiple items (and are followed by other requests seeking specific information already requested previously, only worded differently).
- (3) This type of request can have an adverse impact on IRS resources and poses unique challenges researching and securing requested records. As a result, Disclosure personnel must plan appropriate strategies to respond to multiple and duplicative requests. Strategies should include the following:
 - a. Assign all requests to the same caseworker, if possible. This will allow the caseworker to review each request for duplications, to plan a strategy to address all requests as expeditiously as possible, and to build a history with the requester in the event of future requests.

Note: With centralized case processing this may not always be possible, but research for duplicate requests is mandatory.
 - b. Complete adequate IDRS research to determine that the records requested exist and can be retrieved. For example, a prompt determination that a requester who submitted multiple requests for Examination administrative files and forms associated with those files is not under examination for the years requested may allow a no records response at a considerable savings of time and resources.

Note: However, if future requests seek the same or similar information, conduct fresh research to ensure that no Examination activity has taken place in the interim.
 - c. If the requester has made prior requests and the responsive documents have been released, caseworkers should determine if a response has already been given for the records being requested, if additional records were created after the prior FOIA response date, or if some of the records previously withheld would now be eligible for release.

Caution: If the request is for additional or updated records (i.e., a request for examination records where the audit is still open) related to a prior request, there is no need to re-review or release records previously provided, unless necessary to process the current request (i.e., if a request comes in for an examination file that has been previously released, do not re-review the previously released records).

Example: You receive a new request for information for a specific year, related to a DLN associated with a transaction code 300, which is an examination administrative file. In reviewing prior paper files or electronic records you note that the file for the requested DLN and year was provided in response to a previous FOIA request for “all examination administrative files.” If that DLN predates the previous request, there are no additional records created since the previous response, and/or all of the exemptions used to withhold the prior documents are still applicable, you can close your case by using the pattern paragraph referring the requester to the prior response and, if applicable, providing a copy of the prior response letter. No additional search is required. Check all requests for possible duplications. Combine requests that seek the same records using different terminology to minimize search activities.

Example: You receive a request for “assessment records” and one for “23C or RAC006 records.” These requests are for the same information and require only one response.

Note: Control both requests on the inventory management system. Prepare a single response letter with reference to both requests.

- d. If multiple requests are received from the same requester, or a group of requesters acting in concert, and the requests involve clearly related matters, contact the requester to obtain agreement to withdraw the separate FOIA requests. If they agree to withdraw the separate requests, combine and process all requests under one FOIA case assignment number and provide one response letter; otherwise process each request separately. Contact with the requester must take place prior to combining any requests under one case assignment number in order to obtain the requester’s agreement to withdraw the separate request(s). Case notes must indicate the agreement of the requester to withdraw the separate request(s). Case notes, and the final response letter must also provide a clear explanation of which requests are withdrawn and provide sufficient information as to which case the combined, withdrawn request(s) are being processed under. The separate requests will be closed using closing disposition “Withdrawn.”
- (4) As with any FOIA request, respond as fully and completely as possible by conducting adequate research to determine if records exist, performing a complete search for responsive records, and fully explaining all determinations.
- (5) You may respond to multiple FOIA requests in the same determination letter. There is no requirement to send a separate letter for each request, but every FOIA request must be addressed. For example, you receive 5 FOIA requests for different DLNs but located no records. You may draft one response letter to address all 5 requests rather than separate letters for each request. You must address all 5 case numbers in the response letter.

Note: When consolidating several responses in one letter, include a copy of the signed letter in each electronic FOIA case file and document the case histories. Document the case notes for all of the related requests when consolidating more than one request.

- (6) Locate and consider all documents associated with a DLN, including the Form 5147, *IDRS Transaction Record*, when processing requests for “all forms associated with” a particular DLN, unless research clearly indicates that there would be no document, even the Form 5147. If not requesting the DLN, document the case history with a thorough explanation of the determination that no documents would exist. See IRM 11.3.41.13.8.38, *Requests for Documents Associated with a Document Locator Number (DLN)*.

11.3.41.13.3.13 (08-26-2021) **Pseudo Requests**

- (1) Some requests, while otherwise valid, merely cite the FOIA while not conforming to its intended purpose. Analyze such requests to determine whether they can be processed by locating, analyzing, and releasing records.
- (2) When responding to pseudo-requests, distinguish clearly between the portions of the correspondence which constitute a valid FOIA request and those portions which consist of doctrinal claims or questions.
- (3) The FOIA does not require agencies to respond to questions, create records not already in existence in some format, or engage in doctrinal discussions with requesters.

Note: Printing an electronic record to paper or scanning a paper record to PDF does not constitute creating a record not already in existence. For example, process a request for a paper copy of an electronic audit trail, but consider a request to create a list of employees who worked on an Examination file a request for records not already in existence.

- (4) Do not allow pseudo-requests to drain Disclosure resources needed to administer the FOIA and other programs. Respond in a fashion consistent with statutory requirements and in a tone appropriately reflecting a spirit of openness in government.
- (5) Review all potential pseudo-requests to determine whether they seek information under the FOIA or other governing statute. Reference to the FOIA may be buried many pages into the document. A reference that “the FOIA requires a response within 20 days,” or inclusion of “FOIA” on the envelope, may be sufficient to consider the letter a request under the FOIA. FOIA requests received through an online FOIA portal are considered FOIA requests even if the request does not cite FOIA. See IRM 11.3.41.13.3.14, *Unclear Requests*, regarding unclear requests.

Note: An imperfect request under the FOIA may still qualify for response under IRC 6103(c) or (e) in situations where the request meets those standards of entitlement or identification. See (6)(c) below.

- (6) For correspondence that contains indications of any anti-tax argument, yet contains sufficient information to be considered a request for records under the FOIA or other statutory provision, take the following steps:
 - a. If the request is imperfect, work the case in accordance with procedures in IRM 11.3.41.13.3.7, *Imperfect Requests*.

- b. If it is a valid FOIA request, secure the records requested, process them according to FOIA procedures, and include in your response the information discussed in (9) below to address the frivolous arguments included in the correspondence.
 - c. If it is not a valid FOIA request, yet information could be provided under IRC 6103(c) or (e), secure the information that can be released and include the information listed in (9) below to address the frivolous arguments included in the correspondence. See, however, IRM 11.3.41.13.3.16, *Routine Established Agency Procedures*, for records available under routine agency procedures.
- (7) To address frivolous arguments contained in a request for records, use the appropriate pattern letter to respond, and provide Publication 2105, *Why Do I Have to Pay Taxes?*. If the taxpayer is a frequent FOIA requester and includes the same or similar questions in subsequent requests for records, there is no need to provide another copy of Publication 2105.
- (8) If you have done IDRS research and found evidence of open Examination, Collection, or CI activity, you must provide a copy of the request letter and the response to the compliance function(s). Requests may have been submitted because the requester intends to introduce the request or the response in some litigation. They may also be helpful to government counsel in establishing or illustrating the taxpayer's intent and attitudes.
- (9) Forward correspondence that does not request records in accordance with the FOIA, any other statutory provision, 26 CFR 601.702, and only seeks responses to questions to the following address:

Internal Revenue Service Ogden Compliance Services Attn: FRP
 M/S 4450
 1973 N Rulon White Blvd
 Ogden, UT 84404

Note: The Frivolous Return unit will respond to the requester in accordance with its procedures.

Caution: Do not use this procedure as a means for managing inventory; send only those letters that are clearly not seeking records under FOIA or other statutory provisions to the Frivolous Return unit.

- (10) Coordinate with the affected compliance functions when scheduling inspections of records in response to a request for open investigatory files. The presence of the requester in an IRS office may provide a convenient opportunity to make contact for tax administration purposes. Enforcement personnel may be present for such inspection, bearing in mind the rules and restrictions governing communications with taxpayers who have representatives before the IRS. See IRC 6304.

11.3.41.13.3.14
 (08-26-2021)

Unclear Requests

- (1) After analysis, it may be unclear which statute the requester is using to seek access. The following variations may be encountered.
- a. The request cites neither the FOIA nor the PA.
 - b. The request cites both the FOIA and the PA.

- c. The request cites one Act, but the content of the request appears more appropriate to the other.
- (2) In situations where the requester cites the PA, and processing the request under the FOIA would provide greater access but the requester insists upon processing pursuant to the PA:
- a. Control the case as a PA request but provide the records that would be available under the FOIA as well as any records that are available under the PA. The response letter must cite PA Section (t)(2) and request any applicable search and duplication fees in accordance with FOIA fee provisions. For a discussion about charging fees to first party requesters, see IRM 11.3.5.3.1.4.1, *All Other Requesters Service Fees*.
 - b. If denying records, cite the applicable FOIA exemptions and the PA exemption for the system of records in the response letter.

Note: In applying the above provision, do not deny access to records under the PA unless there is a corresponding exemption under the FOIA that would prevent release of the requested record(s). See Exhibit 11.3.41-17, *FOIA and Privacy Act Decision Matrix*.

- (3) Because the PA only applies to individuals, close any request from a non-individual (i.e., a corporate officer requesting information related to Form 1120, *U.S. Corporation Income Tax Return*) citing only the PA as imperfect.

Note: Remember that a sole proprietorship is considered an individual under the PA.

- (4) In some cases, a single letter may contain some requests made pursuant to the FOIA and meet the procedural requirements of that Act, and other requests made pursuant to the PA and meet the procedural requirements of that Act. Treat these requests as if both Acts were cited. Classify them as FOIA requests in the inventory management system, for control purposes.
- a. Consider such requests split requests to afford each portion proper treatment, appeal rights, and the correct application of fees.
 - b. Distinguish the portions processed pursuant to each Act and the reasons for such treatment in any response to such requests. For any records withheld, cite both the FOIA and PA system of records exemptions that support the denial of records in the response letter.

Note: The instructions above are not intended to require Disclosure personnel to distinguish between FOIA and PA requests in situations where there is little or no significance to the distinction, such as when all requested records may be readily available and releasable and the differences in costs are minimal.

- (5) See IRM 11.3.41.14, *Privacy Act (PA)*, for additional information on processing a PA Request.

11.3.41.13.3.15
(08-26-2021)
FOIA Rebuttals

- (1) When GSS receives a FOIA rebuttal indicating the response of a previous FOIA request may not be correct, it will be indexed in the inventory management system as a new case. These rebuttals are not new FOIA cases, respond to the requester following the procedures below:

Rebuttal Determination	Procedures
The previous case was correctly worked, appeal rights were given and the requester should appeal.	<ol style="list-style-type: none"> 1. The FOIA should be changed to a “Miscellaneous” case type. 2. Contact the requester, advise them of the appeal process, if applicable, and notify them that there will be no further response to the correspondence. 3. Add case notes detailing your actions and close the “Miscellaneous” case.
The caseworker assigned the FOIA rebuttal identifies potential errors in the original FOIA response and the DM concurs.	<ol style="list-style-type: none"> 1. The DM should elevate the issue to the area manager. 2. The FOIA rebuttal case should be changed to case type “Miscellaneous” and reassigned to the DM of the office who worked the original FOIA request. 3. The caseworker assigned the “Miscellaneous” case will close the case in the inventory management system. 4. The caseworker will follow the established procedures to have the original FOIA case re-opened for additional processing.

11.3.41.13.3.16
(12-08-2022)
Routine Established Agency Procedures

- (1) Requests for records should be processed routinely in accordance with the established procedures identified in 26 CFR 601.702 rather than under the processing requirements of the FOIA. Analyze requests to determine if they should be handled according to these procedures. These types of requests will not be diverted to the FOIA or PA simply because the requester cites these Acts. Disclosure personnel will explain to the requester that the request is not diverted to the FOIA simply by mentioning that Act and will be processed under routine agency procedures. Generally, you may provide the requester with instructions to resubmit the request under the routine procedures.
- (2) Routine established agency procedures apply to requests for:

- a. Tax returns and attachments or transcripts. Use Form 4506, *Request for Copy of Tax Return*; Form 4506-F, *Request for Copy of Fraudulent Tax Return*; or Form 4506-T, *Request for Transcript of Tax Return*.

Note: When reviewing responsive administrative files that contain copies of tax returns, attachments and/or transcripts, do **NOT** remove these documents from the file and tell the requester to submit Form 4506, Form 4506-T and/or Form 4506-F.

Note: Use the following table for FOIA requests seeking a copy of the fraudulently filed income tax return or a request for the information that was redacted by the Identity Protection Specialized Unit (IPSU).

FOIA request for a copy of a fraudulently filed income tax return	FOIA request for the unredacted copy of a fraudulently filed income tax return or a request for the information redacted by IPSU
<p>Disclosure personnel will respond with the Routine Agency Procedures Letter, informing the requester to submit Form 4506-F, <i>Request for Copy of Fraudulent Tax Return</i>. IPSU will provide the taxpayer and/or their authorized representative a redacted copy of the fraudulently filed tax return. Instructions for requesting a copy of a fraudulent return are on www.irs.gov.</p>	<ol style="list-style-type: none"> 1. Ensure the requester has previously received a copy of the redacted fraudulently filed income tax return. 2. Use the approved pattern letter language to deny the request in full using FOIA exemptions (b)(3), (b)(6), (b)(7)(A), (b)(7)(C), and (b)(7)(E). 3. The FOIA exemptions used to deny the document in full must be captured within the inventory management system. 4. Adequately document all actions in case notes.

Note: Requests for access to open case files directed to compliance personnel may be processed outside of FOIA, even if they cite the FOIA, if doing so is in the best interests of customer service and the function with jurisdiction agrees. Because only Disclosure employees have delegated authority to respond to FOIA requests, the requester must withdraw the FOIA request and agree to obtain the records directly from compliance personnel. Disclosure personnel will provide assistance, as necessary, if the function plans to withhold information under IRC 6103(e)(7) due to an impairment determination. IRS functional employees should not insist a requester go through the FOIA process if the information is available informally, consistent with Delegation Order 11-2, found in IRM 1.2.2.12.2, *Delegation Order 11-2 (Rev. 4), Authority to Permit Disclosure of Tax Information and to Permit Testimony or the Production of Documents*. Processing requests for access to closed case files is preferred under the FOIA.

Note: A request for an SFR does not fall under the routine established agency procedures discussed in this section. An SFR is considered return information but is not considered a return under IRC 6103(b).

- b. Records of seizure and sale of real estate, found on Record 21, Part 2, are open to public inspection. These may be made available in the Collection Advisory Unit that maintains the record based on the location of the property. The locations of the Collection Advisory Units are contained in Pub 4235, *Collection Advisory Group Addresses*. Process requests for copies of Record 21, Part 2, under the FOIA. See IRM 11.3.11.9.1, *Record of Seizure and Sale*.
- c. Information returns, notices, and reports of certain tax-exempt organizations and trusts, political organizations, applications by organizations granted tax-exempt status, applications for certain deferred compensation plans and accounts, and their annual returns. IRC 6104 grants access to this type of information and requesters may seek this information by filing Form 4506-A, *Request for a Copy of Exempt or Political Organization IRS Form* or Form 4506-B, *Request for a Copy of Exempt Organization IRS Application or Letter*. See IRM 11.3.9, *Exempt Organizations*, and IRM 11.3.10, *Employee Plans Information*.

Note: Information from approved tax-exempt applications is available online at *IRS.gov*. The posted materials include Form 1023-EZ, *Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*. Respond to FOIA requests seeking tax-exempt application information applicable to Form 1023-EZ by explaining that the information is publicly available on *IRS.gov* at: <https://www.irs.gov/charities-non-profits/exempt-organizations-form-1023ez-approvals> Do not provide Form 4506-A for these types of requests.

Note: Requests seeking Form 990, *Return of Organization Exempt from Income Tax*, in machine readable format (MeF, Modernized e-File format, CSV format, etc.) may access this information through Tax Exempt Organization Search on *irs.gov*. Do not provide Form 4506-A for these types of requests.

- d. Statistics of Income publications. IRC 6108(a) and 26 CFR 301.6108-1 grants access. Requesters may access these products through the Tax Stats on *irs.gov*, or request, in writing, that IRS conduct customized statistical studies or make statistical compilations under IRC 6108(b). Address your request to:

Statistics of Income
 Statistical Information Services Internal Revenue Services
 Internal Revenue Service
 1111 Constitution Ave NW
 K-Room 4112
 Washington, DC 20224

See the applicable revenue procedure for further instructions. Copies of statistical studies or compilation previously made under IRC 6108(b) may be available upon written request to the above address.

- e. Public comments in rule making. See IRM 11.3.11.7, *Comments on Proposed Rules and Regulations*.
- f. Accepted OICs less than one year old (from date of execution).

Caution: Process requests for copies of accepted OICs more than one year old, or where no inspection is involved, under the FOIA.

Routine procedures allow for inspection and copying only, not for copies independent of the inspection process.

Note: See IRM 11.3.11.8, *Public Inspection of Accepted Offer-in-Compromise*, for OICs less than one year old.

- g. Written determinations and background file documents under IRC 6110.

Note: See CCDM 37.1.1, *Written Determinations Under Section 6110*, for information regarding IRC 6110 written determination releases. See IRM 11.3.41.17.2, *Written Determinations*, for additional information.

- (3) If any issues arise from requests for documents that fall under Routine Established Agency Procedures, contact the Disclosure FOIA policy analyst using established communication protocols.
- (4) Letter forwarding requests are also processed under routine established agency procedures (see Policy Statement 11-96 (formerly P-1-187)), **Forwarding letters for private individuals, organizations or corporations and Federal, state and local government agencies without disclosure of address**, found in IRM 1.2.1.11.11, and are excluded from FOIA processing. See IRM 11.3.11.11, *Forwarding Letters for Humane Reasons*.

11.3.41.13.3.17
(12-08-2022)
**FOIA Requests
Requiring Area Manager,
Disclosure East and
West Involvement**

- (1) Requests involving unique FOIA issues, those requiring multi-office coordination or those having national implications will be brought to the attention of the area manager, Disclosure through appropriate channels.
- (2) The area manager, Disclosure may determine that certain cases require special handling and direct that cases be reassigned accordingly. Reassign requests involving the following to a TLS in the field Disclosure office:
- a. Requests involving contracts;
 - b. Requests involving background records for Office of Management and Budget (OMB) approval pertaining to a specific form; and
 - c. Requests for written determinations and background file documents.

Note: This list is not all inclusive. This IRM may reference other circumstances where a case reassignment to a TLS in the field Disclosure office is appropriate. See IRM 11.3.41.17.1, *TLS Case Processing Criteria*, for additional information.

- (3) Information obtained from Interpol may be included in enforcement action files. Coordination with the area manager, Disclosure, is required before releasing Interpol information.

11.3.41.13.4
(08-26-2021)
**Case Timeliness
Expectations Freedom
of Information Act**

- (1) When processing FOIA requests, initial analysis must be completed at the earliest opportunity but no later than 3 business days of case assignment. Order records commensurate with initial analysis but no later than 3 business days of initial analysis (6 business days total from case assignment).
- (2) Follow-up Actions:
- To be completed at the earliest opportunity but no later than 2 days after the due date for document receipt. Set a reasonable due date for

receipt of records with the records owner. Obtain management involvement if there is no response and/or delay.

- Establish and document a plan of action after records are received. Case actions are to be documented contemporaneously with the case action in case notes.
- Continuous, substantive actions must be taken to process the case to closure. Action must be taken at a minimum of every 2 weeks unless approved by the DM and a notation made in case notes.

- (3) When resolving FOIA requests, cases must be closed within 1 business day of the final action taken, such as but not limited to the issuance of the final response letter, determining the request is imperfect or determining there are no responsive records.

11.3.41.13.5
(02-26-2024)

Research and Search Efforts

- (1) After determining that a request is valid, Disclosure personnel must also determine the scope of the request and the manner in which to conduct a search for responsive records. Disclosure personnel will initiate search efforts from the business unit that has jurisdiction of the records requested or conduct a reasonable search themselves if the records are maintained by Disclosure to ensure they locate the documents the requester seeks. Disclosure staff must use available procedures to retrieve records and provide the most expeditious response possible to the requester. These procedures may include such negotiated procedures as initial special searches and direct contact with FRCs.

- (2) Disclosure FOIA caseworkers must use the official, approved Disclosure Search Memo when search efforts require caseworkers to formally reach out to business unit personnel to conduct searches for FOIA responsive records. It is no longer permissible for Disclosure caseworkers to send emails requesting copies of records without including a copy of an official, approved search memo.

Use of this search memo provides consistency and standardizes what information is conveyed to each office (e.g., ensures FOIA caseworkers are provided all necessary information to perform a proper search, review and accounting of FOIA activities) and is a good tool to properly document the search effort, including business unit documentation of their FOIA search and review efforts. The following limited exceptions do not require official search memos to be prepared:

1. If an official Disclosure approved form already exists to document and request search efforts, such as the Form 2275, *Records Request, Charge and Recharge*, used to request records from a Federal Records Center, no search memo is required.
2. If a caseworker is completing a “soft touch” request to an IRS office, which is a common procedure used by tax law specialists when reaching out to a FOIA functional coordinator to determine if requested records would be considered “agency records” or if the records are other agency records, a formal search memo is not yet required, until such time a formal written search request is ready to be issued. If the soft touch response advises that records could exist, but not necessarily that they do, a formal search memo is necessary to request and capture that the business unit conducted their search and review efforts.

- (3) When searches return no responsive records, requesters may appeal the scope and adequacy of the search for responsive records. Clearly document the logic behind search efforts in the case file by either case history notes,

check sheets, or another readily understood method. Also include documentation of the search efforts completed by the business units indicating no responsive records were located.

- (4) Case notes must support the adequacy of the search supporting the no responsive documents response. The incoming request, transcripts, search memos, and the written response can also be used to sufficiently document the search effort.

Note: For a description of other data that may be necessary to properly document the file, see IRM 11.3.41.3.6, *Case Documentation*.

- (5) Disclosure personnel must ensure that requests for records identified by a DLN relate to the requester before attempting to locate them. Because DLNs are especially vulnerable to typographical and transposition errors, requests must also identify the tax form and tax period for the DLNs requested and the caseworker must confirm that the documents retrieved belong to the requester prior to release. The requester does not need to provide the IDRS transaction code associated with the DLN.
- (6) If it can be readily ascertained (without additional research) that the requested record is a computer-generated record for which no paper or electronic copy is maintained, the requester shall be so advised. Case notes must be entered to document the process used to determine that the requested record is computer-generated with no associated paper copy. See IRM 11.3.41.13.8.38, *Requests for Documents Associated with a Document Locator Number (DLN)*.
- (7) Some requests seek records from a certain time period to the “present.” Interpret the “present” to mean the date the request is received by the Disclosure office. For a discussion of the cut-off date for records searches, see IRM 11.3.41.13.5.1, *Adequacy of Search*. Records created after the received date of the request are not considered responsive to the request. However, even if the record was created after the received date of the FOIA, release should be considered based upon the concept of openness and transparency or based on the time it takes to locate and retrieve responsive records.

Note: For additional information on when Disclosure personnel may elect to include data outside the scope of the request. See IRM 11.3.41.13.5.1(13), *Adequacy of Search*.

- (8) DMs and staff will attempt to meet both the letter and spirit of the statutes governing the FOIA process by applying a liberal interpretation to the intent of the requester and the scope of the request without making assumptions or guessing what the requester is seeking. It may be necessary to communicate with the requester to clarify the request as well as with those employees conducting the search. It is inappropriate to hold frequent requesters or professionals to a higher standard of exactitude because “they should have known better” or “they know the law, so we shouldn’t read anything into the request” while giving the “benefit of the doubt” to first time or infrequent requesters. The aim of the FOIA process is to provide consistent, top-quality service to all requesters.
- (9) If, while waiting for a response to a search request, notification is provided to the caseworker that the requested records no longer need to be secured by

the caseworker (the requester withdraws the FOIA request, etc.) caseworkers must notify the business function the records are no longer needed and rescind the search request. Provide the reason the search is no longer needed and the date notification was provided to the business function the records are no longer needed.

Exception: When notified of FOIA litigation, records may still need to be secured for the pending litigation. While the records may no longer be needed for Disclosure's purposes to work the request, discuss the records request with the assigned FOIA litigation Counsel attorney prior to notifying the business function that records no longer need to be provided.

Caution: If Counsel requests more assistance other than providing documents from the case file, the request for Counsel assistance must be elevated through the DM to Senior Leadership. Case notes must also document actions taken when assisting Counsel with FOIA litigation.

- (10) Whenever a request seeks records that originated outside of the IRS, Disclosure personnel will make a determination, after coordination with the records' originator, whether the records are agency records based upon the factors mentioned in IRM 11.3.13.3.3, *Definition of Agency Record*.

11.3.41.13.5.1
(08-26-2021)
Adequacy of Search

- (1) The DM is responsible for ensuring the adequacy of search efforts. IRM 11.3.13.1.3.1, *Disclosure Manager*, and IRM 11.3.13.1.3.2, *The Roles of Other IRS Employees in Processing FOIA Requests*, outline the roles of the DM and any functional employees assisting in completing the search.
- (2) Document the following information in the case history notes if it is not already apparent in the case file:
- Which offices were contacted and why,
 - Person contacted in each office and who conducted the search,
 - Files searched,
 - Search terms used,
 - Volume and location of records found, and
 - Time spent in the search, copy, and review process.
- (3) The request itself often is the best source for ideas concerning where responsive records may exist. Disclosure personnel must carefully review the request and, if necessary, involve contacts in the various functions to determine the best course of action.

Note: After analyzing the request, if the scope of the records is still unclear or seems too broad, the caseworker must contact the requester to ask for clarification. If the request is too broad or unclear, and contacting the requester may not assist in re-scoping the caseworker should discuss the case with the DM and FOIA policy analyst prior to closing the case. The requester must provide written response indicating the items that were re-scoped.

- (4) In many instances, the request identifies the functional area or the employee that may have the responsive records. When the request involves tax records, it generally lists the tax periods covered. See IRM 11.3.41.13.3.11, *Requests*

for All Records Concerning Me, for procedures to follow when the tax periods are not provided.

- (5) IDRS is the first step in the search for tax records but may not be sufficient since certain types of investigations in the compliance divisions are not reflected on the IDRS printout.

Example: Records relating to money laundering would not be identified from an IDRS search. CI employees conducting searches need to search the CIMIS in addition to IDRS for records under its jurisdiction.

Note: Use of a search memorandum is required unless the request is very specific and the IDRS search reflects exactly what is requested.

- (6) In the case of requests for other than tax records where the records requested indicate ongoing compliance activity, Disclosure personnel must consider doing an initial IDRS search to determine whether any open compliance case is in process. Occasionally, the requester's purpose is to obtain a statement in a FOIA response letter that may aid the requester in litigation or enforcement activities. While the reason the requester seeks the documents is irrelevant for FOIA processing purposes, see IRM 11.3.41.13.3.13(10), *Pseudo Requests*, about notifying the affected functions about the request.
- (7) Exhibit 11.3.41-12, *IDRS Research Tools*, establishes guidelines for adequate research on IDRS. It should be used as a tool to establish the minimum required research on cases involving tax records. The exhibit is not all-inclusive, however, and researchers must tailor the search on a case-by-case basis.
- (8) When search efforts require going beyond the initial IDRS research, Disclosure personnel will make a written request for a records search, including guidance for conducting the search, to the appropriate offices. Use the standard search request memo pattern language. The use of a standard search memo is a good tool to properly document the search effort. Caseworkers may use the same memo for requests to different offices. Each memo will include:
- a. A copy of the request that has been highlighted or otherwise marked to direct attention to the portion of the request that pertains to that function.
 - b. A request for suggestions about other areas that may have responsive records.
 - c. A reminder that the search must include electronic records.
 - d. A reminder that there is a requirement to provide electronic data in the format requested.
 - e. A response questionnaire assisting the function to document its actions and time spent on search, copy, and review (this also assists Disclosure staff in computing applicable fees and inputting necessary data to the inventory management system).
 - f. The response questionnaire also requires the function to document whether a separated employee's records were searched, if applicable.
 - g. A request for a recommendation as to the release of located records.
 - h. A response due date.
 - i. A point of contact to request clarification or more time to respond.
 - j. Guidance to the searching function regarding the geographical location and function(s) to be searched (for example, the request may encompass

records generated in another office; or may include local Counsel documents, but not headquarters Counsel).

- k. Any additional information that would assist the function in interpreting what is sought.
- (9) Search memos are a useful tool for control purposes and to ensure timeliness of responses. Search efforts and search memo responses from the functions must be documented on the inventory management system. Documented routine follow-ups on overdue responses to search memos will prevent long periods of inactivity on FOIA cases.
 - (10) When determining the scope of records that may be responsive to a request, it may be necessary to evaluate a requester's knowledge of IRS practices. Evaluating this level of knowledge will not be an exact science and will be left to local procedures. A professional tax preparer who deals with the IRS on a continuing basis may request a specific record or a specific file by the proper terminology. In such a request, it is not necessary to increase the responsive data by including related data in the spirit of good customer service. On the other hand, a request from a taxpayer reflecting a limited knowledge of IRS procedures may require a broader interpretation even if the taxpayer uses a specific term. Occasionally, trends in requests which have been reported to HQ will trigger a national directive intended to achieve a level of consistency. The purpose of any directive issued will be to provide service that is more consistent to all requesters, not to penalize a particular type/class of requester.
 - (11) Records created after the receipt date of the FOIA request are outside the scope of the request and functions should be made aware of this fact. In rare circumstances, a lengthy delay (i.e., 90 days) may be unavoidable before search efforts begin. If this occurs, document the case history to explain the delay and extend the search period to the date of search. Also, when appropriate in terms of good customer service or in the spirit of openness in government, Disclosure personnel may include records created after the receipt date of the request. Make this determination on a case-by-case basis.
 - (12) Typically, reading files need not be searched as they contain duplicates of agency records located in case or subject matter files. However, where official records are known to exist but cannot be located, search reading files or a substitute for the missing official agency record.

Note: This instruction is not intended to require search of reading files if the official record should have been destroyed under routine retention schedules. Destruction schedules may be verified with the local area records specialists. A directory is listed on the Records and Information Management (RIM) - Website located at: *Disclosure and Privacy Knowledge Base - Records and Information Management Area Specialist Map*

- (13) When agency knowledge indicates that records responsive to the request would not exist, there is no need to perform futile searches. However, problems may arise when requesters are advised that no records exist in response to their requests. Examples include:
 - a. Advising the requester that there are no records responsive to a request for "notice and demand" letters affords the requester the opportunity to challenge the validity of a NTFL or levy in the requester's substantive tax affairs. The requester must be advised that the IRS does not routinely maintain copies of these notices. If the IRS sent a Notice and Demand, it

was computer generated and would be shown as MF STAT-21 on the enclosed transcript of account. Where these records are available (i.e., located in a Collection file), they will be made available to the requester, if within the scope of the request.

- b. Another area in which no record exists responses are being used by requesters in their substantive tax affairs deals with requests for the delegation order to a specifically named the IRS employee that authorizes them to file NTFLs. Although it may be true that no delegation order to a designated employee by name exists, the more appropriate response would be: "delegation orders are usually not issued to employees by name, but rather are issued to employees by position title. The attached copy of Delegation Order _____ is the authority for _____ to file NTFLs."

11.3.41.13.5.2
(08-26-2021)
**Coordination with
Business Units**

- (1) The TLS in the field Disclosure office has a cadre of IRS employees, known as functional coordinators, within each function that assist in FOIA processing as requested. Other Disclosure staff must use the RRR Points of Contact, found on the Disclosure SharePoint site. The IRS employees in other business units may also be used as contact points for record searches or to explain functional procedures. Other IRS employees assisting Disclosure staff may, for example:

- Advise which records fall within the scope of the request,
- Conduct record searches,
- Analyze records,
- Segregate records,
- Prepare a functional recommendation for releasing or withholding records,
- Prepare indexes, and
- Serve as a witness in litigation regarding the scope of the search or the reasons certain exemptions were claimed.

- (2) The IRS employees assisting Disclosure staff and conducting searches for records under that office's jurisdiction will provide the following information with each response:

- a. The offices contacted and why,
- b. A list of contacts in each office who participated in the search for records,
- c. Files searched, if other than those initially recommended in the records search request,
- d. Search terms used,
- e. Volume and location of records found, and
- f. Total time spent in locating, reviewing, editing, and copying records.

Note: Disclosure Staff must document the total time spent by the assisting IRS office in locating, reviewing and copying records in the inventory management system.

Note: If total time is reported rather than separating search time from all other activities, a requester could be overcharged. See IRM 11.3.41.13.5.1(8), *Adequacy of Search*, item "e" regarding the use of a search memo response questionnaire to ensure accurate reporting of time.

- (3) Refer BU employees to the *FOIA Obligations and Transparency Memo* which provides guidance on making FOIA requests a high priority by responding timely and providing requested documents on a “rolling production” schedule (as they become available and until all documents are delivered). The Memo also provides BU employees the FOIA Single Entry Time Reporting (SETR) time code to use when spending time on FOIA activities.

11.3.41.13.5.3
(02-26-2024)
**Search Efforts
Pertaining to Email
Records**

- (1) Requests for email records should contain sufficient information to allow a reasonable search to be conducted. This could include details such as the sender/recipient names, a reasonable timeframe and a subject matter or reasonable/functional keywords.
- (2) Requests which only contain keywords may be considered **specific enough** to allow a reasonable search to be conducted if the business unit employee with knowledge of the subject matter (i.e., copies of their emails), believes they have enough information to locate potentially responsive records.
- (3) Disclosure caseworkers should initially reach out to the proper business unit points-of-contact (e.g., FOIA Functional Coordinators (FFC)) to determine if the FFC believes the FOIA request reasonably **describes** the record(s) sought and to determine if a reasonable search can be conducted using the keywords and/or other information in the FOIA request. This initial reach out also known as **soft touch**, should be done before issuing a formal search memorandum to the business unit to ensure the record owner does not spend time and resources on a potentially non-processable request. This initial reach out is to determine:
1. If the request for email records is too broad or not specific enough to process,
 2. If the record owner can provide additional information to assist the Disclosure caseworker in discussions with a requester to re-scope the request, or
 3. If the request can be honored and a search conducted.
- (4) If the request is deemed processable and the record owner agrees a reasonable search can be conducted, the Disclosure caseworker should issue a formal search memorandum to the record owner and process the request.

Note: Specific key terms used to search email records will not provide results if the emails are encrypted.

- (5) If the request is deemed too broad or not specific enough to allow the record owner to conduct a reasonable search, the Disclosure caseworker should stop the clock and reach out to the requester to discuss re-scoping the request. Upon receiving a response from the requester, the Disclosure caseworker should resume processing the request.

11.3.41.13.5.4
(08-26-2021)
**Joint Committee on
Taxation (JCT)**

- (1) When the JCT corresponds with the IRS under its general oversight authority, it generally includes a legend on the incoming correspondence that restricts the dissemination and use of both the inquiry and responsive records. The JCT reserves the right to adjust the legend as needed, after coordination with the IRS.

Note: At this time, the legend reads, “This document is a record of the Joint Committee on Taxation (Joint Committee) and is entrusted to the Department

of the Treasury for your use only in handling this matter. Additionally, any documents created by the Department of the Treasury in connection with a response to this Joint Committee document, including (but not limited to) any replies to the Joint Committee, are records of the Joint Committee and shall be segregated from agency records and remain subject to the control of the Joint Committee. Accordingly, the aforementioned documents are not agency records for purposes of the Freedom of Information Act. Absent explicit Joint Committee authorization, access to this document and any responsive documents shall be limited to Treasury personnel who need such access for the purposes of providing information or assistance to the Joint Committee.”

- (2) The incoming JCT document as well as any documents created by the IRS in connection with a response to the JCT document, including (but not limited to) any replies to the JCT, are records of the JCT and shall be segregated from agency records and remain subject to the control of the JCT. Accordingly, the aforementioned documents are not IRS agency records for purposes of the FOIA.
- (3) Whenever the JCT’s inquiry letter includes the restrictive legend, the file that is created for the IRS’s reply as well as any accompanying documents, may only be accessed by IRS personnel for the purpose of providing information to, or otherwise assisting, the JCT. Copies of the inquiry letter and the IRS response are available through the Office of Legislative Affairs in the Communications and Correspondence Tracking System. Copies of records compiled by the IRS to respond to the JCT inquiry are maintained in the office of the IRS component chiefly responsible for preparing the response.
- (4) Whenever the JCT’s inquiry letter includes the restrictive legend, that letter remains a congressional record and is not an agency record of the IRS. In addition, any records created by the IRS in connection with the agency’s response to the JCT’s inquiry, including (but not limited to) the IRS reply letter, are congressional records and are not IRS agency records. Such documents shall not be considered as responsive to a FOIA request directed to the IRS and must not be released under the FOIA. Moreover, the IRS file(s) associated with providing records to the JCT need not be searched for responsive records because the records that the files may contain are not agency records.

Note: An inquiry letter from the Ways and Means committee may also contain the restrictive legend.

- (5) The legend is included as a matter of best practice. It identifies the document as a congressional record, not an IRS agency record. The legend is also an indication of the intent of the parties on how the records should be categorized. However, the absence of the legend is not legally determinative. If a JCT document fails to contain a legend, generally, the IRS practice is to treat the JCT document and any IRS response thereto as a congressional record.

Note: Consider consulting Chief Counsel (P&A) on the treatment of JCT originated documents that do not contain a legend.

- (6) A FOIA request received by an IRS Disclosure Office that seeks access to records involving the Joint Committee falls under the case processing criteria of a TLS. The TLS will consult with the JCT as well as any affected IRS

function(s) and Chief Counsel (P&A), before determining whether to release or withhold any IRS agency records that are the subject of a JCT oversight inquiry.

- (7) Depending upon the wording of the FOIA request, copies of records created and maintained by the IRS in the normal course of its operations that are subsequently provided to the JCT in response to a general oversight inquiry may be IRS agency records subject to the provisions of the FOIA or may be considered congressional records not subject to the FOIA.

- a. If the FOIA request specifically asks for records reviewed by the JCT, the disclosure of any records, or even the acknowledgement that these records exist in the context of a JCT inquiry, may confirm that the JCT had exercised its general oversight responsibilities. These records are congressional records whether or not the JCT inquiry letter bears a legend restricting dissemination of the records, the records are maintained in files specifically pertaining to the JCT oversight inquiry and/or are segregated from IRS agency files, and/or the records are accessible only by IRS personnel involved in responding or providing assistance to the JCT.

Note: When a FOIA requester asks for “all requests by the Joint Committee for [a particular matter],” the IRS will respond that, to the extent such records exist, they are congressional records and are not subject to the FOIA.

- b. If the FOIA request seeks a file, such as an Examination file, which happens to contain records generated in the normal course of its operations that were subsequently furnished to the JCT as part of its general oversight responsibilities, the records in the requested file are IRS agency records subject to the FOIA. Because neither the FOIA request acknowledgement nor the release of the records reveals the existence or the subject of a JCT oversight inquiry, they remain IRS agency records. In the absence of any applicable FOIA exemption, the records in the file will be provided to the requester. For treatment of JCT records in IRC 6405 refund or credit cases, see IRM 11.3.4.6, *Disclosure for IRC 6405 Cases*, and IRM 11.4.36.4, *Joint Committee Review Team Procedures*.

Note: Any records revealing the existence or subject matter of a JCT general oversight inquiry, such as a memorandum seeking or transmitting responsive records, must not be identified as part of the IRS agency’s records in the FOIA response letter. Any notation or indication in the IRS agency records that were the subject of Joint Committee inquiry must be withheld as “not responsive” to the FOIA request.

- (8) In addition to its general oversight authority under IRC 8023, the JCT is also entitled to reports by the IRS under IRC 6405 of the IRS’s proposed issuance of refunds or credits that meet the jurisdictional threshold. IRC 6405 directs the IRS to delay the issuance of large refunds or credits for a thirty-day period after the report is submitted to the JCT. Correspondence or other documentation reflecting the JCT’s inquiries relating to the proposed credits or refunds will be maintained separately within the administrative file of the taxpayer to whom it pertains. Based upon best practice, JCT correspondence in this context may not contain a legend, and any documents or information received from the JCT or prepared by the IRS in response to the JCT’s inquiries regarding the

proposed refund will not constitute IRS agency records subject to the FOIA. The IRS practice is to treat these records as congressional records. Accordingly, the JCT's response to the IRS's letter concerning the proposed refund, and any records created by the IRS as a result of, or in response to, the JCT's response, are not IRS agency records responsive to a FOIA request and must not be released under the FOIA. Moreover, the IRS file(s) associated with providing records to the JCT need not be searched for responsive records because any records the files may contain are not IRS agency records.

11.3.41.13.6
(02-26-2024)
Review and Redacting

- (1) Once the responsive records have been gathered, Disclosure personnel will review the material and determine what should be released or what should be withheld in full or in part.

Note: Disclosure personnel are responsible for determining the documents that are responsive to each request. Disclosure personnel will review documents provided by the functions to ensure the presence of all responsive documents and to separate and remove any non-responsive documents.

- (2) The determination to grant or deny access to a specific record is made for each request on a case-by-case basis. It requires an understanding of:
1. The purpose the record serves.
 2. The relationship the record has to the objective of tax administration.
 3. The effect disclosure of the record may have on tax administration.
 4. The impact the disclosure of the information would have on the personal privacy of any individual weighed against the public interest in accessing the information.
- (3) The determination also requires an understanding of the nine FOIA exemptions, three special law enforcement exclusions, applicable statutes, relevant court cases, precedents, and IRS-wide guidelines issued by HQ Disclosure PPO.

Reminder: Do not use the FOIA Exemptions to withhold information in Non-FOIA case types.

- (4) The role of Disclosure personnel in this process is two-fold:
1. To ensure the requester's needs are addressed to the extent possible, and
 2. To ensure confidential information or information that may harm tax administration, commercial or other institutional interests, or personal privacy is not released.
- (5) Generally, the advice of the function maintaining or originating the record requested weighs heavily in the determination regarding release of the information by Disclosure personnel. There are times, however, when the DM or staff interpretation of the facts of the case and the disclosure statutes may be different from the initial advice provided by the function. The ultimate responsibility for the disclosure determination resides with the DM pursuant to the disclosure authority outlined in 26 CFR 601.702, Delegation Order 11-7, **Authority for Initial Determinations with Respect to Written Requests for Records Pursuant to 5 USC 552, Freedom of Information Act**, found in IRM

1.2.2.12.6, and, Delegation Order 11-2, found in IRM 1.2.2.12.2, *Delegation Order 11-2 (Rev. 4), Authority to Permit Disclosure of Tax Information and to Permit Testimony or the Production of Documents.*

Note: For procedures involving disagreements with the affected function over the release of records, see IRM 11.3.13.1.2, *Authority.*

- (6) DMs and staff must make an independent judgment on the disclosure or withholding of records after considering the views of the affected functions and their understanding of the law. Disclosure personnel are responsible for balancing the two roles described in (4) above. They are also responsible for explaining the reasoning behind the final determination to withhold or release information. Some determinations are discretionary, and some are clearly non-discretionary by statute.

Note: For a discussion of discretionary vs. nondiscretionary disclosures, see IRM 11.3.41.13.6.2.1, *Discretionary Release of Records.*

11.3.41.13.6.1
(12-08-2022)

Approach to Exemptions

- (1) The FOIA requires agencies to make the maximum possible information available to the public. On March 19, 2009, a DOJ FOIA policy memorandum was issued to support the notion that the FOIA reflects a fundamental national commitment to open government and to ensure that commitment was realized in practice. The memorandum also declared a presumption of openness and carried with it two implications:
1. Agencies should make discretionary disclosures of information where possible and not withhold merely because they can demonstrate that the records fall within the scope of a FOIA exemption.
 2. When agencies determine that a full disclosure is not possible, they should take all reasonable steps to disclose what they can.
- (2) The DOJ policy directive also expressed a commitment to protecting other fundamental values including protecting national security, personal privacy, privileged records, and law enforcement interests.
- (3) Under the FOIA, once a record is determined to be responsive, only such portion as falls within one of the nine specific exemption categories or three special law enforcement exclusions may be withheld. Disclosure personnel shall clearly document in their case notes any decision to edit or withhold records. The decision must be made based on the application of one of the exemptions or exclusions contained in the FOIA statute. Each of the exemptions and exclusions is listed and discussed in IRM 11.3.41.13.6.2, *Exemptions and Exclusions.*

Reminder: Do not use the FOIA Exemptions to withhold information in Non-FOIA case types.

- (4) Some exemptions are mandatory in nature. Exemptions (b)(1), (b)(3) and (b)(4) of the FOIA are exemptions for which discretionary disclosures are not appropriate since there are civil and/or criminal penalties for unauthorized disclosure of statutorily protected information.

- (5) Consideration of whether discretionary exemptions should be asserted will usually be made on a case-by-case basis. See Policy Statement 11-13 (Formerly P-1-192), *Freedom of Information Act Requests*, which is available at IRM 1.2.1.11.1.
- (6) Decisions to withhold information protected under the FOIA's discretionary exemptions will be made only when:
 1. The Agency reasonably foresees that disclosure would harm an interest protected by one of the statutory exemptions, or
 2. Disclosure is prohibited by law.
- (7) When considering discretionary disclosures related to personal privacy, Disclosure personnel will weigh the public's right to the information against the privacy interests of the individual(s) affected. Case history notes will fully document the reasons for the application of an exemption and include any discussions with the functions supporting that application.
- (8) Records will not be withheld from the public simply because they may be subject to misinterpretation, because there is no apparent public benefit to their release, to avoid embarrassment, or to hide instances of errors or wrongdoing by IRS officials or employees.
- (9) The designation of a record as "SBU" does not preclude the release of the record pursuant to FOIA. DMs should not approve the denial of FOIA requests for materials subject to this section solely based on their designation as "SBU". Consideration should be given for any appropriate FOIA exemptions where release of the materials may harm or negatively impact IRS operations or the privacy of individuals. See IRM 10.5.1.2.2, *Sensitive But Unclassified (SBU) Data*, for additional information on SBU determinations.

11.3.41.13.6.2
(08-26-2021)
Exemptions and Exclusions

- (1) There are nine specific FOIA exemptions. They are listed in 5 USC 552(b) and form the legal basis for the IRS to withhold records or portions of records from the public. Careful consideration of the exemptions is required when reviewing responsive records. Consider the following:
 - Withhold information under the FOIA, "only if the agency reasonably foresees that the disclosure would harm an interest protected by an exemption, or disclosure is prohibited by law."
 - Whether partial disclosure of information is possible, whenever it is determined that a full disclosure of a requested record is not possible.
 - Taking reasonable steps to segregate and release nonexempt information.

See IRM 11.3.13.5.2, *Exemptions*, for additional information on the FOIA Exemptions.

- (2) "Outside the scope," "out of scope," and "non-responsive" are not legal FOIA exemptions found in section 552(b) of the FOIA and should never be used when processing a FOIA request. See IRM 11.3.13.5.5, *Outside of Scope*.
- (3) The FOIA includes three special exclusions for protecting certain law enforcement records under subsection (c) of the FOIA.

- (4) These exclusions expressly authorize federal law enforcement agencies to treat certain law enforcement records as not subject to the requirements of the FOIA. These provisions apply only to especially sensitive records in specific limited circumstances.
- (5) Disclosure personnel **must** thoroughly familiarize themselves with the exclusion guidelines found in the DOJ Guide to the Freedom of Information Act. See IRM 11.3.13.5.3, *Record Exclusions*, for additional information.
- (6) Disclosure personnel must coordinate the assertion of these exclusions using established communication protocols with the FOIA policy analyst who will coordinate as necessary with Branch 6 or 7 of the Office of the Associate Chief Counsel, P&A.

11.3.41.13.6.2.1
(08-26-2021)

Discretionary Release of Records

- (1) FOIA exemptions allow for discretionary release of information; that agencies can redact out portions of documents or entire documents in full, using FOIA exemptions but are not compelled to do so by the FOIA statute.
- (2) Determinations to withhold information using exemptions other than (b)(3) **must** be made in accordance with discussions with the business function who has control of the responsive records.

Example: Before applying FOIA exemption (b)(5) to “draft” counsel documents or a “draft” Revenue Agent Report (RAR), you must have a discussion with the Chief Counsel attorney or RA who owns the documents to have the document owner articulate the harm of release before applying the redaction to determine if it should be applied. If they cannot articulate a harm in release of the documents, a determination may be made to waive the application of the exemption.

Caution: Business functions **must** articulate and support how release of records would harm or interfere with IRS civil and/or criminal activities prior to Disclosure withholding records under discretionary FOIA exemptions. Any FOIA exemption may apply to records being withheld under one of the nine FOIA exemptions if the business function provides an appropriate basis for withholding the records. The basis for withholding must be documented in the case either in case notes or with a formal attestation provided by the business function. Disclosure personnel must ensure the response from the business function contains enough information to support any discretionary FOIA exemptions applied to records.

11.3.41.13.6.2.2
(08-26-2021)

Exemption (b)(1)

- (1) This exemption applies to classified records concerning national defense and foreign policy. This exemption refers to information which has been or may be properly classified as confidential, secret, or top secret under the terms and procedures of the Executive Order establishing the classification system. It is seldom used by the IRS.

11.3.41.13.6.2.3
(08-26-2021)

Exemption (b)(2)

- (1) This exemption covers matters that relate solely to the internal personnel rules and practices of an agency.
- (2) Disclosure personnel may find conference call-in information in files responsive to FOIA requests in the form of printed emails, calendar invitations, case notes, or other documents. An employee who uses an assigned call-in number and

access code on a recurring basis often organizes these calls. Information about conference call-in information no longer meets the (b)(2) standard because the information is not directly related to agency personnel rules and practices. However, because disseminating conference call-in information could lead to its misuse and impede the effectiveness of IRS law enforcement activities, consider redacting conference call in numbers and access codes found in documents responsive to FOIA requests using the (b)(7)(E) exemption (and not the (b)(2) exemption). Additionally, telephone numbers and pass codes assigned to participants of a conference call might be withheld under the (b)(6) exemption because the release of this information could constitute an unwarranted invasion of personal privacy. Disclosure personnel should make determinations about these requests and responsive documents on a case-by-case basis.

11.3.41.13.6.2.4
(08-26-2021)
Exemption (b)(3)

- (1) This exemption protects information specifically exempted from disclosure by statute, provided that such statute:
 - a. Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or
 - b. Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

- (2) Some examples are:

- a. IRC 6103 (most commonly used).

Note: The use of IRC 6103 as a supporting statute requires a determination that the information being denied is a return or return information, as defined in IRC 6103(b)(2). When citing this exemption to deny the requester access to another taxpayer's return information, a determination must be made that the information is the other taxpayer's return information as defined in IRC 6103(b)(2). For example, information gathered in connection with the examination of Taxpayer A's return includes Department of Motor Vehicle (DMV) records of an individual with a similar name. Since the information was gathered in connection with the examination of Taxpayer A's return, it is the return information of Taxpayer A. Since it was not obtained by the IRS with respect to determining the liability under Title 26 of the other individual named in the DMV records, it is not that individual's return information, and thus cannot be withheld from Taxpayer A on the basis that it is the return information of another individual. FOIA exemptions (b)(3) (in conjunction with IRC 6103(e)(7)), (b)(6), and (b)(7)(C) shall be cited in this situation in order to protect the privacy of the third person. As another example, the taxpayer's Examination file contains records of the taxpayer's expenditures for rent and office supplies. The identities and addresses of the property owner and the supplier(s), and the dates and amounts of payments to them that were obtained to determine the taxpayer's correct expenses are return information of the taxpayer. This information merely reflects a business relationship between the taxpayer and the property owner and supplier(s), and is not return information of the property owner or the supplier(s). Information about the business relationship cannot be withheld from the taxpayer as third-party return informa-

tion (although other exemptions may apply). Any notation in the file that explicitly refers to the tax matters of the property owner or supplier(s) must be withheld from the taxpayer as third-party return information if the information is from IRS sources (including the caseworker). See IRM 11.3.41.13.6.4, *Open Investigatory Files*. For a discussion of how the wording of the request may change the response, see IRM 11.3.41.13.8.27, *Requests Involving Asset Locator Records (ChoicePoint/Accurint etc.)*. Also, a third-party's SSN provided by the taxpayer under examination would not be withheld, although if the same SSN were retrieved from IRS sources it would be withheld. If the third-party SSN provided by the taxpayer has been checked against IRS records, any notation of the result must be withheld as third-party return information.

- b. Rule 6(e) of the Federal Rules of Criminal Procedure (FRCP) exempts grand jury information.
- c. 31 USC 5319 exempts currency transaction and certain other reports (see IRM 11.3.41.13.8.1, *Title 31 Reports - CTRs, CMIRs, FBARs, and SARs*).
- d. 41 USC 4702 exempts certain contract proposals (see IRM 11.3.41.13.8.5, *Contracts/Commercial Information*).
- e. 5 USC 7114 (b)(4)(C) exempts labor management guidance (see the example in IRM 10.5.6.8.7.1, *Disclosure of Tax Records Permitted by IRC 6103(l)(4)(A)*).
- f. IRC 6105 exempts tax convention information (treaties with other countries).
- g. 18 USC 701 prohibits copying federal agency identification media (see IRM 11.3.41.13.8.29, *Requests for Pocket Commissions*).

- (3) Generally, procedural rules are inappropriate as a basis for the (b)(3) exemption, except for those rules prescribed by law and having the effect of law such as Rules 6(e) and 16 of the FRCP.

Caution: Do not cite IRC 7213, IRC 7213A, IRC 7431, or the Privacy Act of 1974, as supporting statutes to the (b)(3) exemption.

- (4) When a statute other than IRC 6103 is used to support the (b)(3) exemption, include a brief explanation of how the statute applies in the case history notes.

11.3.41.13.6.2.5
(08-26-2021)

Exemption (b)(4)

- (1) This exemption protects trade secrets and commercial or financial information obtained from a person that is privileged or confidential.
- (2) The exemption is intended to protect the interests of both the government and submitters of information. Its existence encourages submitters to voluntarily furnish useful commercial and financial information to the government and correspondingly provides the government with an assurance that such information will be reliable and complete.
- (3) The exemption also protects submitters who are required to furnish commercial and financial information to the government by safeguarding them from the competitive disadvantages that could result from disclosure.
- (4) Requests for competitive bids for government contracts may fall in this category.

- (5) This exemption relates to information submitted by individuals, corporations or partnerships. It does not apply to records generated by the government.
- (6) 26 CFR 601.702 establishes certain notification and processing procedures for requests to which exemption (b)(4) might apply. Reference this citation as needed. For further information, see IRM 11.3.41.13.8.5, *Contracts/Commercial Information*.

11.3.41.13.6.2.6
(08-26-2021)
Exemption (b)(5)

- (1) This exemption applies to inter-agency or intra-agency memorandums, letters or emails that would not be available by law to a party other than an agency in litigation with the IRS. Courts have interpreted this language to exempt those documents, and only those documents, that are normally privileged in the civil discovery context.

Note: Counsel must be contacted for release determination on any emails to/from Counsel that are found in responsive records.

- (2) There are three primary privileges incorporated into exemption (b)(5):
 - Deliberative process privilege
 - Attorney work product privilege
 - Attorney-client privilege
- (3) Once determination has been made to apply exemption (b)(5), the case notes and the response letter must state which privilege, or privileges, the withheld information falls under. The case notes must also support the use of exemption (b)(5) and whether the information was considered for a discretionary disclosure determination.
- (4) Deliberative process is the most commonly invoked privilege under exemption (b)(5). There are two fundamental requirements, both of which must be met, in order for the deliberative process privilege to apply.
 - a. The communication must be pre-decisional; that is, it precedes the adoption of an agency policy or other final decision, and
 - b. The communication must be deliberative; that is, play a direct part in the process of making recommendations or expressing opinions on legal or policy matters.

Note: Communications which precede a determination not to issue a decision, policy statement, or published guidance, or with respect to which no final decision, policy statement, or published guidance has been issued, may be withheld under the deliberative process privilege if they meet these two requirements. Internal discussion and recommendations regarding FOIA withholding determinations, ordinarily will also be withheld as deliberative process material.

Note: Documents which post-date a decision, but which merely recite deliberations that pre-date the decision, may be withheld if they otherwise meet the requirements of exemption (b)(5).

Note: The deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested.

- (5) The burden is on the agency to show the records meet both requirements. Records that reflect existing agency policy or reflect an interpretation of law already adopted by the agency should be disclosed because they are not pre-decisional but discuss established policies and decisions.
- (6) Generally, factual portions of internal agency records which may fall within the deliberative process privilege are not exempt from disclosure. However, if the facts are inextricably intertwined with deliberative matter, or selectively culled as part of the author's deliberations on the facts, they may be exempt.

Example: Revenue Agent Form 4665, *Report Transmittal*, or "T-letters" transmitting information to Appeals are not exempt in their entirety, but must be reviewed to consider whether all, or part, of the record may be exempt.

- (7) Disclosure personnel will withhold documents pertaining to published guidance (i.e., regulations, revenue rulings, revenue procedures, notices, and announcements), and those generated during the preparation of any statements of agency policy, or the preparation of interpretations adopted by the agency (i.e., Appeals Settlement Guidelines, Coordinated Issue Papers, IRM), when such documents are exempt from disclosure pursuant to discretionary discovery privileges or FOIA exemptions. The basis for this determination is twofold:
 - a. To protect against public confusion that might result from the disclosure of various internal positions that do not reflect the grounds for the adoption of the guidance or policy that was published (or the decision not to publish at all).
 - b. To protect against exposing the decision-making processes of the IRS in a way that would discourage candid discussion and undermine the IRS's ability to perform its critical tax administration functions.
- (8) Work product privilege protects records prepared by an attorney or other IRS employee during litigation or in reasonable contemplation of litigation. Generally, it does not cover records written by attorneys in the ordinary course of business (i.e., routine review of statutory notices of deficiency or summonses); it only covers those records which, under the particular facts and circumstances, were created primarily because of ongoing, or reasonably expected, litigation. A discussion with the Counsel attorney is required prior to release of any work product. Generally, discretionary FOIA exemptions for documents pertaining to these matters may be waived only by the Associate Area Counsel in consultation with the affected IRS client at the supervisory level. For detailed instructions regarding who is authorized to make these determinations, see CCDM 30.11.1, *FOIA Requests for Chief Counsel Records*.
- (9) Documents pertaining to litigation include not only documents prepared by Counsel attorneys, but also documents maintained in the administrative files of the IRS to which the litigation pertains. Litigants have sometimes used the FOIA as a discovery tool. Therefore, coordinate FOIA responses carefully with the Counsel employee responsible for the litigation. Good coordination will help to ensure that material which is privileged in discovery is also appropriately withheld pursuant to FOIA exemption (b)(5), and that other material which could impair the government's case is reviewed for withholding pursuant to applicable FOIA exemptions. Counsel employees will provide disclosure and withholding recommendations in accordance with CCDM 30.11.1, **FOIA Requests for Chief Counsel Records**.

- (10) Attorney-client privilege protects confidential communications between an attorney and a client relating to a legal matter for which the client has sought professional advice. This includes communication from the client to the attorney and from the attorney to the client based on confidential information conveyed to the attorney by the client. The attorney-client privilege is not limited to communications pertaining to litigation or possible litigation. A discussion with the Counsel attorney is required prior to releasing any attorney-client communication. Discretionary FOIA exemptions for documents pertaining to these matters may be waived only by the Associate Area Counsel in consultation with the affected IRS client at the supervisory level. See CCDM 30.11.1, **FOIA Requests for Chief Counsel Records**.
- (11) Once it is determined that there is a sound factual and legal basis for asserting the exemption, a decision must be made about whether the IRS should exercise its discretion not to claim the exemption. Make the decision to disclose information in response to a FOIA request only after a full and deliberate consideration of the institutional, commercial, and personal privacy interests that could be implicated by disclosing.
- (12) Sometimes, Chief Counsel Advice or other written determinations are located in field compliance files. Since these documents are exclusively governed by IRC 6110, process copies of these documents in accordance with that statutory schema and not the FOIA. IRC 6110 requires the IRS to publish Chief Counsel Advice in addition to other written determinations (i.e., letter rulings, technical advice, and determination letters). If a FOIA request seeks an exam file, and a section 6110 written determination is included in the file, see IRM 11.3.41.13.8.4, *Written Determinations (Including Private Letter Rulings, Technical Advice & Chief Counsel Advice)*. Additional information for handling requests for section 6110 written determinations can also be found at IRC 6110, CCDM 33.1.3, *Releasing Legal Advice to the Public*, and CCDM 37.1.1, *Written Determinations Under Section 6110*.

11.3.41.13.6.2.7
(08-26-2021)
Exemption (b)(6)

- (1) This exemption pertains to the protection of personal privacy and requires a balancing of privacy and public interests. If there is a protectable privacy interest threatened by disclosure of the records, this exemption requires a balancing between the individual's right of privacy against the public's right to be informed. The public interest in this balance is whether the information will shed light on government operations (the core purpose of the FOIA).
- (2) This exemption protects personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
- (3) To accomplish the balancing of public interest and privacy interest, use the following formula:
 - a. If no privacy interest exists - release the information.
 - b. If any protectable privacy interest exists - check for public interest.
 - c. If there is no public interest (or public interest is not the kind of interest that sheds light on how the government operates) - withhold the information.
 - d. If there is both privacy and **qualifying** public interest - balance the two interests with a leaning toward releasing the information.

- (4) Examples of items that are protected by this exemption are the real names of employees using pseudonyms, disciplinary action files, EEO complaint files, and employees' ratings of record.
- (5) Exemption (b)(6) does not preclude the release of:
- Purely statistical information,
 - Staffing patterns,
 - Graphs of units closed, or
 - Overtime expenditures.

11.3.41.13.6.2.8
(08-26-2021)
Exemption (b)(7)

- (1) Exemption (b)(7) exempts from disclosure records or information compiled for law enforcement purposes, but only to the extent that the production of such records:
- a. Could reasonably be expected to interfere with enforcement proceedings,
 - b. Would deprive a person of a right to a fair trial or an impartial adjudication,
 - c. Could reasonably be expected to constitute an unwarranted invasion of personal privacy,
 - d. Could reasonably be expected to disclose the identity of a confidential source, including state, local, or foreign agency or authority, or any private institution, which furnished information on a confidential basis. In the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, any information furnished by the confidential source is also exempt,
 - e. Would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or
 - f. Could reasonably be expected to endanger the life or physical safety of any individual.
- (2) This exemption allows, but does not require, the withholding of records or information compiled for law enforcement purposes. **It does not permit a blanket denial of records.** When information is withheld, in full or in part under this exemption, case notes must explain the foreseeable harm releasing such records would cause. Consider whether partial disclosure of information is possible whenever a determination that a full disclosure of a requested record is not possible. Records may be edited or withheld only if the production of such records would cause one of the six specifically enumerated harms described above. The exemptions under (b)(7) apply to records generated out of civil and criminal judicial and administrative enforcement proceedings, and also apply to information that discusses investigations, such as instructions to staff and other employee guidelines.

Note: The first (threshold) requirement that must be met when applying any of the (b)(7) exemptions is to determine that the document or record in question was compiled for law enforcement purposes. If the record was not compiled for law enforcement purposes, the (b)(7) exemptions do not apply.

Note: Case notes must support the use of exemption (b)(7) and Disclosure personnel must be able to determine the harm to the government's interest and articulate how release would or could interfere with enforcement proceedings.

11.3.41.13.6.2.8.1
(08-26-2021)

Exemption (b)(7)(A)

- (1) Exemption (b)(7)(A) exempts from disclosure, records or information compiled for law enforcement purposes. Information contained in records compiled for a law enforcement purpose is not exempt unless disclosure would harm a protected interest. Thus, records may be withheld if disclosure could reasonably be expected to interfere with enforcement proceedings. This will apply to any ongoing enforcements or where there is a concrete prospect of future enforcement proceedings. This exemption may apply to open or closed investigatory files, along with non-investigatory files if the files were compiled for law enforcement purposes. The supporting documentation of the expected harm to interfere with enforcement proceedings must be explained in the inventory management system case notes.
- (2) Records may be withheld if disclosure of information unknown to requesters might impede the investigation or harm the government's case in that particular or a related proceeding. A determination may be made to exempt a category of records in a specific case, without the necessity of completing a document-by-document review if the category of records meets the requirements for exemption described in (1) above. It is expected that withholding a category of records rather than doing a document-by document review would be an infrequent approach based on very specific and compelling circumstances relating to individual enforcement matters. IRM 11.3.41.13.6.5, *Attestation Process*, for procedures on making a determination to exempt a category of records.
- (3) Grounds for the nondisclosure of records include the harm in disclosing:
 - Evidence
 - The identities of witnesses and their prospective testimony
 - The reliance placed by the government upon the evidence
 - The transactions being investigated
 - The nature, direction and strategy of the investigation
 - The identities of confidential informants
 - Information that would identify a witness or confidential informant
 - The scope and limits of the investigation
 - Methods of surveillance
 - The subjects of surveillance
- (4) The Supreme Court has stated that the exemption may also apply when release of requested information would give the requester earlier and greater access to the government's case than they would otherwise have.
- (5) This exemption is commonly applied to open CI, Examination, Collection, Appeals, and Counsel files. Disclosure personnel, after coordinating with appropriate functional personnel, must be able to determine the harm to the government's interest and articulate how release would interfere with enforcement proceedings. Document the file adequately to reflect the determination.

- (6) Occasionally, exemption (b)(7)(A) may be applied to records in a closed case, where disclosure could reasonably be expected to interfere with other open or future expected cases.

Example: The amount of money actually spent in a sting operation may be withheld to prevent public knowledge of the agency's resource limitations. This is distinct from exemption (b)(7)(E) because this is actual funds, not guidelines, procedures or techniques.

11.3.41.13.6.2.8.2
(08-26-2021)

Exemption (b)(7)(B)

- (1) Exemption (b)(7)(B) protects against prejudicial pretrial publicity. This exemption provides for withholding if disclosure of the records would deprive a person of a right to a fair trial or impartial adjudication. This is primarily a protection against prejudicial publicity in civil or criminal trials. This is rarely used by the IRS.

11.3.41.13.6.2.8.3
(08-26-2021)

Exemption (b)(7)(C)

- (1) Exemption (b)(7)(C) protects personal information found in law enforcement records. This exemption protects from disclosure records or information compiled for law enforcement purposes the disclosure of which could reasonably be expected to constitute an unwarranted invasion of personal privacy.

- (2) This exemption differs from exemption (b)(6) in that it requires a different standard for evaluating the invasion of personal privacy. It requires only a reasonable expectation of an invasion of personal privacy rather than a clearly unwarranted invasion of personal privacy. It also differs from exemption (b)(6) in that it requires the records or information being withheld to be compiled for law enforcement purposes.

Example: A FOIA request for only an IDRS transcript does not constitute information compiled for law enforcement purposes but simply information compiled to respond to the FOIA request. Exemption (b)(6) should be considered in this instance to protect any personal privacy. However, copies of IDRS transcripts within a tax administration file that were compiled by the Compliance employee as part of their administrative proceeding would be considered compiled for law enforcement purposes. Both exemption (b)(6) and (b)(7)(C) should be considered in this instance to protect any personal privacy.

- (3) Prior to invoking this exemption, you must identify and evaluate the personal privacy interests implicated in the requested records. Disclosure personnel must balance competing personal privacy and public interests.
- (4) This exemption only protects the personal privacy of individuals. Entities have no personal privacy. If the privacy or confidential information of a non-individual entity is at issue, Disclosure personnel must consider whether another FOIA exemption will properly apply to withhold the information.
- (5) This exemption is commonly used to protect the identity of lower-level Compliance employees at the federal, state, or local level; names and other identifying information of taxpayers or other targets under investigation; and any witnesses or confidential sources interviewed. See IRM 11.3.41.13.8.22, *Employee Privacy Matters*.

11.3.41.13.6.2.8.4
(08-26-2021)
Exemption (b)(7)(D)

- (1) Exemption (b)(7)(D) protects the identity of confidential sources and, in criminal cases, the information the confidential source provided. This exempts from disclosure the name and any material which could reasonably be expected to disclose the identity of a confidential source. In criminal investigations, any information furnished by a confidential source, whether or not it identifies the source, is exempt.
- (2) The first part of this provision, concerning the identity of confidential sources, applies to any type of law enforcement record, civil or criminal. The term confidential source refers not only to paid informants but to any person who provides information under an express assurance of confidentiality or in circumstances from which such an assurance could be reasonably inferred. The factual basis for confidentiality, if not clear from the face of the records, will be documented in the case file.
- (3) A source can be confidential with respect to some items of information provided, even if other information is furnished on an open basis.
- (4) The second part of the provision applies to the information provided by the confidential source. Generally speaking, with respect to civil matters, such information may not be treated as exempt on the basis of exemption (b)(7)(D), except to the extent that its disclosure would reveal the identity of the confidential source. However, with respect to criminal investigations and lawful national security intelligence investigations, any information provided by a confidential source is, by that fact alone, exempt.
- (5) Use of this exemption by itself provides an indication that a confidential source exists. Use this exemption only where Disclosure personnel have confirmed, through consultation with the affected function(s), that the requester knows a confidential source exists and asserting the exemption is not likely to indirectly reveal the identity of the source. Where assertion of the exemption is believed to be inappropriate, exemption (b)(3) in conjunction with IRC 6103(e)(7), (b)(7)(A), and (b)(7)(C) may be asserted.

11.3.41.13.6.2.8.5
(08-26-2021)
Exemption (b)(7)(E)

- (1) Exemption (b)(7)(E) exempts from disclosure certain enforcement procedures. This exemption applies to records that would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, if such disclosure could reasonably be expected to risk circumvention of law.
- (2) This exemption may only be used to protect investigative techniques or guidelines not generally known to the public.

Note: Where a technique is generally known but the criteria for its use or the details of its use in a specific case are not publicly known, exemption (b)(7)(E) may apply to protect the information. For example, wiretapping is a technique generally known to the public. However, the criteria for IRS use of this technique are not generally known and can be withheld using this exemption. Further, because the mere fact of use of the technique in a specific situation may reveal the criteria for use, fact of usage may (under certain circumstances) be withheld. This must be discussed with the agent(s) handling the investigation.

- (3) This exemption has been applied to protect DIF, DAS and UIDIF scores, tolerances, and investigative criteria, which are also protected by FOIA exemption (b)(3) in conjunction with IRC 6103(b)(2). See IRM 11.3.41.13.8.9, *DIF, DAS, and UIDIF Score, SERFE Indicator*. Settlement criteria or records that discuss hazards of litigation can also be withheld pursuant to FOIA exemption (b)(7)(E).
- (4) After the passage of time, tolerances, investigative and prosecutorial criteria, and settlement guidelines may become known to the public or revised. Consider such factors before invoking the exemption. The determination must be made in consultation with the affected function(s) and documented in the case file.

11.3.41.13.6.2.8.6
(08-26-2021)

Exemption (b)(7)(F)

- (1) Exemption (b)(7)(F) applies to the life and safety of individuals. It exempts information the disclosure of which could reasonably be expected to endanger the life or physical safety of any individual.

Example: This exemption might apply to information that would reveal the identity or existence of undercover agents (local, state, or federal) working on such matters as narcotics, organized crime, terrorism, or espionage.

- (2) The exemption is not limited to law enforcement personnel. The 1986 amendments to the FOIA broadened the scope of the exemption to encompass danger to any person. This exemption may also be appropriate to protect the identity or location of witnesses if the requester is already known or believed to be violent.

11.3.41.13.6.2.9
(08-26-2021)

Exemption (b)(8)

- (1) Exemption (b)(8) applies to reports related to the regulation of financial institutions. This exempts from disclosure matters contained in or related to examination, operation, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions. It is rarely used by the IRS.

11.3.41.13.6.2.10
(08-26-2021)

Exemption (b)(9)

- (1) Exemption (b)(9) applies to geological and geophysical information and data, including maps concerning wells. It is rarely used by the IRS.

11.3.41.13.6.3
(08-26-2021)

Glomar

- (1) Executive Order 12-958, as amended, incorporates the use of a “Glomar” by a federal agency in response to a request for records. The “Glomar” response provides that: “An agency may refuse to confirm or deny the existence or non-existence of requested records whenever the very fact of their existence or non-existence is itself classified under this order.”
- (2) A FOIA exemption must apply to information that is being considered for withholding under a Glomar response. A Glomar response can only be used if any responsive records, or evidence that records exist, fall under one of the nine FOIA exemptions. The exemption(s) and support for the use of those exemptions must be documented in the inventory management system case notes. The basis for applying a Glomar response must also be documented in the inventory management system case notes.

Example: A FOIA request is received from a third party asking for copies of tax administration files for a taxpayer and the third party does not have proper authorization. These tax administration files would fall under FOIA

exemption (b)(3) used in conjunction with 26 USC 6103 and the IRS can neither confirm nor deny the existence of any tax records to the third party.

- (3) A Glomar response is not appropriate when the FOIA request is imperfect.
- (4) In employing “Glomarization,” agencies must be careful to use it only to the extent that is warranted by the terms of the FOIA request at hand. For a request that involves more than just a law enforcement file, the agency should take a bifurcated approach to it, distinguishing between the sensitive law enforcement part of the request and any part that is not so sensitive as to require “Glomarization.”
- (5) Appeal rights are provided to the requester when a Glomar response is used.

11.3.41.13.6.4
(02-26-2024)

Open Investigatory Files

- (1) Investigatory files include returns and return information compiled for law enforcement purposes.
- (2) Returns and return information are only available, under the FOIA, to those taxpayers and requesters who meet the criteria contained in IRC 6103(e) and/or IRC 6103(c). The following instructions apply to those requesters who meet the criteria under IRC 6103(e) and/or IRC 6103(c). See IRM 11.3.2, *Disclosure to Persons with a Material Interest*, and IRM 11.3.3, *Disclosure to Designees and Practitioners*.
- (3) A FOIA requester may not access the return information of another individual by relying on the provisions of IRC 6103(h)(4). Third-party return information, reviewed in response to a FOIA request, must be withheld under section 6103(a) regardless of any item or transactional relationship test. If a taxpayer requests their own open case file and third-party return information is contained therein, the third-party return information must be withheld using FOIA exemption (b)(3) in conjunction with IRC 6103(a).

Note: Per IRM 11.3.2.4.1(2) and IRC 6103(e)(1)(B), returns and return information of individuals who filed jointly may be disclosed to either spouse with respect to whom the return is filed.

- (4) Records or information in open investigatory files, or portions thereof, may be exempt under (b)(7)(A) through (b)(7)(F). The other exemptions provided by the FOIA may be applicable to some portions of the records, depending on the specific records involved. In some cases, exclusions under section (c) may be used. See IRM 11.3.41.13.6.2, *Exemptions and Exclusions*.
- (5) Generally, when asserting exemption (b)(7)(A), the (b)(3) exemption will also apply as a basis to withhold the records. The statutory basis for the (b)(3) exemption is IRC 6103(e)(7). IRC 6103(e)(7) requires the IRS to withhold return information relating to the taxpayer/requester unless the Secretary of the Treasury or their delegate has determined that disclosure would not seriously impair federal tax administration.

Note: See Delegation Order 11-2, found in IRM 1.2.2.12.2, *Delegation Order 11-2 (Rev. 4), Authority to Permit Disclosure of Tax Information and to Permit Testimony or the Production of Documents*, for who is authorized to withhold

information pursuant to IRC 6103(e)(7), and who is authorized to determine that disclosure would not seriously impair federal tax administration.

- (6) Generally, do not assert FOIA exemptions to deny records that would otherwise be available to the taxpayer during the course of an administrative proceeding (i.e., audit). However, see (3) above.
- (7) Do not make a blanket denial asserting the (b)(3) and/or (b)(7)(A) exemptions when processing a FOIA request for records relating to an open civil or criminal investigation.

Note: Process requests for records that are the subject of litigation and that potentially fall under the (b)(5) exemption in accordance with IRM 11.3.41.13.6.2.6, *Exemption (b)(5)*.

- (8) A line-by-line review is usually necessary to determine whether a particular record is exempt in full or in part from disclosure under the (b)(3) and/or the (b)(7) exemptions.

Note: If all records within a particular category share characteristics that would warrant their exemption, they need not be individually analyzed and may be exempted by category.

- (9) Records of a taxpayer's own statements can seldom be withheld; do not attempt such withholding unless justified by the circumstances in a specific case. The agency has the burden of convincing courts of the interference caused by the full or partial release of memoranda of interviews with taxpayers. Evaluate the release of memoranda of interviews with taxpayers and the underlying IRS employee's notes on a case-by-case basis as follows:
 - a. Examine the memorandum to determine whether its disclosure, or any portion of it, could reasonably be expected to interfere with enforcement proceedings.
 - b. Document in case history notes or redaction indexes specific line-by-line identification of contemplated interference, accompanied by the justification for such interference.
 - c. Examples of the types of particularized line-by-line identification of contemplated interference may include admissions or confessions of the taxpayer or conflicting or contradictory statements, the disclosure of which would permit the taxpayer or their authorized representative to develop explanations negating the impeachment value of such admissions, confessions, or statements.
 - d. In contrast, do not rely on general statements that disclosure of the memoranda, or any portions thereof, could reasonably be expected to interfere with enforcement proceedings or provide a "road map" to or reveal the "scope and direction" of the IRS investigation to document the risk of interference. **The function must articulate** how disclosure of each item of information could cause the specific harms recognized in exemption (b)(7).
 - e. Typically, the introductory and biographical sections of these memoranda may not be withheld.
- (10) The following classes of records are available to the taxpayer requester or authorized representative(s):

- Transcripts of verbatim statements or affidavits taken from and signed by the subject taxpayer or authorized representative(s).

Note: IRS employee notes of an interview with the taxpayer may be exempt from FOIA disclosure to the extent that the notes reveal the employee's thoughts, opinions, or analysis of the questions or answers at the interview.

- The subject taxpayer's prior criminal record after ascertaining its releasability from the agency from which it was obtained.
- The taxpayer's tax returns without IRS employee marginal notations.

Example: A return containing markings made to illustrate or highlight those items which the assigned IRS employee considered significant to the investigation may be partially or fully withheld.

- Correspondence between the taxpayer and the IRS or material originally submitted voluntarily by the taxpayer.
- Transcripts of accounts of the taxpayer.
- News clippings relating to the taxpayer except in limited circumstances where a selection of articles reveals areas of interest or may identify a related party in a separate investigation.
- Summonses or other records, copies of which were provided to the subject taxpayer in the course of the investigation.
- Transmittals such as routine standard forms used to request records, or case transfers.
- File debris and any other seemingly innocuous items like folders and routine forms which, if released, would not indicate the scope or direction of an investigation.
- Any other items, the release of which is not prohibited by statute and may be released without adverse effect in the opinion of the IRS employee in charge of the case in coordination with Counsel.

- (11) When a requester seeks a compliance file, open or closed, that includes the records of other taxpayers, the third-party records must be redacted. Examples of these files include TFRP files and Preparer Penalty files. Even though documents containing the third-party return information may have been released during the compliance proceeding, Disclosure personnel do not have the authority to re-release them in response to a FOIA request. Audit reports, explanations of adjustment workpapers, etc., must be closely reviewed and any third-party return information, or data that would identify tax administration pertaining to a third party, must be redacted prior to release, citing FOIA exemption (b)(3) in conjunction with IRC 6103(a).

Note: In terms of any procedural information in the file, evaluate and make a determination about whether to assert (b)(7)(A) and (b)(3) in conjunction with IRC 6103(e)(7) on a case-by-case basis. Other FOIA exemptions may also apply.

Note: The fact that a preparer who is being considered for or has been assessed with a preparer penalty has a Form 2848 on file to represent the third party in the third-party's tax situation, does not allow the preparer to have access to the third-party's tax records in the context of the preparer penalty file. The taxpayer executed the Form 2848 to authorize the preparer to represent the

taxpayer in the taxpayer's administrative proceeding, this authorization does not extend to an administrative proceeding pertaining to the preparer.

- (12) References to an employee's leave usage found in history notes or other areas of an open compliance file may be released. Consider the personal privacy interests of exemption (b)(6) and (b)(7)(C), if applicable.
- (13) Records in System of Records Treasury/IRS 46.002, *CIMIS and Case Files*, may be available in response to a FOIA request. Although CIMIS is exempt from the access provisions of the PA, Disclosure personnel must consider releasing records in response to a FOIA request.
 - a. Release of CIMIS records will only be considered in consultation with the assigned special agent. CI guidelines state that the special agent in charge or the assistant special agent in charge is responsible for reviewing the CIMIS record before it is forwarded to disclosure for release.
 - b. If the requester is not aware of the investigation, disclosure personnel will consider using FOIA exclusion (c)(1). See IRM 11.3.13.5.3.1, *Exclusion (c)(1)*.
 - c. If the requester is aware of the investigation, disclosure personnel will request and consider the special agent's recommendation regarding release of CIMIS information.
 - d. Any information redacted must be referenced to a specific provision and the facts of each case must provide the rationale for the redaction.
 - e. Any determination not in accordance with the recommendation of the SAC requires DM involvement. The DM must discuss any recommended changes to the withholding recommendations of the special agent (SA). The DM should not make any release determinations without concurrence from the SAC. If an agreement cannot be met, Counsel involvement is required using established communication protocols.
- (14) For other records, Disclosure personnel in consultation with affected law enforcement personnel and/or Counsel, must determine whether disclosure meets the criteria of (b)(7).

Note: The IRS maintains contracts with electronic research publishing services such as Accurint/ChoicePoint. Case related research information that is downloaded and/or printed from these services and retained in an open or closed case file may be provided in response to a FOIA request after a determination is made that release will not harm tax administration and that there are no personal privacy interests.

- (15) The IRS employee assigned to the case may be aware that a specific investigation involves circumstances which may require a greater or lesser level of disclosure. Such special circumstances shall be discussed prior to the DM's determination.
- (16) Facts that could affect the level of disclosure in a particular case include:
 - a. The submission or use of falsified records by the taxpayer or the possible use of the records for impeachment purposes during any judicial proceeding.
 - b. Involvement of organized crime or narcotics figures.

- c. A record of violence on the part of the taxpayer that indicates the possibility of threats toward IRS employees or other persons, or prior record of crime involving assaults.
 - d. Attempts to bribe or attempts to threaten the investigating officials.
- (17) When conference call-in numbers and access codes are found in case files, redact them citing the (b)(7)(E) exemption. See IRM 11.3.41.13.6.2.3, *Exemption (b)(2)*.

11.3.41.13.6.5
(08-26-2021)
Attestation Process

- (1) If disclosing the records to the requester will harm an ongoing investigation and making copies for Disclosure personnel would also impair the investigation because it would significantly interrupt the efficient conduct of the investigation, the function with control over the records must make a written attestation and provide it to Disclosure personnel. Disclosure personnel will include the attestation in the FOIA case file. The attestation must contain:
- a. Employee name, title, and phone number,
 - b. Approximate volume of records (number of file cabinet drawers, boxes, pages etc.),
 - c. Location of records,
 - d. Other contact name, title, telephone number (i.e., Supervisor or Administrative personnel who would be able to locate the records),
 - e. Statement that disclosure of the records could reasonably be expected to interfere with enforcement proceedings and that copies of all records to be withheld from the requester are being provided at this time to the Disclosure employee or will be provided to the Disclosure employee if the requester files an administrative appeal or judicial complaint pertaining to the FOIA determination,
 - f. Assurance that the FOIA search request has been noted in the investigative file, and
 - g. The signature of an IRS or Chief Counsel supervisor who has the authority to withhold return information under IRC 6103(e)(7) as found in Delegation Order 11-2, found in IRM 1.2.2.12.2, *Delegation Order 11-2 (Rev. 4), Authority to Permit Disclosure of Tax Information and to Permit Testimony or the Production of Documents*.
- (2) The assigned Disclosure employee will advise the requester that responsive records in an approximate volume are being withheld pursuant to the appropriate FOIA exemption.
- (3) The function making the determination that disclosure could harm the government's case may provide a complete copy of the records being withheld to the Disclosure employee or must state in the documentation described above that a complete copy of the withheld documents will be kept available and will be provided if the requester files an administrative appeal or judicial complaint in the FOIA matter. The IRS must be able to identify any documents withheld. Therefore, if the function does not provide copies of the withheld records to the Disclosure employee, it is imperative that the function clearly identify within its file which documents were withheld in response to the FOIA request, and that this identification be maintained for the life of the file. None of the withheld documents may be destroyed sooner than called for in Document 12990, *Records Control Schedules (RCS)*, controlling FOIA records, and case

documents received or developed subsequent to the FOIA request must be distinguishable from documents withheld.

- (4) The function with control of an open and ongoing case must carefully weigh the administrative burden of providing the copies with its response to the search request against the burden of maintaining the segregation within its file between the withheld documents and newer material added as the case continues. An issue to consider is the possibility that the requester will make additional requests for the file, which will require the function to separately identify the documents responsive to each FOIA request.

11.3.41.13.7
(12-08-2022)

Respond and Close

- (1) The final response letter issued to the requester is the final action to complete a FOIA request. Interim responses must be issued to the requester throughout case processing, as applicable. See IRM 11.3.41.13.7.2, *Interim Response Letters*, for information on interim responses. The Disclosure caseworker must ensure the correct address is used on any correspondence issued to the requester.
- (2) The response letter must contain specific items of information such as the request receipt date and must explain any exemptions applied for records denied in full or in part.
- (3) Generally, when the response includes records that have been edited in any fashion, the letter must cite the reason and the associated exemptions applied. The edited records must reflect the exemption applied at the point of redaction.

Note: For further discussion of editing requirements, see IRM 11.3.13.5.6, *Redacting Records*.

- (4) Whenever a request seeks access to several different records or different classes of records ensure that the response clearly indicates which records and exemptions claimed are applicable to which portions of the request.
- (5) When an office has multiple requests from a single requester:
 - a. Identify the relevant requests by date, subject matter, certified mail number, and/or attach a copy of each request when making a single response to all requests; or,
 - b. When making a response to only one, or some, of the requests, clearly identify the relevant request(s) by date, subject matter, certified mail number, and/or attach a copy of the request(s).
- (6) Response letters which transmit any records to the requester will include:
 - a. Total pages responsive,
 - b. Total number of pages denied in full (if applicable),
 - c. Total number of pages denied in part (if applicable), and
 - d. Total number of pages granted in full.

Caution: The definition of page is one side of a two-sided record. A two-sided record equals two pages. If a record has nothing on the back, the blank page is not counted for FOIA purposes.

Note: The total of pages denied in full, denied in part, and granted in full must equal the total pages responsive to the request. After review, Disclosure personnel may determine records to be non-responsive

and would not count such records in the page totals and would not include them in the response letter.

Note: If denying a large number of pages in full as a category of records, you may estimate the number of pages. For example, “withheld in full four boxes of grand jury documents (copier paper size)” or “withheld in full third-party return information documents filling three linear feet of storage shelving.”

- (7) Enclose Notice 393, *Information on an IRS Determination to Withhold Records Exempt from the Freedom of Information Act-5 USC 552*, for no record, denial, or partial denial closures. Indicate in the response letter that Notice 393 is enclosed.

Example: A requester asks for three items: two are provided in full and one has a no records determination. Provide Notice 393 with this response. This gives the requester the right to appeal the adequacy of the search.

- (8) A DM or their designee must review all cases involving a full or partial denial of records. A DM or their designee must also review all cases where a “no record” determination has been made. See Delegation Order 11-2, found in IRM 1.2.2.12.2, *Delegation Order 11-2 (Rev. 4), Authority to Permit Disclosure of Tax Information and to Permit Testimony or the Production of Documents*, for the delegated official.
- (9) If a FOIA requester seeks judicial review during the processing of a FOIA request, or files a FOIA lawsuit, close the request as soon as notification of the suit is provided by Counsel. FOIA lawsuits are handled by Counsel, P&A and the responsibility for processing the open FOIA request shifts from Disclosure to Counsel once the suit has been filed. Upon notification of a FOIA lawsuit from P&A Counsel, take the following steps:
- a. Do not provide any responsive documents to the requester unless directed to do so by Counsel.
 - b. Notify any business unit(s) to rescind any open search effort requests, stating FOIA litigation has been filed and the FOIA request will be closed.
 - c. Close the case using the appropriate closing disposition to indicate FOIA litigation has been filed.
 - d. Assist the Counsel Attorney assigned to the litigation case by providing them any documents requested from the case files. If Counsel requests more assistance other than providing documents from the case file, the request for Counsel assistance must be elevated through the DM to Senior Leadership using established communication protocols.
 - e. Charge time spent on Counsel assistance to the closed case.
 - f. Document case notes with the fact that the suit was filed, the name of the Counsel attorney assigned the litigation case and any subsequent actions taken to assist Counsel.
- (10) Case notes must document and explain any and all actions taken or considered. Make entries in the inventory management system to document:
- a. Total time spent by Disclosure personnel on the request.
 - b. Total time spent by other IRS employees, as reflected in search memoranda documentation.

- c. Number of pages reviewed and released.
- d. Type of closure (i.e., grant, denial, partial denial, imperfect).
- e. Exemption(s) applied.
- f. The supporting statute, if applying the (b)(3) exemption.
- g. The specific privilege(s) cited if applying the (b)(5) exemption, and the explanation of how the privilege(s) apply.
- h. If applicable, import a blank page into the inventory management system when FOIA exemptions are being cited to deny documents in part or in full when responsive documents are not secured or when voluminous responsive documents are reviewed and processed outside of the inventory management system. Apply any applicable exemptions to the imported blank page to capture what exemptions are being cited in your response.

Note: Other case documentation could include, if applicable, discretionary disclosure considerations, foreseeable harm justifications, impairment determinations, and withholding recommendations from other functions.

- i. When a case is forwarded to the approving official for review and signature, when applicable.

11.3.41.13.7.1
(02-26-2024)

Extension Letters

- (1) Make all efforts to meet the statutory 20-business daytime limit for response. Send all required extension letters, including those needed for deadlines occurring during absences from the office.
- (2) The FOIA (at 5 USC 552(a)(6)(B)(i)) provides for an additional 10 business days to respond if Disclosure personnel notify the requester in writing that the IRS needs more time to:
 - 1. Search for and collect the requested records from other locations separate from the responding office (i.e., FRC),
 - 2. Search for, collect, and review a large volume of records which are, or may be, responsive to the request,
 - 3. Consult with another agency or Treasury bureau which has a substantial interest in one or more of the responsive records, or
 - 4. Consult with business submitters to determine the extent of proprietary information.
- (3) When extension letters are needed consult the table below to determine the requirements:

Expected Completion Time	Statutory Criteria Met	Statutory Criteria Not Met
Within 20 business days of receipt of the request	No extension letter required	No extension letter required
Within 30 business days (20 + additional 10-day statutory) of receipt of the request	Send extension letter with additional 10-day statutory language and provide date of additional 10-day extension	Send extension letter without 10-day statutory language and include paragraph of estimated closing date

Expected Completion Time	Statutory Criteria Met	Statutory Criteria Not Met
Beyond 30 business days (20 + additional 10-day statutory) of receipt of the request. See Note below.	Send extension letter with additional 10-day statutory language, 10-day extension date, and paragraph explaining additional time will be needed beyond that date, providing an estimated closing date or date you will follow up with requester.	Send extension letter without 10-day statutory language and provide paragraph of estimated closing date, or date you will follow up with requester.
Subsequent Extensions	See (4) below	See (4) below

Note: An estimated closing date of up to 90 calendar days in the future can be used without managerial approval. However, caseworkers should only provide a date commensurate with the time necessary to complete the closing of their case.

- (4) The letter requesting the initial voluntary extension of time is required even if the requester agreed to allow additional time to respond during personal or telephone contact. It is important to notify the requester in writing that they have a right to file for judicial review to obtain a response. Additionally, notify the requester that the court may find that the IRS's failure to comply with the statutory response date is justified if the requester refuses to consider limiting the scope or to accept a reasonable alternate time frame for response.
- (5) Send a subsequent extension letter to request additional time beyond the anticipated closing or follow up date provided in the prior extension letter. The subsequent extension letter must include information as to the status of the request (i.e., reviewing voluminous records). Review the Managerial Review of FOIA Extension Letters memo, which can be found on the Disclosure Share-Point site (Disclosure Communication Resources>Memos):
 - a. It is not necessary to send a subsequent voluntary extension letter when notifying the requester in person or by telephone, but you must document case notes with the following information:
 1. Date of verbal contact
 2. Name of the requester and title, if applicable
 3. Discussion of limiting the scope of records, if applicable
 4. The details of any scope limiting agreement and the new voluntary extension date

Note: If the requester agrees to revise the scope of the request, confirm the details of the agreement in a letter to the requester and keep a copy in the electronic case file.

Note: Consider providing an interim response when sending an extension letter, if applicable. See IRM 11.3.41.13.7.2, *Interim Response Letters*.

- b. Send the Subsequent Extension letter if the request provides no phone number and you cannot locate one from internal or external sources.
- (6) Where unusual circumstances require more than 30 calendar days to respond, Disclosure personnel must review open cases, as often as necessary, and take any appropriate processing actions to progress the case toward closure, to send additional extension letters, or to provide a status update to the requester, if needed. Record these reviews and any follow-up activity, in the history notes. For example, record contacts with the function regarding case search or review status.
- (7) Disclosure caseworkers must ensure any extension and revised due date fields are updated in the inventory management system when extension letters have been sent.

11.3.41.13.7.2
(08-26-2021)
**Interim Response
Letters**

- (1) An interim response letter should be issued to requesters when it is appropriate. The Department of Justice Office of Information Policy issued guidance on making interim responses during the processing of FOIA requests. An interim response letter should be provided when some records are available rather than waiting until all records are located and processed.
- (2) Do not send Notice 393, *Information on an IRS Determination to Withhold Records Exempt from the Freedom of Information Act-5 USC 552*, with the interim response letter. Notice 393 should be sent with the final response letter, if applicable.
- (3) Contact information for the Office of Government Information Services (OGIS) and the FOIA Public Liaison must be included in the interim letter. See IRM 11.3.13.6.5, *FOIA Public Liaison*, and IRM 11.3.13.6.6, *Office of Government Information Services (OGIS)*, for additional information on the OGIS and FOIA Public Liaison procedures.

11.3.41.13.7.3
(12-08-2022)
Expedited Response

- (1) The FOIA provides for expedited processing if the requester asks in writing and demonstrates a compelling need for the information.
- (2) A compelling need may exist when:
 - a. Failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual,
 - b. The information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged federal Government activity; or

Note: See *26 CFR 601.702(c)(6)* for details about who qualifies as an individual primarily engaged in disseminating information and what situations may meet the compelling need requirement.

- c. Failure to obtain the records quickly could cause a loss of substantial due process rights.

- (3) A request for expedited processing must include a detailed explanation of the circumstances creating the compelling need. The explanation must be sufficient to enable Disclosure personnel to determine whether the asserted need meets the statutory or regulatory requirements. The requester must certify that the statement of compelling need is true and correct to the best of their knowledge and belief. A requester may ask for expedited processing at the time of the initial request for records or at any later time.

Note: A request that does not contain a compelling need or certification of the need is not an "invalid" request for expedited processing. If the request for expedited processing does not have a compelling need or certification as required, the request for expedited processing may be denied and the requester must be provided the required notification with appeal rights.

- (4) A notice of the determination to grant or deny expedited processing must be provided within **10-calendar days** after receipt of the request. The letter must be signed by the DM or designee. If the request for expedited processing is denied, provide a Notice 393, *Information on an IRS Determination to Withhold Records Exempt from The Freedom of Information Act-5 U.S.C 552*, with notification of the denial. Contact information for the Office of Government Information Services (OGIS) and the FOIA Public Liaison must also be included in all responses denying a request for expedite processing. See IRM 11.3.13.6.5, *FOIA Public Liaison*, and IRM 11.3.13.6.6, *Office of Government Information Services (OGIS)*, for additional information on the FOIA Public Liaison and procedures.

Note: Improper FOIA requests are not considered constructively "received". The 10 calendar day timeframe does not start until the IRS receives a valid FOIA request.

- (5) If a caseworker will close a case before the 10-calendar day requirement, the determination to grant or deny expedited processing is moot and no determination to grant or deny the expedited processing is required to be made. Pattern language should be used to advise requesters that the request for expedited processing was not considered.

Note: If a caseworker is unsure if a case will close before the 10-calendar day requirement, the request should be treated as if it will go beyond the 10-calendar days and a grant or denial response should be sent to the requester.

- (6) The pattern letters have language for responding to requests for expedited processing.
- (7) Document all actions and expedite processing determinations in the inventory management system.

11.3.41.13.8
(08-26-2021)
Special Issues

- (1) This section provides guidance related to some of the more complex or unusual issues encountered when processing FOIA requests.

11.3.41.13.8.1
(12-08-2022)

**Title 31 Reports - CTRs,
CMIRs, FBARs, and
SARs**

- (1) BSA provisions found in Title 31 of the USC require that certain currency transactions and other financial information be reported to the Secretary of the Treasury. The FinCEN has jurisdiction over these reports. They are:
 - a. FinCEN Form 101, Suspicious Activity Report by the Securities and Futures Industries
 - b. FinCEN Form 102, Suspicious Activity Report by Casinos and Card Clubs
 - c. FinCEN Form 103, Currency Transaction Report by Casinos (CTRC)
 - d. FinCEN Form 103-N, Currency Transaction Report by Casinos Nevada (CTRC-N)
 - e. FinCEN Form 104, Currency Transaction Reports (CTR)
 - f. FinCEN Form 105, Report of International Transportation of Currency or Monetary Instruments (CMIR)
 - g. FinCEN Form 107, Registration of Money Services Business (RMSB)
 - h. *FinCEN Form 110, Designation of Exempt Person (DOEP)*
 - i. *FinCEN Form 111, Suspicious Activity Report (SAR)*
 - j. *FinCEN Form 112, Currency Transaction Report (CTR)*
 - k. *FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR)*
 - l. TD F 90–22.1, Report of Foreign Bank and Financial Accounts (FBAR)
 - m. TD F 90–22.47, Suspicious Activity Report (SAR) for Depository Institutions
 - n. TD F 90–22.53, Designation of Exempt Person
 - o. TD F 90–22.56, Suspicious Activity Report by Money Services Business
 - p. *Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business.*
- (2) A FOIA request seeking access to the specific FinCEN reports listed in (1) must be processed by FinCEN. Direct requesters to submit a FOIA request to:

Freedom of Information Act Request
Financial Crimes Enforcement Network (Disclosure Office)
P.O. Box 39
Vienna, VA 22183
- (3) When processing a FOIA request seeking access to FinCEN information related to IRS compliance activities, (i.e., an FBAR examination) cite FOIA exemption (b)(3) in conjunction with 31 USC 5319 to deny access to these Title 31 reports. Also cite FOIA exemption (b)(3) in conjunction with 31 USC 5319 to deny access to information extracted from these reports, unless the information has been used in a tax administration case (see (4) below).
- (4) If a FOIA request is made for tax investigatory files, which may include CTRs, CMIRs, FBARs, or SARs, or information extracted from these reports, the determination to withhold or release the reports or information depends on the status of the underlying investigation and the effect, if any, of disclosure to the taxpayer under investigation. Use the following information to determine whether BSA data may be released pursuant to the FOIA:
 - a. If disclosure of the Title 31 reports or information extracted from the reports will interfere with ongoing tax enforcement proceedings, assert exemptions (b)(7)(A) and (b)(3), in conjunction with IRC 6103(e)(7). Do not assert 31 USC 5319. Treat the information extracted from these reports in the same manner as other return information contained in the tax investigatory file.

- b. If disclosure of the Title 31 reports or information extracted from these reports will not adversely affect ongoing tax enforcement proceedings, assert exemption (b)(3) in conjunction with 31 USC 5319 except as noted in (c) below.
- c. If history notes, underreporter documents, revenue agent reports, or other documents used to sustain an assessment include information from the reports, release the information unless an appropriate official determines that disclosure will impair tax administration under IRC 6103(e)(7). If the appropriate official makes an impairment call, assert FOIA exemption (b)(3) in conjunction with IRC 6103(e)(7) and (b)(7)(A).

Note: During ongoing tax enforcement proceedings, if a taxpayer does not invoke FOIA, the case agent may disclose investigatory material, including Title 31 reports or information extracted from these reports, unless the proper official determines that disclosure will adversely affect ongoing tax enforcement proceedings under IRC 6103(e)(7).

- (5) Title 31 investigatory files, other than the CTRs, CMIRs, FBARs, or SARs themselves, or information extracted from these reports, are not exempt from access under 31 USC 5319 and FOIA exemption (b)(3). Evaluate requests for investigatory files related to “pure” Title 31 investigations under applicable FOIA exemptions (i.e., (b)(7)(A)). Money laundering cases (i.e., most 18 USC 1956 and 1957 cases) follow these same rules.

Note: See Exhibit 11.3.41-18, *FOIA and Title 26 Cases with CTRs or Data Extracted from CTRs*, for assistance in deciding whether to release Title 31 information and the appropriate FOIA (b)(3) statute to cite when withholding.

11.3.41.13.8.2
(08-26-2021)
Microfilm Requests

- (1) Microfilm transcripts and similar records sometimes included in Collection, Examination, and CI enforcement action files contain information about taxpayers other than the taxpayer to whom the file pertains. This results from the physical limitations of microfilm copying equipment or other reasons not related to the administration of the case. These records require special consideration as follows:
 - a. Withhold extraneous information contained in the file because it is third-party return information that the law prohibits disclosing.
 - b. When withholding such extraneous portions of records, cite no exemptions if the material is not within the scope of the request. If such information is the only material not disclosed, this is considered a grant-in-full for reporting purposes. When the request seeks only information about the requester, the extraneous information is not within the scope of the request.
 - c. When the request seeks “everything in the requester’s file” or similar wording, consider the third-party return information to be within the scope of the request and withhold pursuant to exemption (b)(3) in conjunction with IRC 6103(a), (b)(3) in conjunction with IRC 6103(e)(7), and/or (b)(7)(C).

11.3.41.13.8.3
(08-26-2021)

**Foreign Government
Files**

- (1) Foreign government files, sometimes known as international tax information, include information obtained from a foreign government under a treaty with the US or a Tax Information Exchange Agreement (TIEA).
- (2) When searching for responsive documents, international information can be identified in various ways. There may be a stamp on the information that reads "Treaty," or the RA assigned to the case may indicate that the information is treaty information. The FOIA request may also ask for "information received from (country name)."
- (3) Responses to these requests require coordination between Disclosure personnel, the RA who conducted the examination and the Large Business and International (LB&I) Division's EOI function.

Caution: Under no circumstances can any treaty information be released without LB&I EOI coordination, review, and approval.

- (4) Disclosure caseworkers will alert their DM when they receive these types of FOIA requests and document the case file appropriately.
- (5) The Disclosure caseworker will obtain the examination file from the RA handling the case.
- (6) The RA will provide a copy of the exam file and make the initial determination on the release of treaty information. This is in addition to any recommendations from the RA on other (non-treaty) information in the file.
- (7) If the RA determines that some of the treaty information is releasable, Disclosure caseworker or their manager will contact EOI directly to share the RA's recommendations and obtain EOI review and written concurrence.
- (8) If the RA determines that all of the treaty information should be withheld, the RA will provide a written recommendation. Disclosure will work with the RA to determine the applicable FOIA exemptions, i.e., (b)(3) in conjunction with IRC 6103(e)(7) and (b)(7)(A). The Disclosure caseworker must contact EOI directly to share the RA's recommendations and to request a written recommendation of other applicable FOIA exemptions (i.e., (b)(3) in conjunction with IRC 6105).

Note: LB&I is authorized to make recommendations to withhold treaty information under IRC 6105. Case notes must support the recommendation determination from LB&I.

- (9) Requests concerning international tax issues that are not for a specific taxpayer will be worked by a TLS.

11.3.41.13.8.4
(08-26-2021)

**Written Determinations
(Including Private Letter
Rulings, Technical
Advice & Chief Counsel
Advice)**

- (1) The public may access "written determinations" and "background file documents" pursuant to IRC 6110. These documents are not subject to FOIA. These terms are defined in IRC 6110(b)(1) and (b)(2) respectively. See CCDM 37.1.1, *Written Determinations Under Section 6110*, regarding processing requests pursuant to IRC 6110.
- (2) CCA issued on or after January 1, 1986, are available for public inspection through the FOIA Library and caseworkers may direct requesters seeking CCA to the FOIA Library.

Note: If the requester seeks a copy of a written determination from 1997 or later, and they can provide the identification number or Uniform Issue List (UIL) number, field Disclosure personnel may advise the requester how to access the record on the internet website and/or download it themselves and provide it. For further discussion of the determinations involved in data electronically available to the requester, see IRM 11.3.13.4.1(3) and (4), *Search Efforts*. If, however, the request seeks an underlying file, discuss with the DM to get assistance from a TLS or transfer that portion of the request to the TLS with DM approval.

- (3) If the requester's own written determination is located within their administrative file, processed in response to a FOIA request (i.e., in the Examination file), Disclosure personnel must coordinate release of that record with a TLS, or the Chief Counsel attorney if identified in the administrative file, to ensure that any copy released to the requester is in compliance with Chief Counsel release recommendations.

Note: If the requester specifically requests a copy of the requester's own written determination in the version that is available only to the taxpayer who is the subject of the written determination, inform the requester that such version is available only by request under IRC 6110 and addressed to the Chief, Disclosure Unit, Office of the Associate Chief Counsel (P&A).

- (4) When a taxpayer makes a request for an investigative file pursuant to the FOIA, and a third-party written determination (example: CCA, PLR or Technical Advice Memoranda (TAM)) is located within the file, deny the written determination documents citing FOIA exemption (b)(3) in conjunction with 26 USC 6103. The requester must have proper authorization to receive third party return information.

- (5) If a FOIA requester asks the IRS to issue a ruling or determination letter (as an adjunct to the FOIA request itself), use the following response:
"The FOIA does not require federal agencies to create new records, such as new rulings or determination letters. Additional information is available in 26 CFR 601.201. You may request a ruling or determination letter by following the instructions in Revenue Procedures found on IRS.gov, such as Revenue Procedure 2013-8, for rulings related to issues under the jurisdiction of the Tax Exempt and Government Entities division of the IRS (the IRS issues new Revenue Procedures at the beginning of each year to reflect any changes since the previous issuance). The Revenue Procedures also explain the user fee schedules for letter rulings and determination letters. The current Revenue Procedures are published under the Administrative Heading in the first Internal Revenue Bulletin (IRB) of the calendar year."

Example: Revenue Procedure 2020-1 is published in IRB number 2020-1. IRBs are published at the following site: <https://apps.irs.gov/app/picklist/list/internalRevenueBulletins.html>. Contact the persons named in the Revenue Procedure if you have any questions.

11.3.41.13.8.5
(08-26-2021)

**Contracts/Commercial
Information**

- (1) Contractors (Business Submitters/Vendors) provide information to the IRS that may contain trade secrets and commercial or financial information that is privileged or confidential. The IRS routinely receives FOIA requests for this information and must give the contractor the opportunity to provide a detailed statement of any objections to the release of the contract records.

Note: All FOIA requests for contract information must have a valid IRS and/or Treasury contract number listed in the request. If no contract number is listed, then the request is imperfect.

- (2) Disclose business information provided to the IRS by a business submitter only as allowed by regulation. Carefully follow the provisions of 26 CFR 601.702. Generally, they require prompt written notification to submitters of business information that the IRS has received a FOIA request for that information and the details of any proposed response. Further, the IRS must give business information submitters the opportunity to provide a detailed statement of any objections to disclosure within 10 business days. Attempt to contact the submitter to ensure their receipt of the inquiry if you receive no response within the allotted time.

Note: On September 30, 1997, Part 15 of the Federal Acquisition Regulation (FAR) was revised to stipulate that unit prices of each award be disclosed to unsuccessful bidders during the post award notice and debriefing process. Additionally, you may release unit prices on request under the FOIA, unless the business submitter provides written documentation that the unit prices are trade secrets or are commercial or financial information that is privileged or confidential (consider the use of exemption (b)(4) in this situation). Furthermore, the FAR specifically provides that no information shall be publicly shared which is exempt from release under the Freedom of Information Act (5 USC 552) including - (1) Trade secrets; (2) Privileged or confidential manufacturing processes and techniques; (3) Commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information; and (4) The names of individuals providing reference information about an offeror's past performance. FAR 15.506(e).

- (3) Contract proposals are statutorily exempt from disclosure under FOIA (unless the proposal is incorporated by reference into the contract between the IRS and the vendor) and must be withheld using FOIA exemption (b)(3) in conjunction with 41 USC 4702.

Note: Even if a proposal was incorporated into a contract in total, other FOIA exemptions may apply to withhold certain parts of the contract from being disclosed; for example, exemption 4 may apply.

- a. This statute applies only to contractor proposals (technical, business, management, and cost proposals) submitted in response to a solicitation for competitive bid (Request for Proposal or RFP).
- b. The statute also provides protection for a proposal submitted by the successful bidder, provided the language in the proposal is not actually incorporated in, nor referred to in, the contract. Base the determination to assert the (b)(3) exemption on whether the language in the proposal is incorporated into the contract.

- (4) Give considerable weight to a business submitter's objections to disclosure unless they clearly conflict with legal precedent or obviously lack merit.
- (5) If you make a determination to release some or all of the business information over the objections of a business submitter, notify the business submitter in writing of the:
 - a. Reasons for not sustaining the objections to disclosure,
 - b. A description of the business information to be disclosed, and
 - c. The anticipated disclosure date (not less than 10 business days after the mail date of the letter notifying the business submitter). Provide a copy of the notification letter to the FOIA requester at the same time, unless prohibited by law.

Note: If providing a copy of the notification letter under (c) above, do not include information for which the business submitter requests confidential treatment. Therefore, do not describe in any detail the information that Disclosure personnel plan to make public contrary to the vendor's preference. If this is not possible, the detail provided to the vendor must be redacted from the copy sent to the requester. Do not indicate FOIA exemptions with respect to these redactions.

- (6) Notify business submitters whenever a requester brings suit seeking to compel disclosure of business information covered by 26 CFR 601.702.
- (7) FOIA requests for IRS contracts are worked by the TLS. See IRM 11.3.41.17.3, *Contracts*.

11.3.41.13.8.6
(08-26-2021)
**Requests for 23C
Assessment Records**

- (1) A taxpayer or authorized representative may seek access to campus assessment records. These requests may contain language with one or more of the following phrases:
 - All my information in system of records 24.030
 - My Form 23-C and/or RACS006 document
 - Copies of the Form 4340, *Certificate of Assessments and Payments*, prepared about me
 - My section 6203 information
 - The Summary Record of Assessment and all supporting documentation
 - My summary of account

Note: Provide assessment information, to the extent it exists, regardless of the wording of the request. Provide the Form 23-C/RACS006 unless the requester specifically states not to provide RACS006 or unless requester is seeking Form 23-C/RACS006 specific to an individual SSN and/or name.

- (2) Occasionally, requesters submit FOIA requests for assessment materials to use the prospective responses in the context of IRS enforcement activities. A response that merely advises the requester that "there is no Form 23-C with your name on it" opens the door for the requester to assert that the IRS has not made a valid assessment when challenging a statutory notice of deficiency. Use approved pattern correspondence to ensure correct and standard responses.

- (3) Work FOIA requests for assessment information and provide responsive records following the procedures listed in IRM Exhibit 11.3.41-19, *Procedures for Processing Requests for 23C/RACS006*, and using approved pattern language/letters in all responses to ensure that:
 - a. The response clearly explains that the combined RACS006 information and the information in the transcript meet the legal requirement of IRC 6203 and are the equivalent of what was requested.
 - b. The response explains that because 23C and Revenue Accounting Control System (RACS) documents are not retrieved by taxpayer name or identifying number, they are not subject to the PA and the IRS will process all requests for these documents under the FOIA and bill using the fee provisions of that statute.
- (4) If it appears the requester does not understand the IRS procedures on assessments, Disclosure personnel will include approved pattern language in the response letter.
- (5) Research IDRS for any and all assessments for the tax years requested. Use the DLN for the TC associated with the assessment, including but not limited to TC 150, 290, 300, 196, 360, etc.

Note: TCs with no assessment amount (i.e., .00) do not apply.

- a. Search both the MF and the Non-Master File (NMF) for records responsive to the request. NMF records are available through the ANMF system. Research the ANMF database for each request to ensure a complete search for all assessments.
 - b. Prepare Form 13906, *Disclosure Search Request for Accounting Records*, and fax it to the appropriate campus(es) to request assessment documents. See IRM Exhibit 3.17.244-7, *Manual Assessment Contacts*, for a list of Campus Accounting Records contacts.
- (6) If the requester asks for Form 23-C/RACS006 or Summary Record of Assessments and the supporting documents, provide the Form 23-C/RACS006 with a TDS transcript as the supporting document under IRC 6203.
 - (7) If the requester asks for the documents that support an assessment made on their account, the Administrative file (Exam, AUR, SFR, Collection, etc.) is the correct supporting documentation to provide.
 - (8) Since there may be more than one assessment involved, or more than one tax year involved, you may have to send Form 13906 to more than one campus.
 - (9) In all instances, word your response to the requester carefully, whether by telephone or in writing. Even though Form 23-C is rarely used, and there is generally no identifying information on either the signed RACS Automated Summary or the paper Form 23-C, avoid making statements like “there are no records responsive to your request.”
 - (10) Request the preparation of Form 4340, *Certificate of Assessments and Payments*, by completing Form 4338, *Information or Certified Transcript Request*. Submit to the Compliance and Accounting function in the appropriate Campus. See the RRR document on the Disclosure SharePoint site for the appropriate campus contact. See also IRM 3.17.243.6.2, *Form 4340 Certificate of*

Assessments, Payments, Other Specified Matters. Do not provide a certified Form 4340 in response to a FOIA Request. Specifically state in the comments area of the Form 4338, “Do not sign and do not certify.” See IRM 11.3.41.13.8.37, *Requests for Certified Copies of Records.*

- (11) If you receive a letter seeking record of assessment transcripts under IRC 6203 that does not cite FOIA, do not process it using FOIA procedures. In Revenue Ruling 2007-21, the IRS issued formal guidance stating that the IRS is not required to provide information in any particular form when responding to a taxpayer request for proof of assessment. The revenue ruling goes on to state that both Form 4340, MFTRA- X or similar documents contain the information required by 26 CFR 301.6203–1. When responding to a request seeking a record of assessment that does not cite the FOIA, use the approved pattern language to refer the requester to the routine agency procedure. See IRM 21.2.3, *Transcripts*, for additional information for processing these requests.

Note: There is no routine agency procedure to obtain Form 4340. If a request for Form 4340 is received citing only IRC 6203, provide information to the requester that a perfected FOIA request needs to be submitted to obtain Form 4340.

11.3.41.13.8.7 (08-26-2021) Review of Transcripts

- (1) The IRS frequently uses IDRS transcripts to respond to requests from taxpayers. Questions arise relating to what portions, if any, of responsive transcripts may be released and what information to redact.

Note: A requester does not need to file a PA or FOIA request to obtain most IDRS prints. Most IDRS prints are available to the taxpayer under IRC 6103.

- (2) This section relates to where protected data appears on certain transcripts, the actions necessary to release the data, the appropriate citations to use to support non- release of certain information and remarks explaining the logic behind the instructions. It includes instructions for:

- a. CI Indicators. See IRM 11.3.41.13.8.8, *CI Indicator*.
- b. DIF Score, DIF Level, DAS Score, SERFE Indicator, and the UIDIF Score. See IRM 11.3.41.13.8.9, *DIF, DAS, and UIDIF Score, SERFE Indicator*.
- c. Resource Workload and Management System (RWMS). See IRM 11.3.41.13.8.10, *RWMS Score*.
- d. Informant Claim Examination (ICE) indicator. See IRM 11.3.41.13.8.11, *ICE Indicators*.

- (3) Make determinations to redact the Potentially Dangerous Taxpayer (PDT) or Caution Upon Contact (CAU) indicator on a case-by-case basis.

Note: PDT or CAU information may be withheld from disclosure under FOIA exemptions (b)(7)(A), (b)(7)(C), (b)(7)(D), (b)(7)(F) and/or in conjunction with IRC 6103(e)(7) as applicable.

Exception: PDT information is exempt from the access provisions of the Privacy Act of 1974, 5 USC 552a by virtue of subsections (J)(2) and/or (k)(2).

- (4) Do not redact transactions that are dated after the received date of the request as out of scope/outside the scope/non-responsive of the request.
- (5) Review carefully the type(s) of tax and the tax periods specified on POAs or other disclosure authorizations in cases involving a taxpayer's designee or business relationships such as partnerships to ensure that any information released is authorized.
- (6) In cases involving married taxpayers, be alert to changes in marital status and to different spousal combinations for recently married, divorced, or separated taxpayers. Taxpayer entity information on the primary SSN automatically updates for subsequent year filings. This information can include filing status, filing history, SSNs of previous and/or subsequent spouses, etc. Carefully review information requests for a previously filed joint return from a separated or divorced spouse to protect the confidentiality of the other taxpayer's current information.

11.3.41.13.8.8
(08-26-2021)
CI Indicator

- (1) The "Z" or "-T" freeze and transaction codes in the 900 series may need redaction, if present. These indicators and codes are found in the body of TXMODA, MFTRA, ACTRA, ENMOD, IMFOLT, and BMFOL prints.
- (2) If the taxpayer is aware of the investigation, there is no need to redact. When the codes are present, obtain clearance from CI or contact the SA assigned to determine if the taxpayer has been notified they are under investigation. This applies even if the case is closed. CI may also be aware of potential harms to other cases related to the transcript in some fashion.

Example: In the course of a refund scheme investigation, some taxpayers targeted initially may no longer be considered a part of the scheme. While their particular case may have closed, related cases may still be in process. Withholding the CI indicators on the closed case may be appropriate if CI articulates the potential that disclosure of the refund investigation to that previously targeted taxpayer would prematurely alert others in the targeted group about the investigation.

- (3) If the SA recommends redaction, Disclosure personnel will cite exemption (b)(7)(E).
- (4) If the taxpayer is not aware of the investigation and the SA indicates that redacting the code and citing exemptions would harm the investigation, you may consider excluding the information pursuant to the provisions of 5 USC 552(c)(1). See IRM 11.3.13.5.3, *Record Exclusions*. Coordinate any use of the record exclusion through the FOIA policy analyst in HQ.

11.3.41.13.8.9
(02-26-2024)
**DIF, DAS, and UIDIF
Score, SERFE Indicator**

- (1) Do not disclose the DIF, DAS, DIF Level and/or UIDIF scores. Also, do not disclose information containing return selection guidelines. The score of "000" is a potentially legitimate score and must also not be disclosed. In addition to the numeric value, where the term DIF in various forms may appear, such as DIF Category, DIF Formula, DIF Score, DIF Level, DIF Inc Srt, the space following the term, even if blank, must be redacted. Disclosure personnel will cite exemptions (b)(3) in conjunction with IRC 6103(b)(2) and (e)(7), and (b)(7)(E) as authority to protect the DIF, DAS, and UIDIF scores.

Caution: Certain transcripts may contain additional codes or indicators that do not contain the phrase "DIF" but still require redaction as they directly

indicate DIF scores and should have any numbers or spaces redacted. For example, AMDISA transcripts may contain the "FORM-CD>", followed by a number, which contains the DIF Formula used to calculate the DIF Score. The number and/or space following FORM-CD> should be redacted in the same manner as a DIF Score. Refer to IRM 4.4.1-1, *AIMS Procedures and Processing Instructions, Reference Guide Exhibit*, for identification of terms found on AIMS transcripts such as AMDIS.

Exception: Caseworkers should not redact the terms "DIF/DAS Reason Codes", "DIF/DAS-RSN-CD" or the letter or blank space following these terms.

Note: Pursuant to the IRS RRA '98, the IRS must now provide notice to taxpayers explaining, in general terms, how it selects taxpayers for examination, but nothing containing information that would be detrimental to law enforcement, if disclosed. The DIF formulas and scores are examples. Encourage employees to provide a copy of Publication 1, *Your Rights as a Taxpayer*, in response to the question "Why was I selected for audit?". Publication 1 gives a general list of reasons for examination selection without revealing anything about the factors that may have led to a particular examination.

- (2) Do not disclose the SERFE indicator found in Tax Exempt/Government Entities (TEGE) transcripts. Cite exemption (b)(3) in conjunction with IRC 6103(b)(2) and (e)(7), and exemption (b)(7)(E) as authority to protect the SERFE score.

Note: See IRM Exhibit 4.10.16-4, *Reason Codes*, which is available on www.irs.gov for reason codes that are available to the public.

11.3.41.13.8.10
(08-26-2021)
RWMS Score

- (1) The Resource Workload and Management System or RWMS score found in IDRS prints, (i.e., TDINQ) is the scoring system used by the Collection function to assign cases. Several factors, including the grade level of difficulty for RO assignment affect the score. Because the numerical score assigned is not a dollar amount tolerance and it's not governed by national criteria, you may release it.

11.3.41.13.8.11
(12-08-2022)
ICE Indicators

- (1) Informant Claim Examination (ICE) indicators may be found on AMDISA prints which can identify an informant claim. Withhold the ICE indicator as well as the numeric number that follows the indicator and cite exemptions (b)(3) in conjunction with IRC 6103(b)(2) and (e)(7), and (b)(7)(A) as authority to protect the ICE information.
- (2) TXMODA and IMFOLT may contain an ICE indicator SPC 0153 with TC 420. Withhold the Special Processing Code (SPC) 0153 citing exemptions (b)(3) in conjunction with IRC 6103(b)(2) and (e)(7), and (b)(7)(A).

11.3.41.13.8.12
(08-26-2021)
RTVUE and BRTVU Prints

- (1) Release RTVUE and BRTVU prints even when the "per computer" column contains a different amount from that reported by the taxpayer or is all zeros.
- (2) The RTFTP print provides essentially the same information as RTVUE. Provide this transcript except when the FOIA request specifically asks for a RTVUE transcript or the RTVUE is included in documents responsive to a broader request (i.e., for a case file).

11.3.41.13.8.13
(08-26-2021)

**Penalty and Interest
Notice and Explanation
(PINEX)**

- (1) PINEX is an IDRS command code used to compute calculations of penalties and interest using both posted and pending transactions. When interest is computed by the MF, PINEX may be used to explain the debit or credit interest calculations when a taxpayer questions those calculations. See IRM 20.2.1.6.3, *Command Code PINEX*.
- (2) Unlike other IDRS command codes which merely request account information, the PINEX command code initiates activity on the taxpayer's account.
 - a. PINEX generates a notice (Computer Paragraph (CP) 569) which provides the taxpayer with balance due information up to a specified date. The IRS does not retain a copy of this notice.
 - b. Before sending the notices generated through PINEX, IRS employees must manually review the balances and analyze the accounts to resolve discrepancies. See IRM 20.2.1.6.3.2, *PINEX: Hardcopy Notice Verification and Mailing*.
 - c. When a PINEX request is generated, IDRS systemically updates the notice history section of the tax module and automatically delays the next IDRS notice on balance due modules.
- (3) Do not generate a PINEX computation for release in response to a FOIA request as it does not provide a copy of an existing record, rather, it causes the creation of new records.

Note: A PINEX transcript already in an administrative file when a FOIA request arrives is an existing document within the file and must be reviewed for release or withholding under the same criteria as the rest of the file.

- (4) Use the following language in response to a FOIA request seeking PINEX information:

“Your FOIA request appears to ask for documents that concern your personal liability to pay federal income tax. PINEX is a computer command code used to generate a Notice 569, Penalty and Interest Explanation, in response to a taxpayer’s questions about penalty or interest calculations in a Collection proceeding. The IRS does not retain a copy of the Notice. Thus, your request does not identify existing records but is a request for the creation of personalized and specific statements concerning your tax liability. The FOIA gives individuals the right to have access to existing agency records. It does not require agencies to create records in response to a request. There are no documents responsive to your request. If you have questions about a balance due on your tax account, you may contact the IRS toll free number at 1-800-829-1040 to discuss your specific tax situation. Included is a Form 4506-T which you may use to order transcripts of your account.”
- (5) Close the request as imperfect if the only item requested was a PINEX. Like all imperfect requests, do not include a Notice 393, *Information on an IRS Determination to Withhold Records Exempt from The Freedom of Information Act - 5 U.S.C 552*.

11.3.41.13.8.14
(08-26-2021)

**Privacy Act Transcript
Request Activity
(PATRA)**

- (1) PATRA-D is an IDRS command code that is used to obtain a list of any disclosures of a taxpayer's return or return information.
- (2) PATRA-P is an IDRS command code that is used to obtain a list of any disclosures of a payer's master file. This is rarely, if ever, requested.

- (3) See IRM Exhibit 2.3.34-1, *Command Code PATRA*, as a resource for input guidance of the PATRA command code.
- (4) Do not refer PATRA requesters to use Form 4506-T, *Request for Transcript of Tax Return*. PATRA is not available through routine agency procedures.

11.3.41.13.8.15
(08-26-2021)
**Requests for IDRS
Records That Have Been
Removed to Retention**

- (1) Requests for IDRS records that have been removed to retention require a reasonable search including moving a tax period back to the MF through the appropriate IDRS command code. Neither the research required to move the account to the MF to generate the transcript nor the number of days required to accomplish that movement results in an unreasonable search effort. The act of recovering the record is merely a way to retrieve information that is not at hand and does not create new records. However, see IRM 11.3.41.13.8.13, *Penalty and Interest Notice and Explanation (PINEX)*, above, regarding requests for PINEX transcripts.

11.3.41.13.8.16
(08-26-2021)
**SS-8 (Determination of
Worker Status) Requests**

- (1) FOIA requests may be received from unrelated third parties for Form SS-8, *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*, written determinations concerning Form SS-8. Such requesters will be advised that Form SS-8 written determinations do not fall within the auspices of the FOIA, but rather IRC 6110. If they wish to pursue their request for a Form SS-8 written determination, they must make an IRC 6110 request.

Note: See IRM 7.50.1.5.15.2, *IRC 6110 Public Inspection of Written Determinations*, for additional information.

- (2) FOIA requests from first-party requesters seeking copies of Form SS-8 and attachments or a Form SS-8 case file, refer to the RRR on the Disclosure SharePoint site for the names and contact information of individuals that will assist in the retrieval of the Form SS-8 records.

11.3.41.13.8.17
(08-26-2021)
Risk Analysis Reports

- (1) Risk analysis reports and related records and background papers are assessments of the security afforded to information and assets in the custody of the IRS. They may also include recommendations for maintaining appropriate levels of protection or discuss specific system vulnerabilities. Disclosure of the content of such records could contribute to the threat of loss or destruction or compromise data contained in IRS systems.
- (2) Prior to release, due to the sensitivity of the risk analysis and related records, discussions with the owner of the record to ascertain the harm in releasing is required. To the extent the records, if released, would pose a harm to the IRS's enterprise network or other data systems, the records will be denied using exemption (b)(7)(E), as such harm would impair the effective administration of the tax laws. The caseworker must ensure a person in proper authority has determined the harm in release.
- (3) Because of the sensitive nature of risk analysis reports and related records, any FOIA request for these reports and the records pertaining to it will be assigned to a field TLS. The field TLS will coordinate with the Office of the Chief Risk Officer prior to release of records, if applicable.

11.3.41.13.8.18
(08-26-2021)

Executive Performance Agreement

- (1) Executive Performance Agreement, Other Gov TDF 35-07, Catalog Number 51075R, are available to the public when edited pursuant to exemption (b)(6) to prevent any unwarranted invasion of personal privacy.

Note: These requests must be processed by a TLS in the field office.

11.3.41.13.8.19
(12-08-2022)

Requests for Audit Trails

- (1) FOIA requests for “who has accessed my account” or for the “Audit trail of my SSN” can be researched through the Security Audit and Analysis System (SAAS). SAAS collects, stores, and reports audit trail data for the investigation of instances of Unauthorized Access (UNAX) violations against IRS computer systems, including IDRS.
- (2) The system can retrieve audit trail extracts using taxpayer TINs as well as employee SSNs or Standard Employee Identification (SEID)s. Retrieving an IDRS audit trail is a quick process and should take no more than a couple of days, even if requesting many years. Contact Cyber Security Operations for the actual personnel time and effort required to satisfy the FOIA request.
- (3) To retrieve the SAAS audit trail extract, Disclosure personnel will prepare Form 9936, *Request for Audit Trail Extract*. The form must list all calendar time periods/years and all campuses to be searched in response to the FOIA request. Forward the form to Cyber Security Operations for processing. Refer to the RRR on the Disclosure SharePoint for additional information.
- (4) The SAAS will not produce an audit trail listing accesses pertaining to specific tax periods but will search on the taxpayer’s TIN and capture accesses to the taxpayer’s account over a period of time. For example, a request pertaining to accesses between January 1, 2009, and December 31, 2011, will return a listing of all tax periods accessed between the two dates, in chronological order.
- (5) If the FOIA request is for accesses pertaining to a specific tax year/period, request an audit trail for accesses starting January 1st of that year through the FOIA received date.
- (6) Since the IRS can’t generate an audit trail pertaining to a specific tax year/period, a power of attorney or a disclosure authorization based on specific tax years/periods will not be sufficient to authorize disclosure of the audit trail to a third party. Only release an audit trail to a third-party requester if the taxpayer authorizes the disclosure of the audit trail pertaining to the specific calendar time period covered.
- (7) If the authorization is not sufficient to allow a third-party requester access to the audit trail, contact the requester and ask for a valid authorization or ask for permission to respond directly to the taxpayer. If at all possible, make this contact by phone. Advise the requester that an acceptable consent must authorize the disclosure of “a record of accesses to my tax accounts during the period starting [indicate a specific initial calendar date] and ending [indicate a specific calendar date].”
- (8) If you do not receive a proper authorization or an instruction to send the information directly to the taxpayer, close the request as a full denial citing FOIA exemption (b)(3) with 26 USC 6103(a).

- (9) Audit trails are available for 6 years after the end of the processing year. If you receive a request pertaining to older periods, advise the requester that there are no documents responsive to the request and close the file.
- (10) The audit trail extract consists of a series of alphabetic and numeric characters that include the inputting employee's IDRS number, the command code used, the time and date of access, what data was accessed, and the inputting employee's SSN. Other items that may appear on the output as variable data include the tax period and name control. An audit trail key that provides information about the contents of the audit trail is available with the pattern letters language.
- (11) Upon receipt of the extract, Disclosure personnel must work with the business function in analyzing and redacting the extract, prior to releasing to the requester. Refer to IRM 10.8.34.5.3.2.1.3, *Freedom of Information Act Audit Trail Extract Requests*.
 - a. Locate and redact the SSN of the employee and the violation type citing FOIA exemption (b)(6). Redact any other data exempt from disclosure, consider using FOIA exemptions (b)(3) with IRC 6103(a) and IRC 6103(e)(7), (b)(6), (b)(7)(A), or (b)(7)(C). When necessary, contact the FOIA policy analyst for assistance.
 - b. Research IDRS to determine if there are any open investigations requiring coordination with the function performing the investigation. Use the additional information on IDRS to apply the normal considerations for deletion or release of the information that would identify the function performing the investigation or the research conducted (i.e., the Employee IDRS number or the command code contained on the extract). Do not consider any of this IDRS information as a responsive document unless it is otherwise requested in the letter.
 - c. If there is any indication of TIGTA activity (i.e., Office Identifier 96), coordinate with the disclosure officer for TIGTA. There is no need to transfer the request - just obtain input regarding release of the information on the extract. Caseworkers should not contact TIGTA directly. For more information refer to IRM 11.3.13.3.6, *Records of Other Treasury Components or Other Agencies*, for further guidance.
- (12) Clearly advise the taxpayer that this trail of accesses covers only electronic IDRS accesses. Access to other computer systems and to paper records may not have a trailing system in place. Use the approved pattern language in the closing letter and include a copy of the audit trail mentioned in (10) above.

Note: Audit trails are PA records maintained in SOR 34.037, *Audit Trail and Security System*. This system of records is exempt from access under the PA; therefore, first person requests for records maintained in this system cannot be processed under the PA and will be diverted to FOIA. FOIA search, review and duplication fees could apply depending on requester category.

Note: Audit trails consist of return information, therefore the access restrictions of IRC 6103 apply with respect to any third-party requester.

Note: FOIA requests from IRS employees for an audit trail pertaining to their accesses can be researched through the SAAS. Upon receipt of the extract,

Disclosure personnel will locate and redact all information pertaining to the taxpayer(s) including but not limited to command code, SSN, tax period, etc., citing FOIA exemption (b)(3) with IRC 6103(a). Employees involved in a personnel action or proceeding may request disclosure of return information in accordance with IRC 6103(l)(4)(A).

Reminder: If the FOIA request letter also contains allegations regarding a possible unauthorized access to account information, follow the normal UNAX referral procedures in addition to addressing the FOIA issues. Address both the referral of the UNAX issue and FOIA request in the response letter to the requester.

(13) Caseworkers should advise requesters to contact TIGTA, if the requester feels there has been an inappropriate access to their account.

11.3.41.13.8.20
(02-26-2024)
Personnel Records

- (1) The Office of Personnel Management (OPM), as the custodian of the Official Personnel Folder (OPF) and Employee Performance Folder (EPF) and the authority through which other federal agencies may appoint employees, has issued rules and regulations governing the disclosure of OPF and EPF records. These rules and regulations are found in Part 294 of the Federal Personnel Manual (FPM) (5 CFR 294).
- (2) The OPM also has FOIA responsibilities for personnel records maintained by agencies. These responsibilities are detailed in each of the sections describing the various records. Responses to FOIA requests seeking OPF or EPF information will be consistent with OPM regulations at 5 CFR 293 and 5 CFR 297. See IRM 10.5.6.8, *Personnel Records*, for additional information regarding OPFs/EPFs and their contents.
- (3) Disclosure personnel will follow the HCO standard operating procedures. Procedure Number 293-2 at: <http://hco.web.irs.gov/PPS/SOP-UOG/TRS-SOP-2.html> offers guidance for obtaining the OPF for purposes of responding to a FOIA request.
- (4) Contact information for retrieving the OPF information is available in RRR on the Disclosure SharePoint site.
- (5) OPFs for current employees (other than Chief Counsel attorneys and Chief Counsel employees located in HQ except for support staff) have been centralized in one location under the jurisdiction of the Kansas City Transactional Processing Center (TPC).
 - a. Submit search requests in writing through email or fax. Include the name and SSN of the employee and specify what is needed and provide a complete mailing street address along with a contact phone number.

Caution: Follow privacy and security procedures when sending search requests via email. See IRM 10.5.1.6.8, *Email* for additional information.
- (6) OPF information pertaining to Chief Counsel attorneys or Chief Counsel employees located in HQ, except support staff, whose information is located in Kansas City, is maintained in Washington, DC. Direct search requests to Chief, Payroll and Processing Section, at:

Chief, Payroll and Processing Section CC:FM:LER
Room 4022
1111 Constitution Avenue NW
Washington, DC 20224

- (7) If you need the entire OPF, provide your complete name and street mailing address (OPFs cannot be sent to a Post Office Box), along with your phone number for contact.
- (8) Generally, direct requests for information on former employees to the following address:

National Personnel Records Center, Annex
1411 Boulder Boulevard
Valmeyer, IL 62295

- a. The benefits specialist who handled the employee retirement paperwork retains the OPFs of recently retired employees for twelve to fourteen months, or until completion of the retirement process. In this situation, coordinate requests for OPFs with the benefits specialist.
 - b. If the request involves a former IRS employee who is now working for another federal agency, refer the requester to the other agency and not to OPM. Notify the requester that the IRS has no responsive records and provide contact information for the new agency. Close the case as a no records response.
- (9) Send requests for time and attendance records via secure email to Employee Support Services, Payroll Personnel Section. Include the employee's name and SEID or SSN. Disclosure staff must include their title and the basis for the request. See RRR on the Disclosure SharePoint site for contact information.
 - (10) If a request seeks a deceased employee's records, a surviving heir cannot invoke common law privacy rights. Decedent's records are available under the FOIA, unless it can be shown that release could cause harm to a survivor's privacy by causing a disruption of their piece of mind.

Example: Particularly sensitive, often graphic, personal details about the circumstances surrounding an individual's death may be withheld when necessary to protect the privacy interests of the surviving family members.

Note: Frequently, requesters seeking decedent OPF/EPF files are interested in the Designation of Beneficiary form(s) or documents that show the decedent's most recent rate of pay. Caseworkers may clarify this with the requester and then limit the disclosure.

- (11) Requests for employee badge numbers. Section 3705 of the Restructuring and Reform Act (RRA) of 1998 requires that during personal, telephone and correspondence contacts by an IRS employee working *tax related* issues, a unique identification number must be provided. Employee badge numbers are not required to be provided in response to a FOIA request. Consider FOIA exemption (b)(6) when making a withholding determination.

- (12) Requests which have responsive documents containing fingerprint records, must be referred to the originating agency following the procedures in IRM 11.3.41.13.3.10.1, *Referrals and Consultations*.

11.3.41.13.8.21
(12-08-2022)
**Public Information
Listing**

- (1) The OPM has designated six items of information, pertaining to federal employees, which are generally available to the public. Based on the OPM guidelines, federal agencies must maintain a PIL of all their employees which contains the OPM designated items. A copy of the PIL can be provided under the FOIA. Refer to the Personnel Records job aid found in the RRR on the Disclosure SharePoint site.
- (2) The PIL consists of the following six items of information as specified in 5 CFR 293.311, Public Information Listing.
- a. Name,
 - b. Present and past position titles and occupational series,
 - c. Present and past grades,
 - d. Present and past annual salary rates (including performance awards or bonuses, incentive awards, merit pay amount, Meritorious or Distinguished Executive Ranks, and allowances and differentials). These may be separately stated, if so requested,
 - e. Present and past duty stations (the official duty station does not include any flexiplace address or even the existence of a flexiplace work option), and
 - f. Position descriptions, identification of job elements, and those performance standards (but not actual performance appraisals) which, if released, would not interfere with law enforcement programs or severely inhibit agency effectiveness. See the Position Description guidance found in the RRR on the Disclosure SharePoint site.
- (3) The following policies should be adhered to when processing requests for PIL or specific employee request(s):
- The identity and duty station location information of “cyber security” designated positions will be withheld citing FOIA exemption (b)(6), similar to how sensitive positions are currently treated as defined within OPM’s Data Release Policy.
 - The “adjusted base salary” information for both “sensitive” and/or “cyber security” designated positions will be partially withheld, only releasing the “base salary” information and withholding the locality pay information citing exemption (b)(6).
 - Any personnel information for specific employee request(s) (i.e., named IRS personnel) – pertaining to “sensitive” and/or “cyber security” designated positions, including appointment affidavit/oath of office, etc., will be withheld in full citing exemption (b)(6).

Note: Request(s) will be processed under normal established procedures for IRS employees not falling within either a “sensitive” and/or “cyber security” designated position (i.e., releasing information consistent with what would otherwise be generally available to the public so long as no privacy concerns are implicated).

Note: If the employee whose information has been requested uses a pseudonym, and any responsive documents contain the legal name of the employee, withhold the employee's legal name citing exemption (b)(6).

- (4) Do not disclose the specific amounts of performance awards if doing so makes it possible to determine the employee's specific or critical job element average or rating of record. However, the fact of an award may not be withheld even though it may imply an above fully successful performance rating.

Note: Beginning with awards issued for fiscal year 2002, the IRS implemented the National Awards Agreement for bargaining unit (BU) employees. The basis for the computation of the award is widely distributed. Given this information, it is possible to compute the rating of record based on the amount of the award. Therefore, do not provide the specific amount of a performance award for a bargaining unit employee in response to a FOIA request for fiscal year 2002 and subsequent. However, awards to BU employees in the Office of Chief Counsel do not reveal performance evaluation or rating of record. Thus, Chief Counsel BU employee award information can usually be disclosed.

- (5) OPM has authorized the withholding of the public information items of employees in sensitive positions. Consequently, you must ensure that other records such as office telephone directories do not include information on employees in these positions when released to the public. Criminal Investigation Division provides statistical data to the public on staffing numbers, locations of posts of duty, and salary ranges on an area basis. OPM has designated the following positions as sensitive:

GS/IR Series	Title
0007	Correctional Officer
0082	United States Marshall
0083	Police Officer
0084	Nuclear Materials Courier
0132	Intelligence
0134	Intelligence Clerk/Aide
0401	General National Resources and Biological Science
0436	Plant Protection and Quarantine
0512	Internal Revenue Agent
0840	Nuclear Engineering
0930	Hearing and Appeals Officer
1169	Internal Revenue Officer

GS/IR Series	Title
1171	Property Appraisal and Liquidation Specialist
1801	General Inspection, Investigation, Enforcement and Compliance
1802	Compliance Inspection and Support
1805	Investigative Analyst
1810	General Investigating
1811	Special Agent (SA) Criminal Investigation
1812	Game Law Enforcement
1816	Alcohol, Tobacco, and Firearms Inspection
1854	Immigration Inspection
1881	Customs and Border Protection Interdiction
1884	Customs Patrol Officer
1890	Customs Inspection
1895	Customs and Border Protection
1896	Border Patrol Enforcement

- (6) The IRS policy also authorizes the withholding of the public information items of employees in cyber security designated positions. Cybersecurity designated positions are not identified by a specific GS/IR series or position title. Refer to the Personnel Records job aid found in the RRR on the Disclosure SharePoint site for additional information regarding cyber security designated positions.
- (7) Disclosure personnel may access the PIL via the IRS intranet.
- (8) Access to the PIL database is limited to Disclosure personnel. The names and locations of employees in sensitive positions, cybersecurity designated employees and those employees who have been issued a pseudonym have been “masked” with XXXX from the listing available on the PIL database. The remaining information (items b, c, d, and f of paragraphs (2) and (3) above) is still available on the PIL and can be retrieved by requesting a national PIL. Requests for National PIL are case criteria for assignment to the field TLS.
- a. Since the legal names of employees with pseudonyms are not on the PIL, a request may seek information about a current IRS employee who has made contact with the requester and who is not listed on the PIL. If a request pertains to a named employee who is not on the PIL, conduct additional research to determine if the employee has an approved pseudonym or is in one of the sensitive series, including cybersecurity designated employees, to avoid informing the requester erroneously that the individual is not an IRS employee. Conduct IDRS research to

determine if there is existing compliance activity, which may help to locate the employee named in the request. In addition, you may contact other employees or management in a post of duty near the taxpayer's address to locate the employee.

- b. If the employee whose information has been requested uses a pseudonym, withhold the employee's legal name citing exemption (b)(6).
- (9) When a FOIA request seeks information about a specific employee, you may notify the employee that their PIL information was requested, how the request will be processed, and if requested, the name of the FOIA requester. The employee may provide information about privacy interests that you may consider, but Disclosure personnel make the final determination about the application of exemptions. It is not necessary to contact employees when a request seeks the PIL of all IRS employees or large subsets thereof (i.e., all employees located in a large office or a given state).

Note: Refer to the Personnel Records job aid found in the RRR on the Disclosure SharePoint site for instructions on how to process specific requests (such as oath of office and/or appointment affidavits) for employees in sensitive series or for employees in cybersecurity designated positions.

- (10) The following types of documents are under the jurisdiction of HCO:
- a. **Requests for Information Related to an IRS Executive:** Requests for IRS Executive information, other than a PIL or an appointment affidavit/oath of office, will be assigned to a field TLS. When processing a request for the information of an IRS Executive, verify on Discovery Directory the executive is an IRS employee (an executive is listed in Discovery Directory in the ES or EX series). Emails or contacts with an IRS Executive should not be done by caseworkers. Follow procedures using an established FOIA functional contact or discuss with the DM.
Note: The Commissioner is an IRS employee.
 - b. **Requests for the National PIL:** For requests for a National PIL of all IRS employees, follow the procedures found in the RRR>Personnel Information.
Caution: Do not release phone numbers and/or email addresses of IRS employees upon request for fear that the requester will compromise the IRS Enterprise network system, use those emails for various schemes or solicit the purchase of insurance or other items. FOIA exemption 5 USC 552(b)(6) should be used, and the information must not be requested from HCO.

11.3.41.13.8.22
(12-08-2022)
Employee Privacy Matters

- (1) FOIA requests seeking records regarding specific IRS employee information need to be reviewed for employee privacy considerations. Based on the presumption of openness found in the FOIA and the Open Government Act of 2007, a strong articulation of what would constitute a clearly unwarranted invasion of personal privacy must be met when making a withholding determination. See IRM 11.3.41.13.6.2.7, *Exemption (b)(6)*.

Note: Requests for specific IRS employee information should not be processed as a PIL request, unless PIL is specifically stated in the request.

- (2) Redact the names, signatures, initials, and other identifying details (but not name of office) of lower-level IRS employees when necessary to avoid unwarranted invasion of personal privacy, including the threat of harassment or abuse of the employees and their families.

Example: This protection applies to campus employees and to clerical employees in the field who are chiefly performing according to legal authority, established procedures or instructions from a superior, without exercising any judgment and whose identities are not normally shared publicly, for example, as a contact point or caseworker.

- a. Redact the identities of lower-level employees from law enforcement records, even when their identities are known to the particular requester.
 - b. Support these redactions with proper case documentation, citing exemption (b)(6) and, when applicable, exemptions (b)(7)(C) and/or (b)(7)(F).
- (3) Generally, do not withhold the identities of senior level officials (i.e., those management officials who are heads of office) pursuant to these privacy-based exemptions. However, these employees, if they are the subject of alleged wrongdoing, may have privacy interests that must be balanced against the public's interest. See IRM 11.3.41.13.6.2.7, *Exemption (b)(6)*, for more on balancing private and public interests. The result of that balancing will depend on the facts and circumstances of an employee case. Employee names in sensitive and/or cyber security designated positions included in responsive documents to non-administrative file requests should be withheld. See IRM 11.3.41.13.8.21, *Public Information Listing*. Direct any questions about the senior level official status of a particular employee to the FOIA policy analyst.
 - (4) Refer to the Personnel Records job aid found in the RRR on the Disclosure SharePoint site when processing requests for Standard Form 61 (SF-61), *Appointment Affidavit*. Ordinarily, do not use the privacy-based exemptions to withhold typed identity information and the signatures of IRS employees shown on SF-61. Generally, the public interest in ensuring proper agency actions by duly sworn employees, as evidenced by the appointment affidavits, outweighs any privacy interest relating to these typed identities and signatures. Usually SF-61 may be released in full for employees that are not currently in sensitive positions and are not currently in a cyber security designated position. If an employee is not in a sensitive position or cyber security designated position, release the appointment affidavit in full with the exceptions below:
 - When the requester seeks the appointment affidavit of an employee who uses a registered pseudonym, furnish the appointment affidavit after redacting the real identity (typed identity and signature) of the employee, citing exemption (b)(6).
 - When the employee changes their name after signing the appointment affidavit, the public interest in the release of the employee's former name may be less than the employee's privacy interest. If release of the former name could cause an unwarranted invasion of personal privacy or a threat of harassment to the employee's family members, withhold the last name only, citing exemption (b)(6).

- (5) Do not redact SEIDs and IDRS numbers from transcripts. The release of an SEID or IDRS number, without a name associated with it, does not constitute an unwarranted invasion of an employee's privacy nor would it compromise the security of any IRS computer system.

Note: Review proposed releases of SEIDs in combination with other identifying information to avoid release of information that would otherwise be protected. Some functions in the IRS, such as CI and Chief Counsel, may use different naming conventions on SEIDs that may require a review and determination as to whether that information may, by itself, reveal the identity of the employee.

- (6) Requests may seek information about an employee by reference to the employee's unique identifying number (for example, the IDRS Number or SEID) without providing the employee's name. Advise the requester that the name of an IRS employee associated with a specific identification number is protected under FOIA exemption (b)(6). Do not conduct research to determine which IRS employee has been assigned to any specific IDRS identification number even if the number is assigned to a manager or other IRS employee whose identity would be made known to the requester through normal channels.

11.3.41.13.8.23
(08-26-2021)

Commercial Solicitation

- (1) The OPM regulations at 5 CFR 294.103 provide guidance on how commercial solicitation firms can obtain access to public information items on employees.
- (2) When a commercial solicitation firm files a FOIA request for information on employees, provide the requested public information items in response.
- (3) The IRS will not release phone numbers or email addresses of IRS employees upon request for fear that the requester will compromise the IRS Enterprise network system, use those emails for various schemes or solicit the purchase of insurance or other items. FOIA exemption 5 USC 552(b)(6) should be used, and the information must not be requested from HCO.

11.3.41.13.8.24
(08-26-2021)

Trust Fund Recovery Penalty

- (1) FOIA requests may come in at any point in the TFRP process. Consider each request based on the current status of the case.
- (2) If a FOIA requester mentions other persons liable for the penalty or IRC 6103(e)(9) in the request, segregate the (e)(9) portion and send it to Collection Advisory for response. Use the approved pattern letter language to notify the requester that the information is available under IRC 6103(e)(9), and that you referred that portion of the request to Collection Advisory. Disclosure personnel must process the remainder of the FOIA request.

Note: Contact information for Advisory is located in the RRR on the Disclosure SharePoint site. The locations of the Collection Advisory Units are contained in Pub 4235, *Collection Advisory Offices Contact Information*.

- (3) If the FOIA request is solely for (e)(9) information, refer the request to Advisory for processing and close the case as imperfect. Advise the requester in your response letter that you referred the matter to Advisory for a direct response.
- (4) To locate a TFRP file consult the TFRP contact list in the RRR on the Disclosure SharePoint site. TFRP files frequently contain information concerning

multiple taxpayers (i.e., employer/corporation, corporate officers, and other potentially responsible persons). When responding to a FOIA request for information relating to the TFRP, the return information of each taxpayer may be released only to that taxpayer.

- (5) First or third-party return information cannot be disclosed under IRC 6103(h)(4) in response to a FOIA request. IRC 6103(h)(4) is not an access provision and only IRC 6103(e) can be the basis for release of information in the FOIA context.

Note: Compliance employees can use IRC 6103(h)(4) in situations involving an open TFRP case to the extent disclosure of the information is directly related to the resolution of an issue in their case.

- (6) For further guidance about processing TFRP files, see IRM 11.3.40, *Disclosures Involving Trust Fund Recovery Penalty Assessments*.

11.3.41.13.8.25
(08-26-2021)

Credit Bureaus

- (1) Copies of credit bureau reports obtained in the course of compliance activities may be provided to the taxpayer to whom they pertain unless there is harm to tax administration. The Fair Credit Reporting Act (FCRA), 15 USC 1681, places no restrictions on government release of credit reports. There is nothing in the FCRA that prohibits disclosure to the taxpayer. Consumer reporting agencies are required to provide the consumer with data. The only statutory prohibition against disclosure appears in section 1681(r). That section prohibits an officer or employee of a consumer reporting agency from revealing information to a person who is not authorized to receive it.

11.3.41.13.8.26
(08-26-2021)

**Non-specific Requests
Citing “A Citizen’s Guide
to FOIA”**

- (1) A non-specific FOIA request may cite “A Citizen’s Guide on Using FOIA and the Privacy Act of 1974 to Request Government Records” to justify the non-specificity of the request.
- (2) Normally, this would be considered an imperfect request. However, if the non-specificity is based on the quote “...no individual is required to name a system of records...” from the Citizen’s Guide to FOIA, include the following language in the response: Your reliance on “A Citizen’s Guide on Using FOIA and the Privacy Act of 1974 to Request Government Records” is misplaced. Its authors intended the Guide to serve only as a general introduction to familiarize members of the public with the two Acts. The authors acknowledged that there is a considerable body of case law under both Acts that contribute to a complete understanding of the principles underlying the FOIA and the PA. In that regard, courts have upheld strict compliance with agency regulations. Therefore, since the Department of Treasury Regulations on the PA explicitly provide that a request must “give the name of the system or subsystem or categories of records to which access is sought...” (31 CFR 1.26(d)(iii)), and the IRS Statement of Procedural Rules for FOIA (26 CFR 601.702) requires that a FOIA request be for reasonably described records, your request cannot be processed.
- (3) Also list in the response letter any other missing material needed to perfect the request.

11.3.41.13.8.27
(12-08-2022)

Requests Involving Asset Locator Records (ChoicePoint/Accurint, etc.)

- (1) ChoicePoint/Accurint is an information service used primarily by ROs and RAs which contains asset information about specific taxpayers and also includes information about third parties.
- (2) When a taxpayer requests a copy of their own records (such as Examination or Collection files) and ChoicePoint/Accurint data are found within those records, apply the following guidelines to process the request:
 - a. Caseworkers will redact any information which identifies, or potentially identifies particular individuals who are not the first party FOIA requester (i.e., taxpayer), or that first party's authorized representative who submits a request on that individual's behalf. This information should be redacted regardless of potential knowledge the requester may have about the third-party individuals, using FOIA exemptions (b)(6) and (b)(7)(C). This includes, but is not limited to: third-party names, third-party addresses, information related to neighbors and deceased relatives, information related to potential children/spouses/ex-spouses, information related to individuals who bought or sold properties and/or vehicles (i.e., the loan amount the third party may have received from a bank to purchase property from the requester), potential third-party criminal record information, etc.
 - b. Caseworkers should not redact information pertaining to the first-party requester (i.e., taxpayer).
 - c. Business entities do not have personal privacy, therefore FOIA exemptions (b)(6) and/or (b)(7)(C) do not apply.
- (3) Caseworkers should discuss any questions regarding potential withholding determinations with their manager and/or business unit record owner, as appropriate.

11.3.41.13.8.28
(02-26-2024)

Automated Lien System

- (1) If a request seeks information contained in the Automated Lien System (ALS) database for all NTFs in any given county or state, inform the requester that only Business Master File (BMF) liens are subject to disclosure from the ALS and information pertaining to individuals is not available. If the request does not seek BMF data, inform the requester that the requested information is exempt from disclosure pursuant to FOIA exemptions (b)(6) and (b)(7)(C). Consider also applying (b)(3) in conjunction with 6103(a) if the request is for taxpayers for which the requester does not have an authorization.

Note: This subsection does not apply where a requester seeks their own information in the ALS data base. In response to a request for a taxpayer's own records, conduct a search and process any records located.

- (2) Additional guidance on locating records pertaining to the ALS database are found in the RRR on the Disclosure SharePoint site.

11.3.41.13.8.29
(08-26-2021)

Requests for Pocket Commissions

- (1) When processing requests for information pertaining to a pocket commission, follow these guidelines:
 - a. Deny requests for copies of the actual pocket commission citing (b)(3) in conjunction with 18 USC 701.

b. Deny requests for any other information pertaining to the pocket commission such as Form 13716-B, *Request for Pocket Commission*, photos, serial numbers, etc. using (b)(6), (b)(7)(C) and (b)(7)(E).

(2) For requests submitted in the form of a series of questions pertaining to the pocket commissions for specific employees, advise the requester that the response will deal with only those portions of the request that conform to the FOIA. Also advise that the FOIA does not require agencies to respond to questions. See IRM 10.2.6, *Pocket Commissions*, for more information relating to pocket commissions.

11.3.41.13.8.30
(08-26-2021)
Undeliverable Refund Lists

(1) The Undeliverable Refund Check Listing (URCL) is no longer provided to media outlets for publication. A news release is issued each year to inform the public that there are refunds that have become undeliverable and could be available to the appropriate taxpayer. The news release advises the taxpayer to access “Where’s My Refund” if they believe their refund check may have become undeliverable.

(2) If a caseworker receives a FOIA request for the URCL they should refer the requester to “Where’s My Refund” on IRS.gov.

11.3.41.13.8.31
(12-08-2022)
Electronic Return Originator Lists (EROs)

(1) A database listing businesses that participate in the IRS electronic filing program is available on IRS.gov. The listing includes the name, address, and telephone number of the business, the point of contact, and the type of service provided. Requesters can locate this information for providers of electronic services through:

- a. An interactive search engine that identifies and lists basic information for Electronic Return Originators (EROs), Transmitters, Software Developers, and Service Bureaus, or by
- b. Downloading comma delimited text files by state for creating mailing lists.

(2) Carefully review FOIA requests seeking information relating to electronic filers to determine if these publicly available resources contain information responsive to the request. If the information on the site is responsive, provide the web address (URL) to the requester.

(3) If you receive a request that seeks information about electronic filers that is not available through the site mentioned in (1) above, follow the instructions found in the RRR on the Disclosure SharePoint site.

(4) No FOIA exemption applies to a list of EROs who have been suspended within the past five years. The public’s right to know outweighs any privacy interests of the ERO. However, withhold the specific reason for suspension by citing FOIA exemption (b)(3) in conjunction with IRC 6103.

11.3.41.13.8.32
(08-26-2021)
Possible Refund Scheme Requests

(1) In some situations, a taxpayer may file a FOIA/PA request for transcript information and use the transcript along with a Statement of Lifetime Earnings obtained from Social Security to file a false claim. Disclosure offices will provide the CI function with a list of FOIA requesters who make the following or a closely similar request: “a statement of all taxes paid, all penalties, all fines, all interest and all credits for any seizures and all deposits that have

been credited in the files of your system of records for [name] [SSN] since the first date of filing with the IRS on or about the year 1953 to the present date of this Privacy Act Request.”

- (2) When you receive this type of request, fax a copy to an investigative analyst at the Ogden Fraud Detection Center. Find the fax number in the RRR on the Disclosure SharePoint site. Link to “Refund Schemes.”

Note: Referral to the Ogden Fraud Detection Center for possible refund scheme scrutiny must not affect the normal processing of the FOIA request. Provide the requester’s tax information, as appropriate, regardless of the possible purpose behind the request.

11.3.41.13.8.33 (08-26-2021) IRC 6001 Requests

- (1) Requests may seek a copy of the “notice from the District Director that I was required to keep books, records, and file return(s) as required by 26 USC 6001 and 26 CFR 1.6001-1(d) and 26 CFR 31.6001-6,” or similar wording.
- (2) IRC 6001 does not require issuance of such a notice, but the Secretary may serve notice requiring a person to make returns and keep records. A revenue agent may issue “Notices of Inadequate Books and Records,” (Letter 978, *Notice of Inadequate Records* and/or Letter 979, *Inadequate Record Notice*), during a field audit after determining in a review of actual books and records that the records were insufficient to correctly record income and expenses.
- (3) Notices to file returns do not exist, per se. There are computer-generated letters sent by campuses but are not retrievable in most cases. These letters, which have a notice number, request that the taxpayer file a return. If the campus sends the case to the field (for Examination or Collection involvement), a copy of the notice may or may not be in the file.
- (4) Field employees may also issue letters to a non-filer (i.e., Letter 964, *Income Tax Filing Requirements*), copies of which should be in the case file.
- (5) Do not close requests discussed in (1) above as imperfect simply because the IRS no longer has District Directors or because they do not clearly articulate the programs/procedures relating to IRC 6001.
- (6) Because some IRS offices kept files of Letter 978 and Letter 979, search files and IDRS for indications of a field examination for the years covered by the request. Files of notices issued may be found in the local Technical Support Unit (Examination and Return Selection PSP). If there is no evidence of a field audit, you may assume that there are no responsive records.
- (7) If the search returns no responsive records, include the following language in the response letter:
“IRC 6001 does not require issuance of a notice by the District Director or any other IRS employee. IRC 6001 merely states that the Secretary (or their delegate) may serve notice to require a person to make returns or keep records. If you received a notice that asks you to file a return or provide information about a tax year for which no return has been received, the notice was computer-generated. The IRS does not routinely maintain copies of such notices. At this time, we are unable to identify a document that meets the description in your letter. IRS employees sometimes issue letters that address issues related to IRC 6001. If you have not filed tax returns for certain years,

you may have received such a letter of inquiry. Or, if returns you filed were audited and actual books and records reviewed, the examiner may have issued a letter that states that your records are inadequate. If you received such a letter and you wish to obtain a duplicate of the file copy, please write again specifically requesting this information.”

11.3.41.13.8.34
(08-26-2021)

Requests for the IRS EIN

- (1) The Chief Financial Officer has given GLDS authority to release the IRS Employer Identification Number in response to a valid FOIA request.
- (2) Secure the EIN used by the IRS on *Form 1099* and *Form W-2, Wage and Tax Statement*, where the IRS is the payer from the RRR on the Disclosure Share-Point site. Link to “IRS EIN in Response to FOIA Request.”

11.3.41.13.8.35
(08-26-2021)

Federal Witness Security Program Information

- (1) Title 28 of the Code of Regulations, 0.111B, implements non-disclosure provisions of the Witness Security Program statute.
- (2) Although records related to this area are rare, if a request specifically seeks Federal Witness Security Program information or a search for records identifies Program information as responsive, you must contact the FOIA policy analyst for further information and guidance. Resolution may require coordination with appropriate DOJ personnel.

11.3.41.13.8.36
(08-26-2021)

Grand Jury Information

- (1) A response to a FOIA search memorandum may include a statement from the function in control of the responsive records (usually CI) that all, or a portion, of the responsive records are grand jury information.
- (2) Not all records relating to a grand jury investigation are considered grand jury information subject to secrecy under Rule 6(e) of the FRCP.
- (3) The following are generally considered grand jury information:
 - Exhibits to the Grand Jury, clearly labeled as Grand Jury information
 - Transcripts of Grand Jury testimony, or information revealing the substance of such transcripts
 - Information identifying Grand Jury Witness
 - Information identifying Grand Jury Jurors
 - Information revealing the direction, scope, or strategy of the Grand Jury Investigation
 - Grand Jury subpoenas or search warrants, or information revealing the substance thereof
 - Information revealing the deliberations or questions of Grand Jury jurors
- (4) The following are generally not considered grand jury information:
 - Records obtained without use of the grand jury process and without mention of the existence of a grand jury
 - Records obtained prior to the existence of the grand jury (i.e., tax returns, other return information developed by CI, Exam, or Collection prior to referral for a grand jury investigation)
 - Records which exist independent of the grand jury (i.e., bank account records) the release of which would not reveal the inner workings of the grand jury
- (5) If the function makes a determination that providing grand jury records to Disclosure will harm the investigation, the function with control over the records

(usually CI) must prepare and provide to Disclosure staff, written attestation that the records are grand jury information. Include the attestation in the FOIA case file. The attestation must contain:

- a. Case agent name, title, telephone number
- b. Approximate volume of records (number of file cabinet drawers, boxes, etc.)
- c. Location of records
- d. Other contact person name, title, telephone number
- e. Assurance that the FOIA search request has been noted in the investigative file
- f. Assurance that a complete copy of the withheld documents will be kept available and that the function will re-evaluate the records if the requester files an administrative appeal or judicial complaint in the FOIA matter
- g. The signature of the SA or Supervisory SA
- h. Concurrence from the SAC

Note: See IRM 9.3.1, *Disclosure*, and IRM 9.5.2, *Grand Jury Investigations*, for further information. Also see IRM 11.3.41.13.6.5, *Attestation Process*, for additional information pertaining to attestations.

- (6) Disclosure personnel will advise the requester that responsive records in an approximate volume have been determined to be grand jury information and as such are withheld under FOIA exemption (b)(3) in conjunction with grand jury secrecy provisions of FRCP 6(e). Also cite exemptions such as (b)(7)(A) and (b)(3) in conjunction with IRC 6103(e)(7), where appropriate.

Note: In the rare circumstance where the Special Agent Report was generated during a grand jury investigation at the direction of the Assistant United States Attorney, consider FOIA exemption (b)(5) as well.

- (7) The office (usually CI) making the determination that records are grand jury information is responsible for flagging the case file so that appeals officers and attorneys in the Office of the Associate Chief Counsel (P&A) can analyze it in the event of an administrative appeal or litigation associated with the FOIA response. The office must retain the grand jury information in a way consistent with FOIA record retention requirements. The IRS must be able to identify any documents withheld. Therefore, it is imperative that the function clearly identify within its file which documents were withheld in response to the FOIA request, and that this identification be maintained for the life of the file. None of the withheld documents may be destroyed sooner than called for in the RCS controlling FOIA records and case documents developed or received subsequent to the FOIA request must be distinguishable from documents withheld.

11.3.41.13.8.37
(08-26-2021)
**Requests for Certified
Copies of Records**

- (1) Many FOIA requests include language asking that Disclosure personnel provide certified copies of records found responsive or asking for a certification of lack of record for those items where we have a no records determination.
- (2) The FOIA contains no provision requiring the IRS to provide certified copies of documents. In response to a request for certification of any IRS records sought under the FOIA, advise the requester that the FOIA does not require certification of documents in response to a FOIA request. Advise that IRC 6103(p)(2) only requires the provision of a certified copy of a return to a person autho-

ized access to the return and that by completing a Form 4506, *Request for Copy of Tax Return*, checking the box on line 6, enclosing the required fees, and submitting the form to the appropriate address as shown in the instructions, the IRS will provide a certified copy. Provide a blank Form 4506 with the response.

- (3) Under no circumstances will a Form 3050, *Certification of Lack of Record*, be provided when no responsive records are found. It is sufficient to state that no records were located, without providing a certification to that effect. If the requester seeks certification that a return was not filed, notify the requester that verification of non-filing may be obtained by submitting a Form 4506-T, *Request for Transcript of Tax Return*, to the appropriate address as shown in the instructions. Provide a blank Form 4506-T with the response.
- (4) See IRM 11.3.41.3.10.3, *Certification*, for further discussion on certification of records.

11.3.41.13.8.38
(08-26-2021)

**Requests for Documents
Associated with a
Document Locator
Number (DLN)**

- (1) Disclosure personnel frequently receive FOIA requests seeking access to documents associated with specific Document Locator Numbers (DLNs). Generally, these requests come in a series of letters, each asking for one or more DLNs listed on a transcript provided in response to a previous request.

Note: Read and analyze each request carefully. If the request seeks documents “associated with” or “identified by” the DLN, or similar language, it is sufficient to retrieve the DLN from campus files or the FRC. However, if the wording of the request seeks “the documents that caused the DLN to be input” or uses similar language, you must analyze the transaction and possible underlying actions further to locate responsive documents.

- (2) Consider any document associated with the requested DLN responsive to the request, including the Form 5147, *IDRS Transaction Record*. The Form 5147 is created when the underlying transaction is input, not when requesting a DLN.
- (3) The underlying Form 2848, *Power of Attorney and Declaration of Representative*, and Form 8821, *Tax Information Authorization*, associated with TC 960 (Centralized Authorization File) are filed separately from tax returns. Always retrieve the actual form in response to a request seeking access to either the form by name or the documents associated with the TC 960 DLN. Depending on the wording of the request, you may also need to retrieve Form 5147. To retrieve Form 2848 or Form 8821, obtain a Source Document Locator Number (SDLN) and prepare and fax a Form 2275, *Records Request, Charge and Recharge*, to the Kansas City Consolidated Files Site (C-Site). Locate the fax number in the RRR on the Disclosure SharePoint site.

Note: You may fax requests for fewer than 15 documents.

- a. Locate the SDLN by accessing the CFINK command code on IDRS under the requester’s SSN. The CFINK contains the SDLN.
- b. If the request seeks access to the documents associated with the DLN, retrieve Form 5147 from campus files or the FRC. Also request the underlying Form 2848 or Form 8821.
- (4) The following DLNs have no paper or source documents. Do not retrieve any DLN that meets either description.

- a. Any DLN with a Julian Date (digits six, seven, and eight) of 367 through 400 or 767 and above.
 - b. Any DLN with a series of repetitive numbers in digits six through thirteen (i.e., 29210-000-00000-X, or 49210-999-99999-X).
- (5) It is extremely difficult to identify those transactions that, when input, do not generate a paper document. Therefore, retrieve every DLN that does not meet the description in (4) above.
- (6) When you receive requested documents, review, edit, and release or withhold in accordance with IRM 11.3.13.5, *Review and Redacting*.

Note: Always retrieve the Form 5147 even if denying access. Retain a copy in the case file for possible appeals and litigation.

- (7) The following changes apply to TCs input on or after February 23, 2005.
- a. Form 5147 generated as a result of a change to the account causing a new re-file DLN or associated with source documents will continue printing, and Files will continue to pull the documents.
 - b. Form 5147 without source documents (NSD), including but not limited to document codes 17, 18, 24, 34, 48, 58, 63, 77, 87, will no longer print. Since there are no paper documents associated with these forms, Files will no longer process these requests. View these forms through the Control-D WebAccess database. Print them, as they are considered responsive to the request.

11.3.41.13.8.39
(08-26-2021)
**Request for Form W-7,
Application for IRS
Individual Taxpayer
Identification Number
(ITIN)**

- (1) An Individual Taxpayer Identification Number (ITIN) is a nine-digit number issued by the IRS to individuals who need a taxpayer identification number for tax purposes, but who do not have, and are not eligible to obtain, an SSN. The FOIA requests generally include an ITIN and seek a copy of the Form W-7, Application for IRS Individual Taxpayer Identification Number.

Note: ITINs are return information and information pertaining to them can only be disclosed if the requirements of IRC 6103(e) or (c) are met.

- (2) Offices receiving a valid FOIA request for a Form W-7 or related information will research the RTS-ITIN application in the Employer User Portal (EUP). Refer to the W-7 Job aid located on the RRR on the Disclosure SharePoint site.
- (3) Once you locate a DLN, you can retrieve the W-7 from campus files or the FRC using Form 2275, *Records Request, Charge and Recharge*. The DLN for a W-7 is identified by a Tax Class 2 with a document code of 96 (English) or Tax Class 2 with a document code of 98 (Spanish).

11.3.41.13.8.40
(08-26-2021)
**Requests for Third Party
Contact Information**

- (1) IRC 7602(c) requires IRS employees to document certain third-party contacts. Employees use Form 12175, *Third Party Contact Report*, to document these contacts.
- (2) In response to FOIA requests for Form 12175, neither confirm nor deny the existence of the form (Glomar response) in situations where:

- a. There has been a reprisal determination made with respect to the third party named in the form.
 - b. There is no responsive record.
 - c. It has been determined that disclosure would jeopardize the collection of any tax (but only so long as the jeopardy situation continues).
- (3) Assert FOIA exemptions (b)(3) in conjunction with IRC 6103(e)(7), (b)(7)(A) (where applicable), and (b)(7)(C) as the exemptions underlying the Glomar response.
 - (4) You may provide the Form 12175 in situations where none of the above criteria apply.

Note: Form 12175 is maintained in two different PA systems of records: non-reprisal (00.333) and reprisal (00.334). System of records 00.334 is exempt from the access provisions of the PA.

- (5) In response to FOIA requests for a list of third parties contacted with respect to the requester, the Disclosure employee must contact the Third-Party Contact Coordinator. The Third-Party Contact Coordinator information is found on the RRR on the Disclosure SharePoint site.

11.3.41.13.8.41
(08-26-2021)

FedState Agreements

- (1) Copies of FedState agreements are available to the public under the FOIA. However, withhold those portions of implementing agreements or MOUs which contain tolerance and criteria information using FOIA exemption (b)(7)(E).
- (2) U.S. Possession Agreements (i.e., Tax Information Agreements, Tax Coordination Agreements, and MOUs) are considered Tax Conventions within the meaning of IRC 6105 and can only be disclosed consistent with that statute. Usually these agreements will be exempt under FOIA exemption (b)(3) cited in conjunction with IRC 6105. Other FOIA exemptions, such as (b)(7)(E) may also apply. Coordinate any FOIA request seeking copies of these Possession Agreements with the LB&I EOI office.
- (3) Coordinate with state agencies and Safeguards, any responses to FOIA requests for copies of reports prepared by state agencies (including Safeguard Activity and Procedures Reports), by IRS following a review of a state agency (under IRC 6103(p)(4)), or by IRS (under IRC 6103(p)(5)). These reports often focus on sensitive processes and systems and may expose vulnerabilities. As such, the information may be protected at the request of state officials pursuant to FOIA exemption (b)(7)(E).

11.3.41.13.8.42
(08-26-2021)

Requests for Copies of Information Provided to State Tax Agencies

- (1) FOIA requests for access to documents provided by the IRS to state tax agencies may seek records provided through:
 - A specific request from a state employee
 - An implementing agreement
- (2) Prior to the release of any information to the requester, or confirmation that information was released, contact the agency liaison to determine whether release of any information not part of the GLDEP would impair any ongoing compliance activity. If the state representative indicates the release would harm state tax administration and can articulate that harm, withhold the information citing FOIA exemptions (b)(7)(A) and (b)(3) in conjunction with IRC 6103(e)(7).

- (3) Consider releasing the following information, after evaluating the state agency's response:
 - a. Information provided to the state pursuant to a specific request. Include Disclosure inventory management system records in the search.
 - b. Documents routinely provided to the state under an implementing agreement (i.e., revenue agent reports (RARs)). Download and consider responsive Examination Operational Automation Database (EOAD) data if maintained by Disclosure staff, rather than retrieving RARs from files.

Note: The PA specifically excludes records released to state agencies pursuant to IRC 6103(d) from the requirement to make accountings available upon request of the individual named in the record. However, give consideration to the release of accounting records pursuant to a request under the FOIA.

Note: Return information provided to state tax agencies is covered by IRC 6103. A FOIA requester can receive only their own return information unless a proper disclosure consent is in effect.

11.3.41.13.8.43
(08-26-2021)
Requests for Lottery Information

- (1) If you receive a FOIA request for information regarding lottery winners, use the following language:

“You asked for copies of any and all documents related to court and administrative judgments for lottery winners who have brought suit against the IRS, and any and all documents concerning the appeal of a previous judgment pertaining to the taxation of their winnings. You also asked for copies of any and all court orders regarding judgments from lottery winners or their heirs for the period 1986 to the present. One of the FOIA requirements is that requesters reasonably describe the records they are seeking. The content of your request is so broadly based that we are unable to specifically identify any releasable records that can be made available to you. To the extent that your request would require us to conduct legal research on your behalf, please be advised that the FOIA does not require agencies to conduct such research. Based on the description of the records you seek; you might locate information in publicly available case decisions. You may research these at public libraries or law libraries. There are also a number of commercial research services that allow users to search case law or decisions associated with specific topics. You may wish to make use of these resources. If any of the requested records exist in Internal Revenue Service taxpayer files, they are the return information of the taxpayer(s) to whom they pertain. These records are protected by the confidentiality provisions of Internal Revenue Code 6103 and may be disclosed only with the authorization of the taxpayer(s) whose information is to be disclosed. Because you have not provided the required authorizations, we cannot disclose any responsive records that may exist, and we are closing our case file.”
- (2) Close these cases as imperfect because the requester did not reasonably describe the records.

11.3.41.13.8.44
(08-26-2021)

**Requests for Offshore
Credit Card Project
(OCCP) Files**

- (1) You may receive requests for access to the data contained in the Offshore Credit Card Project (OCCP) databases for either general inspection, to study the data, or to determine if the name of the requester or a client of the requester appears in the data. The information in the OCCP databases pertains to live credit cards.
- (2) Transfer requests for information from the OCCP database to a field TLS for processing. Requests transferred to a field TLS require DM approval.
- (3) The Deputy Director, Compliance Policy, has determined that disclosure of data contained in the OCCP database would seriously impair tax administration within the meaning of IRC 6103(e)(7) and would interfere with enforcement proceedings within the meaning of FOIA exemption (b)(7)(A).
- (4) Based on this determination, deny the following requests, citing FOIA exemption (b)(3) in conjunction with IRC 6103(a) and/or (e)(7) and FOIA exemption (b)(7)(A) and/or (b)(7)(C):
 - A request for data that does not pertain to the requester or the requester's client
 - A request asking whether the subject taxpayer's name appears in the data
 - A request seeking copies of any transactional credit card records pertaining to the subject taxpayer
- (5) The individual examiners in coordination with the local DMs will consider requests from specific taxpayers for credit card data that has been placed in their individual case files on a case-by-case basis. Work closely with the case agent and manager to ensure that any information released will not impair tax administration or violate personal privacy.
- (6) An OCCP case file may have unique considerations when processing a FOIA request.
 - a. The file may contain ChoicePoint/Accurint (or similar) information pertaining to more than one individual with the same name as that on the credit card. Agents doing the research often leave all such information in the file so that the case agent can see the process used to identify the taxpayer. Deny any ChoicePoint/Accurint (or similar) information not directly pertaining to the taxpayer in accordance with the guidelines in IRM 11.3.41.13.8.27, *Requests Involving Asset Locator Records (ChoicePoint/Accurint, etc.)*.
 - b. You may disclose ChoicePoint/Accurint (or similar) information on the taxpayer involved in the case to that taxpayer at any time, unless the case agent has a justifiable reason for temporarily withholding it. Work closely with the case agent and manager, although it is rare that disclosure of this information would harm the case.

11.3.41.13.8.45
(02-26-2024)

**Requests for Centralized
Authorization File (CAF)
Extracts**

- (1) Requests from individuals representing taxpayers before the IRS seeking access to all information regarding themselves from the CAF are processed in field Disclosure offices.
- (2) Requests for CAF Listings must be accompanied by a valid photo identification with a signature, such as a valid driver's license. All other forms for proof of identity (notarized statement, presenting a sworn statement, etc.) will not be accepted.

- (3) If no valid photo identification with a signature accompanies the FOIA request, contact the requester to obtain photo identification with a signature to perfect the request. Toll the request if identification cannot be provided the same day. If identification information is not provided, the records will be denied under exemption (b)(3) in conjunction with IRC 6103.
- (4) A request for CAF Listing must also include the requester's CAF number and an agreement to pay fees if a payment would be due.

Caution: If the requester is asking for the original Forms 2848 and/or Forms 8821 for individual clients, the request would not be for a CAF Listing. Follow the guidance in the RRR to request a copy of an original Form 2848 or Form 8821.

- (5) Review the inventory management system and ensure the correct request type, received date and requester information is correct. Identify the Subject Category as "Extracts". Update the Backlog category accordingly.
- (6) Because CAF extracts involve electronic records that are sent on electronic media, or have low hardcopy page counts, most requests will not have a fee but there may be paper fees depending on how the records are provided to the requester. Follow current guidance to determine if any fees apply.
- (7) If the requester has provided all relevant information for a valid request, complete IDRS research and import into the inventory management system. Command Code CFINK with the CAF number provided should be used in any research.

Note: If the representative does not have any authorizations on file, you will still need to order the CAF Listing. This will generate a one-line report which is considered a responsive record.

- (8) To order the CAF Client Listing on IDRS use Command Code KAFFQ and the CAF number. The results of the request will be available the following day on Control-D.

Note: The Disclosure Share Point page has guidance on how to request access to Control-D. The Report Name in Control-D for the CAF Listing is FOIFILE the Job Name is A700102G. Job Run Date is the date the report was created, generally the day after using Command Code KAFFQ to order the report.

- (9) The records at the top of the report are the "end" of a report for another CAF Listing. Records responsive to your request will be highlighted in blue. The records on the last page of the report may also contain the beginning of the next report. After saving the report to your computer, the information that is not responsive must be removed to avoid unauthorized disclosures.

Note: If there are no authorizations, the report will show as 1 line, this one-line report is considered a responsive record.

Note: The report must be saved in Native Format which is a .txt file. If the text document opens in Microsoft Word, right click on the text file, choose properties and open the document in Notepad. The settings should be Landscape with the font Lucida Sans Unicode, size 8.

- (10) Generally responses to CAF Listing requests must be printed and mailed locally unless specific steps are provided to GSS regarding where the records are located, how to print or burn the records to a CD/DVD and ensuring the page count is entered in the response letter.
- (11) While rarer, there may be requests received which seek CAF Listings for a business. This comes in two scenarios:
1. A request seeking the CAF Listing for the business itself, and
 2. A request seeking the CAF Listing for employees of the business (e.g., a professional tax firm with multiple accountants).
- (12) For requests seeking the listing of the business itself, if the requester can provide their identification/authentication for the business (e.g., Schedule K-1 for a partnership, for a corporation a written statement by the officer on corporate letterhead to the effect that they have authority to legally bind the corporation), they would have access to the CAF Listing under their EIN just like an individual. For information on who has authority for a partnership or corporation see IRM 11.3.2, *Disclosure to Persons with a Material Interest*. The CAF Listing for a business should only consist of Forms 8821 as a business cannot file Forms 2848. Reviews and redactions should follow the same process as all other requests and proper exemptions should be cited.
- (13) For requests seeking the CAF Listings of the individual employees, the requesting business owner cannot receive those records simply because they own the business. The records are stored under, and retrieved by, the unique identifiers of each individual CAF number owner which places them under the Privacy Act. There are also potential IRC 6103 issues as the CAF Listing would include information for each taxpayer who a Form 2848 is associated with. The requester would need an authorization for each employee and potentially the authorization of the individual taxpayer's depending on the circumstances of the request and what is specifically requested.

11.3.41.13.8.46
(08-26-2021)
**Preparer Tax
Identification Numbers
(PTINs) and Enrolled
Agent (EA) Listings**

- (1) A PTIN listing and an active enrolled agent listing are not return information as defined in IRC 6103(b), nor is Form W-12, *IRS Paid Preparer Tax Identification Number (PTIN) Application*, a return within the meaning of IRC 6103.
- (2) Additional guidance on locating records pertaining to the PTIN or EA databases are found in the RRR on the Disclosure SharePoint site.

11.3.41.13.8.47
(08-26-2021)
**Requests for Taxpayer
Recording Made in the
Contact Recording
Process**

- (1) The IRS implemented Contact Recording (CR) in all toll-free sites. CR is an automated system that records interactions between the customer and telephone assistants.
- (2) The taxpayer does not have PA access to any CR recordings because any voice or data capture made under CR is not retained by taxpayer identifier. Rather, it is kept under the recorded employee's unique identifier for as long as it is needed, prior to transcription and use in the evaluation and feedback process.
- (3) However, if the taxpayer makes a timely and processable FOIA request, the IRS will attempt to locate and provide the recording. The responsive document(s) will generally include the entire recording pertaining to the taxpayer's contact with the employee. If the recording includes an interchange between the assistant and their manager or some other IRS employee, Disclo-

sure personnel must review those portions of the recording and assert applicable FOIA exemptions as appropriate.

- Caution:** CRs are PA records of the employee. When processing a FOIA request from an employee seeking a copy of a CR, Disclosure employees must consider FOIA exemptions (b)(6) and (b)(7)(C).
- (4) Depending on the language of the request, the responsive documents might also include printouts of any captured computer data that correspond to the resolution of the recorded contact. Review all responsive documents to consider withholding portions under applicable FOIA exemptions.
 - (5) A FOIA request may seek “any recordings that might have been made on me during my contacts with Customer Service” (or some similar wording). Because customer call center inquiries route nationwide, the FOIA request must include specific information to facilitate a search. The request must provide the information listed below. Without it, a search will be unsuccessful, and the FOIA request will be rejected as imperfect.
 - a. The date of the call.
 - b. The approximate time of day of the call.
 - c. Specific identifying information that was provided during the call that will allow the IRS to find and associate the call with the requester (name, address, TIN, etc.).
 - d. The identity of the assisting IRS employee (name, identification number or both).
 - (6) The retention period for CR recordings may be as little as 7 days and as long as 45 days. Offices retain a small number of recordings longer for various purposes, such as to resolve a dispute between the manager and employee, for example. Therefore, there are no time frame limitations on the filing of such requests.
 - (7) The receiving Disclosure office will validate the request and determine whether all needed information is present.
 - (8) The assigned employee will submit Form 13817, *Request for Downloaded Contact*, to the Business Application Administrator (BAA) assigned to the employee’s call site. Disclosure personnel will locate the correct call site through research on Discovery Directory and Outlook. See RRR on the Disclosure SharePoint site for the names and contact information of the BAA’s. IRM 1.4.21.2.1.6, *Freedom of Information Act (FOIA)*, has additional information on FOIA requests for contact recordings. The responsive document for a contact recording is an audio CD. Prior to release, the assigned Disclosure employee will determine what, if anything, to withhold in accordance with applicable FOIA exemptions. See the resources on the RRR>Adobe Audition>How to Upload Audio Files.
 - (9) Because the retention period can be as little as 7 days, follow FOIA case processing time frames strictly. Work cases as quickly as possible to minimize the chance of data destruction.
 - (10) Bill for fees under the fee provisions of the FOIA. It is unlikely that costs incurred for search and providing a tape recording will rise above the tolerance level for fees. See IRM 11.3.5, *Fees*.

Caution: Because CR recordings are PA records of the employee, you must process any request from an IRS employee seeking that employee's CR records under both the PA and the FOIA. Withhold return information of any taxpayer included in the recording in accordance with IRC 6103(a) as third-party return information.

11.3.41.13.8.48
(08-26-2021)
**Requests for
Whistleblower Office
Records**

- (1) Whistleblower Office (WO) records, such as Form 211, *Application for Award For Original Information*; Form 11369, *Confidential Evaluation Report on Claim for Award*; and related records, are records compiled for law enforcement purposes and consist, in whole or in part, of return information of the subject taxpayer. To the extent these records were not obtained or created by the IRS with respect to a return of the whistleblower or the determination of the whistleblower's liability under Title 26, these records are not the return information of the whistleblower.
- (2) FOIA requests for whistleblower records are processed by TLS in field Disclosure offices. Upon receipt of the request, contact the WO to confirm the identity of the whistleblower and to obtain a complete copy of all responsive records. See also IRM 11.3.41.3.8.7, **Whistleblower Administrative Files**.
- (3) If the request comes from anyone other than the whistleblower or their power of attorney, refuse to confirm or deny the existence of any responsive documents. State that any responsive documents that may exist are exempt from release under FOIA exemption 5 USC 552(b)(3) in conjunction with IRC 6103(a). Also consider exemptions 5 USC 552(b)(5), (b)(6), (b)(7)(A), and (b)(7)(C), if applicable.
- (4) If the FOIA requester is the whistleblower, provide copies of the original documents that the whistleblower provided to the IRS as well as any documents obtained or created by the IRS with respect to a return of the whistleblower or the determination of the whistleblower's liability under Title 26 as a result of the whistleblower claim (i.e., any withholding computations performed with respect to the whistleblower's award).

11.3.41.13.8.49
(08-26-2021)
**Requests for
Congressional
Correspondence**

- (1) FOIA requests for correspondence between the IRS and members of Congress are considered sensitive and may have Servicewide impact. Congressional inquiries are case criteria for assignment to a field TLS. An SCR is required for these types of requests.
- (2) FOIA Requests for Congressional Correspondence are under the jurisdiction of Communications & Liaison, Legislative Affairs. Documents from Legislative Affairs will generally contain an inquiry from a Congressional office to IRS and a response from the IRS to either the Congressperson or their constituent.

Note: Congressional correspondence records will generally go back only ten years. Prior to 2005, they were available only in paper format. Congressional correspondence records are kept for 10 years after the end of the Congressional session (calendar year) and are then destroyed. All records for years prior to the most recent 10 years have been destroyed. To the extent the FOIA request seeks records that go beyond the most recent 10 years, your response will be the records do not exist as they were destroyed in accordance with Document 12990, *Records Control Schedules*.

- (3) Review the inquiry (from Legislative Affairs) for any *legend* marking, indicating that the documents are the records of a Congressional Committee and **not** the IRS. If the legend is found, remove the entire inquiry and response from the responsive documents.
- (4) The legend appears on all JCT requests and therefore applies to all requests from, and responses to the JCT, but it occasionally appears on incoming requests from other Members of Congress and their Committees. The Congressional inquiry will contain language identifying the request as a disclosure to the Committee under IRC 6103(f) and noting the inquiry and response is considered a Congressional record not subject to the FOIA. See IRM 11.3.41.13.5.4, *Joint Committee on Taxation (JCT)*, for further detail regarding JCT records.

Caution: Whether a legend is included or not on Committee documents is immaterial and does not negate the fact the records are Congressional records and not subject to the FOIA.

Note: Legislative Affairs will provide a Congressional Correspondence Log with the responsive documents. The log may be used as a reference to ensure that all of the responsive inquiries and responses were captured in responsive documents. The log may also be used to re-scope a request that is overly broad by sending a copy of the log to the requester and asking them to identify the specific congressional correspondence they are seeking (a pattern letter is available for this purpose). If the log is a requested FOIA item, review in accordance with the technical guidance provided above. If not a FOIA item, import the log into the inventory management system as a supporting document.

11.3.41.13.8.50
(08-26-2021)
Requests for Blank IRS Forms

- (1) Requests seeking copies of “blank” IRS forms consisting of IRS tax forms, publications, letters, notices or other published documents, may be processed under a routine agency procedure or may be provided under the FOIA.

11.3.41.13.8.50.1
(12-08-2022)
IRS Tax Forms

- (1) The procedures to obtain “blank” tax forms from the IRS include referring the requester to:
 - Access online through *IRS.gov*
 - Access through the toll-free number, 1-800-829-3676

Note: This guidance pertains only to requests for IRS tax forms. If the requester seeks access under FOIA to blank internal use forms, see IRM 11.3.41.13.8.50.2, *IRS Internal Use Forms*.

11.3.41.13.8.50.2
(08-26-2021)
IRS Internal Use Forms

- (1) Requests seeking IRS Internal Use Forms must be processed under the FOIA. Research Forms/Pubs/Products Repository on the IRS intranet website to determine the distribution properties of the requested document. The public cannot access this site and would have no way to locate forms or any accompanying instructions that are on the intranet but not on *IRS.gov*.

- (2) If the distribution property shows the document is available to the public, the Disclosure employee will provide a copy of the blank form with the notation "Sample" marked clearly on its face.
- (3) If the distribution property shows "Official Use Only," release determination must be made in accordance with the instruction in IRM 11.3.12, *Designation of Documents*.

11.3.41.13.8.50.3
(08-26-2021)
**Requests for the
Paperwork Reduction
Act Submission (OMB
83-I)**

- (1) The *Paperwork Reduction Act* requires that agency information collection practices minimize burden on the public, have practical utility, and support the performance of the agency's mission. Federal agencies are required to obtain OMB approval before they can enforce the collection of any information. OMB's Office of Information and Regulatory Affairs (OIRA) reviews federal regulations and information collections.
- (2) Occasionally Disclosure receives a request seeking a copy of the Paperwork Reduction Act Submission (OMB 83-I) form IRS submitted to OMB that caused a particular OMB number to be assigned to an IRS form. OMB manages a website that makes information about forms that are submitted for approval, available to the public. The information can be searched by form number (i.e., 1040), or OMB approval number (i.e., 1545-0074). Requesters may be directed to the *Advanced Search* site at *Reginfo.gov*.

11.3.41.13.8.51
(08-26-2021)
**Requests for FOIA Case
Files**

- (1) A FOIA request that asks for information pertaining to a previously submitted FOIA request must be reviewed on a case-by-case basis to determine if it is valid for processing. Items to consider during the initial analysis include:
 - Is the request too broad and would require the requester to re-scope?
 - Is the request for taxpayer records or for IRS records?
 - Is the requester authorized under law to receive the requested records?
- (2) Courts have held that FOIA requesters have no general expectation that their names will be kept private. In fact, in most cases the release of the name of a FOIA requester would not cause the minimal invasion of privacy required to trigger the balancing test of exemption (b)(6).
- (3) On the other hand, any personal information about an individual FOIA requester, such as their home address, should be protected under exemption (b)(6), if applicable, and absent a compelling public interest in its disclosure.
- (4) Do not release information about a requester if that information, in conjunction with the context of the request, reveals any return information of another taxpayer. All responsive records must be reviewed and references that implicate IRS compliance actions removed using exemption (b)(3) with IRC 6103(a).
- (5) In making release determinations, exemption (b)(6) will be considered for withholding the identity and/or other PII of an individual(s), and (b)(3) with IRC 6103(a) will be considered for withholding information that implicates tax administration pertaining to a third party. Other FOIA exemptions may also apply.
- (6) Internal discussion and recommendations regarding FOIA withholding determinations will ordinarily be withheld as deliberative process material using FOIA exemption (b)(5). Contact with counsel must take place using established com-

munication protocols, and the Counsel advice provided must be documented in the case notes, to support the use of FOIA exemption (b)(5).

11.3.41.13.8.52
(08-26-2021)

Requests for Audit Information Management System (AIMS) Case Files

- (1) AIMS tables provide the Service and Enforcement Headquarters Offices and field personnel with information to monitor the current year's Examination Plan as well as specific programs. The Detroit Computing Center generates national level reports, whereas the Tennessee Computing Center generates group level reports. These reports are compiled monthly. At the conclusion of each fiscal year, an error correction system identifies problems. This system results in three reports for the September period of each year: (1) 1st FY Preliminary; (2) 2nd FY Preliminary; and (3) Final FY report. The Final FY report is delivered by the end of November.
- (2) The Transactional Records Access Clearinghouse (TRAC) is the primary requester of the AIMS tables. The purpose of TRAC is to provide comprehensive information about staffing, spending, and enforcement activities of the federal government. This information is provided to the public through their websites.
- (3) The IRS produces the AIMS tables to TRAC, upon 30 days of a request, and only redacts the information identified as "cells of one." This information is being provided pursuant to a court order based upon FOIA litigation results and is indexed into the inventory management system as a FOIA. Caseworkers should ensure the case is properly indexed in the system. Best efforts should be made to complete these cases within the 30 days afforded by the court, but extensions do occur and should be handled according to FOIA procedures.
- (4) TRAC requests are submitted monthly for Table 35, Table 36, Table 37 and Table 38 of the AIMS report. This creates 36 cases per year. September has 3 versions of Table 37 & 38 produced. TRAC requests the second and third version of the reports by submitting a request for the "2nd Run" September Table 37 & 38 and "Final Run" Table 37 & 38. This creates 2 cases per year.
- (5) TRAC requests a fee waiver with each request. TRAC has a standing management approval for fee waivers. The caseworker must place a note in the inventory management system regarding the standing management approval of the fee waiver. The case is sent to the DM through normal Fee Waiver procedure for concurrence.
- (6) SB/SE produces the AIMS reports and provides them to Disclosure in both an unredacted and redacted format around the middle of the month following the report month. These reports are placed onto the Disclosure SharePoint site at: TRAC – AIMS UnRedacted in Process, and/or TRAC – AIMS Redacted in Process.
- (7) Relevant response files must be retrieved from the Disclosure SharePoint site and organized in a non-inventory management system case file. Upon conclusion of the case the response files need to be loaded into the Disclosure SharePoint related archive folder.
- (8) Review considerations:

- For Tables 35 & 36 no review is required as the tables are released un-redacted.
 - For Tables 37 & 38 the court order permits application of IRC 6103(a) to only “cells of one” that shows records of tax enforcement results (ROTTERS). It is essential to confirm that all ROTTERS relating to a single taxpayer are redacted.
- (9) The AIMS tables report ROTTERS as well as inventory and man hours expended. It is important that the caseworker confirm that non-ROTTER data is not erroneously redacted. The AIMS tables programming is subject to inadvertent and unintentional errors. It is important to confirm the programming does not create erroneous overlays, omit pages, corrupt data, or similar errors.
- (10) The AIMS tables reviewed in Microsoft Access are emulations of the underlying data tables. Therefore, all corrections require the SB/SE programmer to adjust the underlying tables. Error correction is coordinated between Disclosure and the SB/SE programmers.
- (11) A review log is found on the Disclosure SharePoint site and captures the review completion of individual specific office reports. Any identified errors should also be noted in the review log.
- (12) When case is ready for closure:
- For Tables 35 & 36 – This item is identified in the inventory management system as a release in full.
 - For Tables 37 & 38 – This item is identified in the inventory management system as a (b)(3) w/ 26 USC 6103 redaction in part.
- (13) The tables will be placed in a .Zip file which will be uploaded into the inventory management system. The review logs will also be uploaded into the inventory management system.
- (14) The caseworker will create a final response using approved pattern language. The .Zip file will be placed on an encrypted CD for delivery to the requester. Pursuant to DOJ OIP instruction, TRAC receives modified appeal rights due to the doctrine of res judicata being applicable and the production being controlled by a standing court order. Therefore, TRAC receives instruction referring it back to the US District Court rather than being provided a Notice 393 and administrative appeal rights.
- (15) See the TRAC AIMS Job Aid on the Disclosure SharePoint in Resources>TRAC AIMS for additional information.

11.3.41.13.8.53
(08-26-2021)

**Requests for Tax Court
Cases**

- (1) FOIA requests for records that involve a tax court case must be processed routinely. All responsive records must be secure, a complete review of responsive records must be conducted, and the records must either be released or withheld citing applicable FOIA exemptions based on the facts and circumstances of the case.
- (2) FOIA and discovery are two separate processes, see *Chief Counsel Notice 2006-016* on procedures that employees may use to identify and process requests for information that are the subject of discovery requests (in a litigation context) and FOIA requests.

- (3) When a case is in Tax Court, the IRS retains the original administrative file and the legal file generated as a result of a Tax Court suit. The records remain under IRS control and must be considered in response to a FOIA request. It is possible that the timing of a FOIA request may adversely affect the development of a Tax Court case once it is calendared. Disclosure employees must work closely with the Counsel Attorney who is litigating the case to balance the demands of both the FOIA and the litigation processes.
- (4) *Rule 24* of the Tax Court Rules of Practice and Procedure, Title III, explains the process for counsel to enter an appearance in Tax Court on behalf of a taxpayer. However, entering an appearance in Tax Court and submitting a Form 2848, *Power of Attorney and Declaration of Representative*, are two distinct processes. Any FOIA request from a third party for tax information regarding a docketed Tax Court case must still contain sufficient information providing valid authority in accordance with IRC 6103(e). This same rule applies if the litigation is in any other type of court. Making an appearance in court as the representative of a taxpayer does not automatically authorize the attorney to obtain disclosure of the taxpayer's tax information other than within the procedures of that litigation.

11.3.41.13.8.54
(02-26-2024)
FOIA Litigation

- (1) A FOIA requester can seek judicial review during the processing of a FOIA request. For example, the FOIA extension letter advises the requester that a suit may be filed if the requester does not agree to an extension beyond the statutory period.
- (2) FOIA lawsuits are handled by Counsel, P&A and the responsibility for processing the open FOIA request shifts from Disclosure to Counsel once the suit has been filed. Should you receive notice from Counsel, P&A that a suit has been filed, take these steps:
 1. Immediately notify the DM, by email of the FOIA litigation. Include the case number and cc the area TA.
 2. Do not provide any responsive documents to the requester.
 3. Notify all record custodians that have been issued requests for documents to discontinue their search. (This includes but is not limited to all BUs, FRCs and SS units).
 4. Close the case using the FOIA Litigation closing disposition.
 5. Provide the Counsel attorney all case notes and other relevant information contained within the FOIA case.
 6. Charge time spent on any assistance to Counsel on the closed FOIA case.
 7. Document case notes with:
 - a) The fact that the suit was filed, and that the FOIA case is being closed
 - b) The Counsel attorney assigned to the FOIA litigation
 - c) Any subsequent actions taken (if applicable)

Note: If the Counsel attorney is requesting that the FOIA case remain open, the caseworker must discuss this with the DM prior to taking any additional action.

Caution: If Counsel requests assistance other than providing documents from the case file, the request for Counsel assistance must be elevated through the DM to Senior Leadership. Case notes must also document actions taken when assisting Counsel with FOIA litigation.

11.3.41.13.8.55
(08-26-2021)

**Requests for Volunteer
Income Tax Assistance
(VITA) and Tax
Counseling for the
Elderly (TCE)
Information**

- (1) Returns prepared in VITA and TCE sites are not federal tax returns as defined by IRC 6103(b) until the IRS receives them.
- (2) Statistical and review information about returns prepared in VITA and TCE sites are maintained by Stakeholder Partnership, Education and Communication (SPEC). SPEC can provide data in an Excel spreadsheet regarding the numbers of returns prepared at specific sites and selected characteristics about those returns. Each site is identified by a unique Site Identification Number (SIDN), no individual identifying information associated with the return preparation or the taxpayer is maintained.
- (3) Form 6729, *QSS Site Review Sheet*, and Form 6729-C, *FSV Return Review Sheet* are prepared by SPEC during site visits. Although the review sheet formats may be revised from year to year, the forms currently in use and those for the most recent years do not identify individual VITA or TCE return preparers or individuals whose returns have been prepared.
- (4) In response to a FOIA request for these Forms, release them in full including the Site name, SIDN, reviewer's SEID, and "review conducted by" information.

Note: There are places for comments on these review forms, if properly completed these comments will not have personal information but the caseworker must review the comments to make sure there is no content that needs to be withheld. If the comments have any personal information, it must be removed citing FOIA exemption (b)(6).

- (5) Since there is no FOIA exemption that can be used for the statistical information or the individual review sheets these will be released in their entirety. The fact that a request for information will result in providing a sample that is not statistically valid is not a factor in determining whether the information must be disclosed.

11.3.41.13.8.56
(02-26-2024)

**Transferee, Nominee and
Alter Ego**

- (1) A transferee is a third-party recipient of property from a taxpayer prior to or after a tax liability is incurred. Frequently, collection of tax is based on a finding that the transfer is fraudulent, but may also be based on contract, statute, or changes in corporate structure.
- (2) A nominee is a third party who owns property in name only for the benefit of the taxpayer. The taxpayer is the true owner of and holds equitable interest in the property. The government may look to property held in the name of a nominee to satisfy the tax liabilities of the true owner. A nominee differs from a transferee in that the transfer of property was simulated, often being made to a fictitious entity which is an alter-ego of the taxpayer.
- (3) In circumstances where there is such a unity of interest and ownership between a corporation and an individual or shareholder that their separateness has ceased to exist, and failure to disregard the corporate form would result in

injustice, the corporation may be deemed the “alter ego” of the individual, and the government may look to the individual to collect unpaid taxes and non-tax debts of the corporation.

- (4) A request by a nominee, transferee or alter ego seeking information regarding a lien or levy determination will normally seek files and records related to the determination. In most cases this information will be that of the taxpayer - not the nominee or transferee. The key factor is not whose tax liability may be affected by the data, but whose tax liability is under investigation.
- (5) Most information related to the determination will be considered return or return information under IRC 6103(b). It therefore cannot be disclosed under FOIA except to the extent permitted by IRC 6103.
- (6) Return and return information does not become that of the other party as a result of the lien or levy. Transferees and nominees are third parties. Even though the doctrines of transferee and nominee liability may make them responsible for the taxpayer’s liability, the taxpayer’s return and return information does not become that of the transferee or nominee. Similarly, the transferee or nominee’s return and return information does not become that of the taxpayer. For purposes of FOIA it is vital to determine what is taxpayer return information and what is third-party information. The requester must provide proof of their right to receive returns and return information. Withhold any third party information using exemption (b)(3) with IRC 6103(a). Apply other relevant exemptions as needed (i.e., (b)(6), (b)(7)(A) or (b)(7)(C)). Reach out to the originating compliance employee for help in determining what is first party or third party tax information.

11.3.41.14
(08-26-2021)
Privacy Act (PA)

- (1) Overview: The Privacy Act, 5 USC 552a, provides for public access to agency records that are retrieved by an identifier for an individual. Disclosure of information is limited by a determination that one of the exclusions applies. Requests must be made in writing and comply with the requirements of the PA. Disclosures made under PA must align with Delegation Order 11-8, **Authority for Initial Determinations with Respect to Requests for Records Pursuant to 5 USC 552a, Privacy Act**, as found in IRM 1.2.2.12.7.

Note: Any disclosure of tax information under the PA must also comply with IRC 6103 provisions and Delegation Order 11-2, found in IRM 1.2.2.12.2, *Delegation Order 11-2 (Rev. 4), Authority to Permit Disclosure of Tax Information and to Permit Testimony or the Production of Documents*, for the delegated official.

Additional procedures relating to PA disclosures can be found in IRM 10.5.6, *Privacy Act*. For information on Disclosure casework processing procedures see IRM 11.3.41.3, *General Disclosure Case Processing Procedures*. This section will provide specific casework guidance pertaining to PA requests. See Exhibit 11.3.41-9, *Privacy Act Case Processing Checklist*, for case processing guidance.

- (2) CAP
 - **Code** - 5 USC 552a, 31 CFR Part 1 Subpart C, 5 CFR Chapter 1, Subchapter B, parts 293, 294 and 297
 - **Authority** - Delegation Order 11-8

- **Procedures** - IRM 11.3.41.14 and IRM 10.5.6

(3) Related Terms/Definitions. Review the following terms/definitions in Exhibit 11.3.41-1, *Terms/Definitions/Acronyms*:

- Individual
- Notice of Exempt System
- Routine Uses
- System of Records
- System of Records Notice

11.3.41.14.1
(08-26-2021)
**General Case
Processing for
Disclosure Pursuant to
the Privacy Act (PA) 5
USC 552a**

(1) The Disclosure office is responsible for operational casework related to requests for access to and disclosure of PA information. The Disclosure office will control and process written PA requests for access and amendment.

(2) Individuals making a written PA request to Disclosure for notification and access to IRS systems of records should:

- Furnish their name and address and sign the request.
- Clearly mark the request, "Request for Notification and Access."
- Insert a statement that the request is being made under the PA.
- Provide their SSN if the system being accessed is accessed by SSN. Requests for records maintained in the name of two or more individuals (such as husband and wife) must contain the names, addresses and SSNs (if necessary) of both individuals.
- Specify the name and location of the system of records being accessed.
- Indicate whether the requester wishes merely to be notified whether the system contains a record pertaining to that requester; whether that requester wishes to inspect the record in person; or whether that requester wishes to have a copy made and furnished by the IRS. If the individual requests copies, the request must include an agreement to pay the fee for copying records, if such fee is anticipated to be for \$25.00 or more.

Note: The sole fee to the public pursuant to the PA is one that permits the Government to recover the expense incurred by providing copies of records. For more information, see IRM 11.3.5, *Fees*.

- In the case of records which are maintained by specific dates or periods, indicate whether the requester wishes notification and access to other than the latest period available. Unless otherwise specified, requests will be deemed to be limited to the latest period available.
- In the case of requests for notification and access to material maintained in a system of records which is exempt from notification and access under PA Section (k)(2), establish that the requester has been denied a right, privilege, or benefit that the requester would have otherwise been entitled to under federal law as a result of the maintenance of such material.

(3) Although individuals are encouraged to meet all the requirements stated, all of the requested information may not be necessary to process every request. DMs are to exercise discretion in accepting requests as filed, if they substantially meet procedural requirements and are adequate to permit processing.

- (4) The PA section (b) limits access to a record without the prior written consent of the individual to whom the record pertains. The Act has other Conditions of Disclosure where a record may be disclosed without prior written consent. These conditions include:

- (b)(1) – Internally to officers and employees of the agency who have a “need to know” the information in the performance of their official duties.
- (b)(2) – For the release of a record as required by the FOIA. The existence of an actual FOIA request is a prerequisite for application of this provision.
- (b)(3) – A routine use provision.
- (b)(7) – For civil and criminal law enforcement activities. This condition of disclosure is applicable when federal, state, and local governments request information for investigations of welfare fraud, tax matters, unemployment compensation and other civil or criminal law enforcement activities.

Caution: For disclosures of tax returns or return information the provisions of IRC 6103 must be met.

- (b)(11) – Disclosure pursuant to an order of a court of competent jurisdiction.

See IRM 10.5.6.8.2, *Conditions of Disclosure Under the Privacy Act*, for additional information.

- (5) Disclosure caseworkers should refer requesters to routine procedures for personnel information that is available under another IRS process. For example, an employee seeking to review information pertaining to their personnel folder, retirement records, disciplinary files or medical files. Personnel may provide such information under existing procedures, although the request may mention the PA. Individuals will not be required to submit a PA request for data available to them under other procedures. See IRM 10.5.6, *Privacy Act*, for additional information on routine processes on requests for personnel records.
- (6) If a request for access to a system of records mentions the FOIA, process the request in accordance with procedures for administering that Act to the extent that the description reasonably permits the identification of the records. A PA access request, like a first party FOIA request, will be processed under the statute that provides the greatest right of access to the individual regardless of the statute cited by the individual.

Note: If the request seeks records under the PA and are exempt under the PA but are available under the FOIA, FOIA fees for search, review and processing apply.

- (7) DMs will determine if the request is processed under the PA or FOIA. If the request is processed under the FOIA, refer to IRM 11.3.41.13, *Freedom of Information Act (FOIA)*. If greater access is provided by processing under the PA, the following procedures apply:
- a. If a request for notification and access omits any information which is essential to processing the request: advise the requester within 10 working days of the additional information which must be submitted

- before the request can be processed. Then close the case. If additional information is received after the case is closed, the caseworker should work with their manager to determine whether to work from the closed case or to create a new case for processing.
- b. Disclosure will contact the business unit that has jurisdiction over the requested records. Disclosure will respond directly to the requester after the business unit provides a response.
 - c. If a request extends to numerous systems of records, or systems which could not contain information relating to the requester, the Disclosure employee should correspond with or telephone the requester to assist the requester in refining the request.
 - d. Disclosure will provide a copy of any valid request for records to the official having control of the records, requesting that notification information, records, and/or disclosure recommendations be provided.
 - e. Notify the requester whether the system of records contains a record pertaining to the requester, unless the system is exempt from the notification requirement.
 - f. Permit access to requested records (by inspection or copying), unless the system of records is exempt from the access provision.
 - g. When access is requested to medical records, including psychological records, the Disclosure employee will consult with the system manager to determine if release could have an adverse effect on the individual, and that release will be made only to a physician authorized in writing to have access to such records.
 - h. All disclosures made pursuant to the access and notification provisions must be consistent with all other disclosure requirements. Deletions may be necessary to protect information pertaining to persons other than the requester. Adhere to all provisions of IRC 6103 accordingly.
 - i. A response authorizing disclosure must be signed by the system manager, or by a Disclosure employee having an appropriate delegation from the system manager and having obtained the concurrence of the function responsible for the records being disclosed.
 - j. Make the determination to grant or deny access within 30 working days after receipt of a valid request. If the response cannot be made within 30 days, the DM will advise the requester of the reasons for the delay and of the approximate date the request will be answered.
- (8) The PA provides an individual with the opportunity to request amendment of a record pertaining to him/her in order to correct information that is not timely, accurate or complete. See IRM 10.5.6.6.4, *Requests to Amend Records*, for additional information.
- Note:** IRC 7852(e) provides a statutory exemption to the amendment of tax records. Respond to any PA request received asking directly or indirectly to amend the determination of liability of any person for any tax, penalty, interest, fine, forfeiture, other imposition or offense which is defined in IRC 6103, by citing IRC 7852(e). Furnish no statement explaining appeal rights.
- (9) There is no provision for the administrative appeal of access denials under the PA. Responses should not mention any right to judicial review when a request does not substantially comply with appropriate regulations and is not adequate to permit processing. No mention should be made of a right to judicial review when requested records are contained in an exempt system of records, or where the requester has not established that the requester was denied a

specific right, privilege, or benefit to which the requester would otherwise be entitled under federal law as a result of the maintenance of such material.

Note: However, if a PA request is processed under FOIA, then the response is made under FOIA and should include the usual FOIA language regarding administrative appeal and judicial review.

- (10) Most IRS records are subject to an extensive body of law, including the confidentiality and disclosure provisions of IRC 6103 that are usually more specific and restrictive than the PA, and that therefore will be found to be the governing statute. It is important, in applying the PA, to take into consideration all statutory requirements that are applicable; the result should be that the safeguards against the invasion of an individual's privacy should be not less than required by the PA.
- (11) Requests for notification and access received by Disclosure must not be processed unless the requester has established the requester's identity in the request. The requester's identity can be established by a signature, address, and one other item of identification such as a photocopy of a valid driver's license or other document bearing the individual's signature.
- (12) Individuals may also establish their identity either in person or by mail by providing a notarized statement swearing or affirming to their identity, and to the fact that they understand the penalties provided in PA Section (i)(3) for requesting or obtaining access to records under false pretenses.
- (13) Although the requirements for identification are discussed above, the employee receiving or processing the written request may require additional proof of an individual's identity before action will be taken, if necessary, to protect against an unauthorized disclosure.
- (14) A parent of any minor, the attorney-in-fact of an individual, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity by a court of competent jurisdiction, must (in addition to the identification requirements) provide adequate proof of legal relationship and authority before the parent, attorney-in-fact, or guardian may act on behalf of such minor or individual.
- (15) Employees authorized to make disclosures of non-tax PA records must account for such disclosures. The PA requires each agency to keep an accurate accounting of the date, nature, and purpose of each non-tax disclosure of an individual's record to any person or to another agency and the name and address of the person or agency to whom the disclosure is made. See PA Section (c). This requirement only applies to records maintained in a system of records. See PA Section (a)(5).
- (16) For accounting of non-tax disclosures under the PA, use Form 5482, *Record of Disclosure (Privacy Act of 1974)*. See IRM 10.5.6.7.4, *Form 5482 Procedure*, for additional information.
- (17) See IRM 11.3.37, *Recordkeeping and Accounting for Disclosures*, for detailed information about disclosures of tax returns and return information pursuant to IRC 6103(p)(3)(A) accounting.

- (18) Subsection (c)(3) of the PA provides that accountings of disclosures (non-tax) made pursuant to the PA will be available to the individuals named in the records at their request. The request must be in writing, signed, originate from an individual and must be for an accounting of disclosures that relates to records subject to the PA. See IRM 10.5.6.7.5, *Requests for Access to Accountings of Disclosure of a Privacy Act Record*; IRM 10.5.6.7.5.1, *Form of Request*; and IRM 10.5.6.7.5.2, *Processing Requests*, for additional information.

11.3.41.14.2
(12-08-2022)
**Case Timeliness
Expectations Privacy
Act**

- (1) When processing PA requests, initial analysis must be completed at the earliest opportunity but no later than 3 business days of case assignment. Order records commensurate with initial analysis but no later than 3 business days of initial analysis (6 business days total from case assignment).
- (2) Follow-up Actions:
- To be completed at the earliest opportunity but no later than 2 business days after the due date for document receipt. Set a reasonable due date for receipt of records with the records owner. Obtain management involvement if there is no response and/or delay.
 - Establish and document a plan of action after records are received. Case actions are to be documented contemporaneously with the case action in case notes.
 - Continuous, substantive actions must be taken to process the case to closure. Action must be taken at a minimum of every 2 weeks unless approved by the DM and a notation made in case notes.
- (3) When resolving PA requests, cases must be closed within 1 business day of the final action taken, such as but not limited to the issuance of the final response letter, determining the request is imperfect or determining there are no responsive records.

11.3.41.14.3
(08-26-2021)
Privacy Act Exemptions

- (1) Certain Systems of Records (SORs) are exempt from provisions of the PA. The determination to exempt an SOR is made by the head of an agency and is published in the Federal Register. The IRS System of Records Notices (SORNs) are published in the Federal Register; each SORN includes a statement of whether the records in the system are exempt from disclosure under the PA. The exemptions are also published in the CFRs located at 31 CFR, Subtitle A, Part 1, Subpart C, Section 1.36. The CFRs explain the reasons why a PA record is exempt, however just because a record may be exempt at one period in time does not mean that it will always be exempt. The PA exemptions include:
- 5 USC 552a(j)(2), which provides for exemption from disclosure of certain records pertaining to criminal law enforcement;
 - 5 USC 552a(k), which provides for seven specific exemptions that can be applied to specific records maintained in a system of records; and
 - 5 USC 552a(d)(5), which is a special exemption that provides an exemption only from the access provision.
- (2) Privacy Act 552a(j)(2), allows an agency to exempt an entire SOR from certain provisions of the Act. This exemption is applied to all records maintained in the SOR. The records must be maintained by a component of the agency whose principal function is the enforcement of criminal laws. To be exempt, an IRS SOR must contain information or reports gathered:

- To identify individual criminal offenders and alleged offenders,
 - For a criminal investigation, including reports of informants and investigators, or
 - At any stage of criminal law enforcement, from arrest or indictment through release from supervision.
- (3) Privacy Act 552a(k), contains seven provisions that allow an agency to exempt an SOR. This exemption can only be applied to specific records maintained in an SOR. Responsive records must be reviewed to determine whether the exemption applies. Any SOR may be exempt from certain provisions of the Act under the following:
- Section (k)(1) – By Executive Order requiring the material to be kept secret in the interests of national defense or foreign policy, and the material is properly classified pursuant to the Executive Order.
 - Section (k)(2) – Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2). However, if as a result of the maintenance of the material, an individual is denied any right, privilege, or benefit for which he is otherwise entitled or eligible by federal law, the material shall be provided to the individual except to the extent disclosure would identify a source who had been given an express promise of confidentiality of their identity.
 - Section (k)(3) – Maintained in connection with providing protection services to the President of the United States or other individuals pursuant to Section 3056 of Title 18.
 - Section (k)(4) – Required by statute to be maintained and used solely as statistical records.
 - Section (k)(5) – Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information, to the extent that disclosure would reveal the identity of a source who had been given an express promise of confidentiality of their identity. This exemption is generally applicable to source-identifying material in background employment and personnel-type investigative files.
 - Section (k)(6) – Testing or examination material used solely for the purpose of determining suitability, eligibility, or qualification for appointment or promotion in the federal service, the disclosure of which would compromise the objectivity or fairness of the testing or examination.
 - Section (k)(7) – Evaluation material used to determine potential promotion in the armed services.
- Note:** The primary exemptions used by the IRS are (k)(2), (k)(5) and (k)(6).
- (4) Records exempt under section (j) or section (k) of the PA are also exempt from other provisions of the Act including the following:
- Section (c)(3), which allows an individual to get access to an accounting of disclosures of their records.
 - Section (d)(1), which gives an individual the right to request access to all records pertaining to him/her.
 - Section (d)(2), which permits an individual to request amendment of their records.

- Section (d)(3), which allows an individual to request a review of the agency's refusal to amend records.
 - Section (e)(8), which notifies individuals when their records are made available through compulsory legal process.
 - Section (f), which establishes access and amendment procedures to be used by an individual.
- (5) Privacy Act 552a(d)(5), provides an exception only from the access provisions of the Act. Subsection (d)(5) states that nothing in the Act requires an agency to grant access to any information gathered in "reasonable anticipation" of a civil action or proceeding. The exemption covers documents prepared in anticipation of quasi-judicial administrative hearings and was also intended to cover preliminary judicial steps. A distinguishing feature between this exemption and all the other PA exemptions is that it does not require an implementing regulation in order to be effective.
- (6) Unlike the attorney work-product privilege under FOIA exemption (b)(5), subsection (d)(5) of the PA does not cover records compiled in anticipation of criminal actions. Records of this type would be protected under exemption (j)(2) of the Act.
- (7) The PA has a provision that requires the IRS to provide requesters the greatest access possible to their records. Provisions (t)(1) and (2) of the Act require the IRS to process a FOIA or PA request under the Act that gives the requester the greatest access. If an SOR is exempt under the provisions of the PA, you must consider whether the PA exemption is applicable to the particular fact situation and whether information could be released under the FOIA. To withhold any records in response to a request, they must be exempt from access under both statutes. With tax records, you must also consider IRC section 6103.

11.3.41.14.4
(12-08-2022)

**Access to Records of
Deceased Employees**

- (1) The PA only applies to living individuals. See OMB Guidelines, 40 Fed. Reg. 28,948, 28,951 (July 9, 1975). While the PA does not provide deceased IRS employees confidentiality, their surviving families and friends have some expectations of privacy concerning certain aspects of records of deceased employees.
- (2) Generally, the IRS privacy policy is to keep information about employees who died confidential. Sometimes the IRS may be required to disclose limited information about the deceased person to executors and relatives when the disclosure is necessary for implementation of a will or other necessary business to finalize the deceased person's affairs.
- (3) If a surviving family member warrants protection of particularly sensitive graphic details about a death or other very sensitive information when disclosure would cause mental anguish and pain to the survivor. Keep the following in mind:
- Survivors have the right to keep their privacy from being invaded by the disclosure of embarrassing, painful, or distressing information about the employee who died.
 - When feasible, only share basic information about an employee's death (name, date of death, date/time/location of announced memorial services) with co-workers.

- Treat the cause of death or the identities of surviving relatives and friends as confidential, until/unless the next of kin states that the IRS may share the information.
- As with ill employees, information provided unofficially by the next of kin is not an agency record.
- Be clear about what the next of kin wants co-workers to be told. Ask if there is a newspaper announcement to share or invite the family/friend to ensure the accuracy of the information by sending a message to forward to co-workers.

11.3.41.14.5
(12-08-2022)

Notifying Individuals That Their Records Were Made Available Under Compulsory Legal Process

- (1) Subsection (e)(8) of the PA requires that agencies “make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record.”
- (2) This provision applies to disclosures made pursuant to:
1. Subpoenas and summonses
 2. The order of a court of “competent jurisdiction,” as authorized by subsection (b)(11) of the Act
 3. An IRC 6103(i) ex parte order

Note: See also IRM 11.3.28, *Disclosure to Federal Agencies for Administration of Non-Tax Criminal Laws*, and IRM 11.3.35, *Requests and Demands for Testimony and Production of Documents*, for disclosure of tax return and return information; and IRM 11.3.37, *Recordkeeping and Accounting for Disclosures*, for the accountings required by IRC 6103(p)(3).

- (3) This provision does not apply to disclosures from a system of records exempt pursuant to subsection (j)(2) of the PA, as they are not subject to the subsection (e)(8) notification requirement.
- (4) This provision does not apply to disclosures made pursuant to a written request by, or with the written consent of, the individual to whom the record pertains. Consequently, it does not apply if the process leading to disclosure is at the behest or on the behalf of the subject of the record.
- (5) While this provision does not apply to disclosures made pursuant to subsections (b)(1), (2), (4)-(10), and (12) of the Act, this provision does apply when a disclosure is made pursuant to a routine use as provided by subsection (b)(3) that authorizes disclosures in response to subpoenas or court orders.
- (6) The notice will be mailed to the individual’s last known address. One copy of the notice will be maintained in the disclosure file and one copy should be associated with the record disclosed, if practical.

Note: If the disclosure is of personnel records, the last known address will be the personnel file address. Caseworkers should not access tax records to obtain an address for this purpose.

- (7) This procedure will be carried out by the person authorized to make the disclosure following established procedures for the compulsory legal process or under the direction of the DM.

- (8) Any compulsory legal process which appears to make an individual's record (which is subject to the PA) available to a third party should be carefully examined to determine whether it is subject to the notification procedure.

Note: The notification procedure only becomes effective if the record is actually disclosed. Do not interpret this instruction as authorization for any disclosure.

- (9) Provide notice within five working days of making a disclosure pursuant to compulsory legal process.
- (10) If the disclosure is made in response to a grand jury subpoena or an ex parte order pursuant to IRC 6103(i)(1), (5), or (7)(C), do not give the notice until the subpoena or order becomes a matter of public record. If the subpoena or order does not indicate whether it is a matter of public record, it may be necessary to request the issuing authority to advise the IRS when the matter becomes public, so that the required notice may be issued. See also IRM 11.3.28, *Disclosure to Federal Agencies for Administration of Non-Tax Criminal Laws*, and IRM 11.3.35, *Requests and Demands for Testimony and Production of Documents*, for notification rules involving ex parte orders in judicial, administrative, or grand jury situations.

Note: Whenever the individual whose information was made available under compulsory legal process is present in the judicial or administrative proceeding when that information is disclosed, the notice requirement may be considered satisfied and no additional notification is required. The case file will be noted that the individual was present at the time of disclosure.

Example: The individual is a party, witness, or observer in the proceeding.

- (11) The notice will be mailed to the individual's last known address. One copy of the notice should be maintained in the administrative or other file from which the disclosed documents originated. One copy should be associated with the record disclosed, if practical.
- (12) See IRM 10.5.6.4.7, *Notifying Individuals That Their Records Were Made Available to a Person Under Compulsory Legal Process*, and IRM 11.3.35.17, *Notifying Individuals That Their Records Were Made Available to a Person Under Compulsory Legal Process*, for a full explanation of requirements and procedures.

11.3.41.15
(08-26-2021)
**Subpoena and
Testimony
Authorizations**

- (1) Overview: 26 CFR 301.9000-1 through 301.9000-7 (Touhy regs) require IRS officers and employees as well as contractors, to obtain prior approval before they may produce IRS records or information, or testify in judicial or administrative proceedings in response to a demand. Requests must be made in writing and comply with the Touhy regs. Disclosures made under the Touhy regs must align with Delegation Order 11-2, found in IRM 1.2.2.12.2, *Delegation Order 11-2 (Rev. 4), Authority to Permit Disclosure of Tax Information and to Permit Testimony or the Production of Documents - Testimony Tables*.

Note: Any disclosure of tax information under Touhy must also comply with IRC 6103 provisions and Delegation Order 11-2. Any disclosure of personal information under Touhy must also comply with the PA and Delegation Order 11-8.

Additional procedures relating to Subpoena and Testimony disclosures can be found in IRM 11.3.35, *Requests and Demands for Testimony and Production of Documents*. For information on Disclosure casework processing procedures see IRM 11.3.41.3 *General Disclosure Case Processing Procedures*. This section will provide specific casework guidance pertaining to subpoena requests. See Exhibit 11.3.41-10, *Subpoena Case Processing Checklist* for case processing guidance.

(2) CAP

- **Code** - 26 CFR 301.9000-1 through 301.9000-7
- **Authority** - *Delegation Order 11-2* testimony tables (tax information) *Delegation Order 11-8* (personal information)
- **Procedures** - IRM 11.3.41.15 and IRM 11.3.35

(3) Related Terms/Definitions. Review the following terms/definitions in Exhibit 11.3.41-1, *Terms/Definitions/Acronyms*:

- Demand
- IRS matter
- IRS records or information
- Request

11.3.41.15.1
(08-26-2021)
General Case Processing for Disclosure Pursuant to Touhy Regulations 26 CFR 301.9000-1 through 301.9000-7

- (1) 26 CFR 301.9000-1 through 301.9000-7 set forth the procedures under which IRS employees may disclose IRS information in response to a subpoena. All subpoenas received by IRS officers and employees, as well as contractors, **must** be forwarded immediately to the Disclosure Office.
- (2) In **IRS matters**, Disclosure personnel will **immediately**, upon receipt, forward a subpoena, court order or other request or demand from a party other than the government to the appropriate Chief Counsel office. These subpoenas involving the federal government will contain references in their titles to the United States, the Department of the Treasury, the IRS, or other federal agency as either the plaintiff or the defendant.
- (3) "IRS matter" is defined under 26 CFR 301.9000-1(f) and not IRC 6103. These matters include, but are not limited to:
- Criminal tax cases
 - Refund litigation cases
 - Summons enforcement cases
 - Wrongful levies
 - Foreclosure of federal tax liens
 - Bankruptcies
 - Actions affecting personnel rights of employees or former employees of the IRS
 - Federal tort claims litigation, FOIA and PA litigation
- (4) When forwarding the request or demand to the appropriate Area Counsel for processing, provide the CAP justification applicable to the referral.
- (5) In **Non-IRS matters**, Disclosure personnel will be responsible for correctly responding to the request. The key to handling testimony cases is confirming their validity under 26 CFR 301.9000-1 through -7 and obtaining **timely** and **accurate** information.

- (6) Disclosure personnel should speak to the attorney or requester responsible for serving the request or subpoena. This call should be used to:
- Verify receipt of the subpoena,
 - Determine additional background and scope of the subpoena (See IRM 11.3.41.15.6, *Briefing The Employee Who Will Testify*),
 - Verify the time frame for the appearance/production of records, and
 - Explain any disclosure complications.
- Example:** Some IRC 6103 disclosures may require written authorization. See IRM 11.3.3, *Disclosure to Designees and Practitioners*.
- Example:** An ex parte court order or other written request under IRC 6103(i) is necessary prior to testimony pursuant to IRC 6103(i)(4). See IRM 11.3.28, *Disclosure to Federal Agencies for Administration of Non-Tax Criminal Laws*.
- Example:** A subpoena for personnel records requires close analysis by Disclosure personnel in order to determine whether a routine use disclosure or the PA (b)(11) court order exception applies.
- (7) If there are disclosure complications, Disclosure personnel should request that the issuing party withdraw the request/subpoena. Although a written statement of withdrawal is desirable, an oral statement by the requester to the effect that the IRS need not appear in response to their request/subpoena is sufficient to close out the case. A note to this effect should be included in the electronic inventory management system case history notes. Disclosure personnel should send a letter confirming withdrawal to the requester.
- (8) If the requester is not authorized to receive the requested information, the requester will not withdraw, and the requested response date **has not** passed, then the disclosure employee will use the appropriate pattern language to indicate no authorization was received. Once the letter is sent the disclosure employee can close the case.
- (9) If the requester is not authorized to receive the requested information, the requester will not withdraw, and the requested response date **has** passed, then the disclosure employee should advise the requester that the subpoena will be discussed with Counsel to determine the next actions.
- (10) Next steps provided by Counsel may include:
- a. Counsel may request the disclosure employee issue a pattern response letter.
 - b. Counsel may contact the requester directly and discuss the subpoena.
 - c. Counsel may decide to file a motion with the court to quash. (A motion to quash is a request to the court to revoke the subpoena or consider it as invalid.)
- (11) If Counsel agrees to proceed with the motion to quash, then the disclosure employee will close the case without a response to the subpoena. Counsel will send any further responses to the requester. If Counsel does not agree to the motion to quash, then the disclosure employee will respond to the requester appropriately, before closing the case.

(12) Certified documents are particularly useful when tax returns are desired. If time allows, Disclosure personnel should:

- Suggest that the requester withdraw a subpoena for returns, and
- Send a Form 4506, *Request for Copy of Tax Return*, to the requester with instructions to forward to the appropriate Campus, checking the box on the form to request a certified copy for court purposes.

The use of certified documents is also a way to minimize requests for the appearance of an IRS employee at trial. With managerial approval, offer the requester certified documents, if disclosure is permitted, in lieu of appearance and testimony by an employee. The certified copies of returns and return information are admissible into evidence in accordance with IRC 6103(p)(2)(C) and IRC 7514.

Note: See IRM 11.3.6, *Seals and Certifications*.

(13) Disclosure personnel will document all actions taken in the electronic inventory management system throughout the testimony and production of records process. This documentation should include:

- a. A history note confirming that the appropriate accounting for the disclosure was completed, if applicable. See IRM 11.3.37, *Recordkeeping and Accounting for Disclosures*, and IRM 10.5.6.7, *Privacy Act Accounting for Disclosures*.

Note: A copy of the appropriate form or narrative of accounting memorandum is not required to be included in the inventory management system case file.

- b. Comprehensive documentation notating all considerations and actions taken on a request including, but not limited to, disclosure and privacy aspects considered, communications made, conclusions made, and agreements reached.
- c. Copies of the original request or demand and the testimony authorization as well as any written functional clearance or disclosure recommendation secured.

(14) Subsection (e)(8) of the PA requires that agencies "...make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record." See IRM 11.3.41.14.5, *Notifying Individuals That Their Records Were Made Available Under Compulsory Legal Process*. If disclosure is made in response to a subpoena issued by a court of competent jurisdiction the required notice should be issued. This procedure will be carried out by the DM or under their direction.

11.3.41.15.2
(12-08-2022)
**Case Timeliness
Expectations Subpoena
and Testimony**

(1) When processing subpoenas, initial analysis must be completed at the earliest opportunity but no later than 24 hours of case assignment to determine validity and complete actions outlined in IRM 11.3.41.15.1, *General Case Processing for Disclosure Pursuant to Touhy Regulations 26 CFR 301.9000-1 through 301.9000-7*.

(2) The Disclosure caseworker assigned to process the subpoena will contact the requester and acknowledge receipt. Discussion with the requester must take place within 7 business days of assignment. The contact must be documented

in the case history of the inventory management system. See IRM 11.3.41.5.1(6).

- (3) If the subpoena is valid, determine the demand date. Time periods for actions depend on the demand date. If a testimony authorization is required, it must be submitted for approval as soon as possible but no later than 7 business days in advance of the date the testimony is required. If a court witness is needed, secure the court witness as soon as possible but no later than 1 business day from the determination that the subpoena is valid.
- (4) If the subpoena is invalid, contact the requester by phone to explain the reason the request is invalid and request the subpoena be withdrawn per IRM 11.3.41.15.1. Cases must be closed within 7 business days unless extenuating circumstances apply, which must be documented in case notes and have managerial concurrence.

11.3.41.15.3
(08-26-2021)
**Requests for IRS
Records**

- (1) Disclosure personnel, with the assistance of functional employees in the affected offices, may be responsible for coordinating the following actions in connection with the processing of a request for IRS records or testimony:
 - a. Locating and assembling requested/demanded documents.
 - b. Screening records requested/demanded and segregating or disassociating documents that are not authorized to be disclosed.
 - c. Arranging for inspection or transmittal of records.
 - d. Arranging for Chief Counsel to assist or an attorney of the DOJ (including U.S. Attorneys) to represent the requested/subpoenaed employee.
 - e. Use Disclosure's Special Search Procedures to obtain tax records in response to all court mandated requests and demands for documents, including subpoenas. When requesting these documents, Disclosure will fully complete the Form 2275, *Records Request, Charge and Recharge*, to include all necessary information. The caseworker will fax Form 2275 to the appropriate Campus Special Search Unit or FRC for processing. If a reply is not received within three days, DMs will initiate follow-up contact with the appropriate official.

Note: If appropriate, refer the requester to routine agency procedures (i.e., Form 4506, *Request for Copy of Tax Return*) to request a copy of a tax return. The caseworker must contact the requester to alert them of the routine agency procedure and ask them to withdraw the subpoena.

- (2) Normally, IRS resources should not be expended in private litigation. The Disclosure Office should offer alternate sources or methods to obtain the requested data (e.g., routine uses of PA SORs, Form 4506, IRC 6103(c), or IRC 6103(e)).

11.3.41.15.4
(02-26-2024)
**Processing Requests for
Privacy Act Protected
Records**

- (1) Requests and demands for testimony and/or production of PA protected records require proper authorization. Only release the records if there is a signed PA consent or a listed court order routine use in the PA SORN.
- (2) Valid subpoenas for documents under OPM's jurisdiction, Official Personnel Files (OPFs) of **retired, deceased, or separated** employees, **without** the written authorization from the subject employee attached (but which meet the PA routine use court order exception), are handled by the OPM Office of

General Counsel. After calling the OPM Counsel to advise the subpoena is being referred to them, caseworkers should forward it to the following address:

The Office of General Counsel
Office of Personnel Management
1900 E Street, NW
Washington, DC 20415
Telephone Number: (202) 606-1700

- (3) Subpoenas for documents under OPM's jurisdiction **of retired, deceased, or separated** employees, **with** a written authorization from the subject employee attached, should be forwarded to the following address:

National Personnel Records Center, Annex
1411 Boulder Boulevard
Valmeyer, IL 62295
Fax #: 618-935-3014

- (4) Valid subpoenas for personnel records of **active** federal civilian employees are handled by OPM Office of General Counsel. After calling the OPM Counsel to advise the subpoena is being referred to them, caseworkers should forward the subpoena to the following address:

The Office of General Counsel
Office of Personnel Management
1900 E Street, NW
Washington, DC 20415
Telephone Number: (202) 606-1700

- (5) Before rejecting a subpoena for IRS employee time and attendance, payroll or personnel records signed by an attorney or clerk of the court, Disclosure personnel should contact the requester who issued the subpoena and advise them of the OPM and PA requirements. See IRM 11.3.41.14, *Privacy Act (PA)*.
- (6) If the subpoena is for records of a former IRS employee, and there is no valid PA consent, Disclosure personnel should offer the requester an option of withdrawing the subpoena and/or obtaining written permission from the subject of the time and attendance, payroll or personnel record in order to meet the confidentiality requirements of the Act.
- (7) Caseworkers should advise the third-party requester in the closing letter to send their requests for personnel records with authorization from the former employee to the address listed in (3). The caseworker must contact the requester to advise them of the procedure and ask the requester to withdraw the subpoena. If the requester will not withdraw the subpoena the caseworker should contact Counsel to determine if the subpoena needs to be quashed. See IRM 11.3.41.15.2(8) and (9), *Case Timeliness Expectations Subpoena and Testimony*.
- (8) Caseworkers should advise the third-party requester in the closing letter to send their requests for time and attendance or payroll records with authorization from the employee to the following address:

IRS, Philadelphia Payroll Center – Satellite Office
 7940 Kentucky Drive
 Stop 50A
 Florence, KY 41042

Note: Time and attendance records cannot be verified through payroll. These records need to be requested through the employee's manager.

(9) Disclosure personnel should ensure that the accounting and notification requirements regarding disclosure of personnel records made under compulsory legal process are adhered to.

11.3.41.15.5
 (12-08-2022)

**Request for Testimony
 of IRS Employee**

(1) 26 CFR 301.9000-1 through 301.9000-7 set forth the procedures under which IRS employees may testify in response to a subpoena. There is a general rule of cooperation among federal agencies. Therefore, when the government is a party to the litigation, testimony is usually provided. Depending upon local policy, this cooperation may also extend to state or local governments.

(2) Normally, IRS resources should not be expended in private litigation. If any person makes a request or demand for IRS records or information in connection with a non-IRS matter, authorizing officials must take into account the following additional factors when responding to the request or demand:

- a. Whether the requester is a federal agency, or a state or local government entity or agency.
- b. Whether the demand was issued by a federal or state court, administrative agency or other authority.
- c. Where the IRS is not a party, whether the IRS has already been involved in some capacity (e.g., making disclosures under a PA routine use or providing documents/information in a federal non-tax criminal matter under IRC 6103(i)).
- d. The potential effect of the case on the administration of internal revenue laws or any other laws administered by or concerning the IRS.
- e. The importance of the legal issues presented.
- f. Whether the IRS information is available from other sources.
- g. The IRS's anticipated commitment of time and anticipated expenditure of funds necessary to comply with the request or demand.
- h. The number of similar requests and their cumulative effect on the expenditure of IRS resources.
- i. Whether the request or demand allows a reasonable time for compliance (generally, at least 15 business days).
- j. Whether testimony or disclosure is appropriate under the rules of procedure governing the case or matter in which the request or demand arises.
- k. Whether the request or demand involves expert witness testimony.
- l. Whether the request or demand is for the testimony of an IRS employee or contractor who has no personal knowledge of relevant facts.
- m. Whether the request or demand is for the testimony of a presidential appointee or senior executive and whether the testimony of a lower-level official would suffice.
- n. Whether the procedures of 26 CFR 301.9000-5 have been followed.
- o. Any other relevant factors brought to the attention of the authorizing official.

- (3) Requests for IRS expert testimony in non-tax matters will normally be denied. However, if the IRS has an interest in the issue and the outcome of the litigation, IRS employees may be authorized to testify. The DM will coordinate determinations of IRS interest with Chief Counsel and the involved function(s). However, when a determination is made that it is not in the IRS's interest to provide testimony, appropriate actions should be taken by the field Disclosure staff (request that the order be withdrawn, offer alternate information, etc.) or by Area Counsel to work through DOJ to have the subpoena quashed. Written notification should be supplied to the employee. See IRM 11.3.35, *Requests and Demands for Testimony and Production of Documents*.
- (4) When IRS records were previously provided pursuant to an ex parte court order under IRC 6103(i)(1), often Disclosure receives a telephone call from the US Attorney's Office requesting the testimony of an expert witness to introduce these documents in open court. This occurs when the IRS has no involvement in the non-tax case. The AUSA in this case would not have a specific employee to whom to issue the subpoena. Disclosure employees will follow the procedures outlined in the "Court Witness for Ex Parte" document located on the Disclosure SharePoint site, to secure an expert witness.
- (5) Some important guidelines to note when processing a testimony request resulting from an ex parte court order are:
 - a. Return information other than returns and taxpayer return information, initially provided under an IRC 6103(i) request, may be disclosed in a proceeding pursuant to IRC 6103(i)(4)(B) without a finding or an order.
 - b. An IRS employee may testify about records already disclosed under IRC 6103(i) records and their meaning but may not make additional disclosures in testimony.
 - c. A written testimony authorization may be required, depending on whether testimony is in conjunction with an IRS case and who is requesting the testimony. The employee's testimony is limited to the disclosures already made under the IRC 6103(i) order. The testimony is limited to that which has already been disclosed. However, see 26 CFR 301.6103(c)-1 for disclosure consents made in open court.

Caution dictates that if a non-written authorization is needed, written advice about the limitations of the permitted testimony should be provided to the employee in the same format as a testimony authorization. If there is no assigned Chief Counsel attorney, the Disclosure Office should prepare the written advice.

- (6) Field Disclosure employees are responsible for preparing any necessary authorizations or non-authorizations for signature by Disclosure area managers (see *Delegation Order 11-2, Testimony Tables 1 through 8*; see also IRM 1.2.2.12.2, *Delegation Order 11-2 (Rev. 4), Authority to Permit Disclosure of Tax Information and to Permit Testimony or the Production of Documents*) in all non-IRS matters, except for those involving BSA information outlined in *Delegation Order 11-2, Table 6*. These Testimony Authorizations must be routed through area Counsel, the DM and tech advisor and/or management assistant before approval by the area manager.

Note: For requests for testimony pertaining to an IRS matter, Chief Counsel is responsible for providing the authorization, when needed.

- (7) Disclosure personnel are responsible for gathering and reporting the necessary facts on which a proper authorization may be based. Before a testimony authorization is prepared, a subpoena is required outlining the necessary facts. These facts include the name of the employee whose testimony is requested, the date, time and place the testimony is needed, by whom the testimony is being requested, and exactly what is to be testified. See Title 26 CFR 301.9000-5.
- (8) Gathering the necessary facts will include contacting all IRS functions that are or may be affected by the requested testimony to determine if there are open or pending cases. If there are such matters, Disclosure personnel should secure a clearance or written recommendation from the affected functions as to whether disclosure will seriously impair tax administration, and if so, how.
- (9) In submitting recommendations for and preparing testimony and production authorizations, disclosure personnel must take into account:
- a. If testimony or disclosure of IRS information would violate a federal statute including, but not limited to the following:
 - a) IRC 6103 or IRC 6105
 - b) Privacy Act 5 USC 552a
 - c) Regulations such as 31 CFR Chapter X
 - d) Re-Dissemination Guidelines covering reports, and information derived through the BSA
 - c) Grand Jury Secrecy (FRCP 6(e))
 - b. If testimony or disclosure of IRS information would reveal classified national security information, unless properly declassified.
 - c. Whether the disclosure is appropriate or relevant to the case under the rules of procedure governing the case or matter in which the subpoena arose.
 - d. The availability or feasibility of producing the information or testimony sought (i.e., time limits and volume or format of documents).
 - e. Whether testimony or disclosure of IRS information would reveal investigatory records or information compiled for law enforcement purposes that would permit interference with law enforcement proceedings or would disclose investigative techniques and procedures, the effectiveness of which could thereby be impaired.
 - f. Whether disclosure might tend to reveal unrelated third-party tax information or the identity of a confidential informant.
- (10) Any applicable privilege or protection under law may be asserted in response to a request or demand for testimony or disclosure of IRS information, including, but not limited to, the following:
- Attorney-client privilege
 - Attorney work product privilege
 - Deliberative process (executive) privilege
- (11) Caseworkers must prepare the Testimony Authorization Memo using the approved pattern letter. The authorization prepared for the appropriate approving official should, to the extent applicable, specifically indicate:
- Names and locations.
 - Court appearance date(s).
 - Tax periods.
 - Classes of tax or types of returns.

- The extent and limitations of disclosure.
- A description of the testimony and document production sought, and the exact nature of the testimony and document production authorized.

Note: The Testimony Authorization Memo pattern language incorporates these elements. Applicability of the factors in (4) or (5) will serve as a basis for including specific limiting language in the proposed testimony and production authorization.

- (12) Prior to submission to the appropriate official for signature, all authorizations must be reviewed by Chief Counsel.
- (13) It is imperative that the authorization be approved, and the employee notified prior to the time the requested/subpoenaed employee is scheduled to appear in the judicial or administrative proceeding.

Note: In all cases, a written authorization should be executed, forwarded to the employee, and included in the testimony file. However, in time-sensitive situations, the authorization may be given orally by the authorizing official. This fact will be documented in the electronic inventory management system testimony case file and followed-up with a written authorization to the employee confirming the authorization granted.

- (14) If there is insufficient time to gather and analyze the facts, prepare a report, and obtain an authorization, disclosure personnel should contact the requester and inform them to this effect (or request that Area Counsel do so). The requester should be informed that the employee would appear if they insist, but that the employee will explain to the court or other authority that the request/subpoena was served at the last minute and that 26 CFR 301.9000-3 does not permit testimony or production of IRS information without the proper authorization. When confronted with this situation, the requester may seek a postponement, withdraw the subpoena, or still require the employee to appear.
- (15) However, when a determination is made that it is not in the IRS's interest to provide testimony, appropriate actions should be taken by the field disclosure staff (request that the order be withdrawn, offer alternate information, etc.) or by Area Counsel to work through DOJ to have the subpoena quashed. Written notification should be supplied to the employee.
- (16) If the authorization to testify is denied, and the requester refuses to withdraw the request/subpoena, the authorizing official must give the employee written confirmation of the denial. A copy may be provided to the court when they respectfully decline to testify for lack of authorization as required by 26 CFR 301.9000-3.

Note: See IRM 11.3.41.15.1, *General Case Processing for Disclosure Pursuant to Touhy Regulations 26 CFR 301.9000-1 through 301.9000-7*.

11.3.41.15.6
(12-08-2022)
**Briefing the Employee
Who Will Testify**

- (1) Disclosure personnel must advise the requested/subpoenaed employee of the authorization and the permissible scope of testimony and production of IRS information before the employee is scheduled to appear.

Note: IRM Exhibit 11.3.35-2, *Testimony Considerations*, provides a briefing guide/handout which may be used.

- (2) The following items are examples of matters that might be addressed:
- a. The specifics of the testimony and production authorization; the particular records, tax entities and tax records that the employee may disclose.
 - b. The need to segregate documents and not testify about matters not authorized for disclosure.
 - c. The need to confine testimony to the limits of the authorization. Additional information (and personal opinions, unless authorized) should not be volunteered.
 - d. During testimony, the need for employees to make sure that they understand a question and give the accompanying counsel time to raise any objections they might have before responding. If the employee does not understand a question or does not know the answer, they should say so.
 - e. The employee's right to say that they cannot properly answer a question when a yes or no answer is requested without an explanation, if the "yes or no" answer could be misleading.
- (3) Disclosure personnel must ensure the court witness is aware of the requirement to account for any disclosures. See IRM 11.3.41.14.5, *Notifying Individuals That Their Records Were Made Available Under Compulsory Legal Process*, and IRM 11.3.37, *Recordkeeping and Accounting for Disclosures*.
- (4) Close the testimony file after briefing the employee who will testify and providing a copy of the Testimony Authorization.

11.3.41.15.7
(08-26-2021)

**Testimony
Authorizations in
Identity (ID) Theft Cases**

- (1) Disclosure employees will process the Testimony Authorization request. In addition to normal procedures for processing these subpoenas, Disclosure caseworkers must also contact the CI ID Theft Coordinator for the specified state to:
1. Verify the case is part of the IRS ID Theft Program
 2. Confirm that the returns and return information were provided to state or local law enforcement and what type of information was provided

Note: A list of the CI ID Theft Coordinators is found in the RRR on the Disclosure SharePoint site.

- (2) Prepare the Testimony Authorization Memo using the approved pattern letter:
1. Authorization should include that testimony is confined to the state case only and is authorized only for the information provided pursuant to the ID theft consent previously submitted to CI.
 2. Consents are not required to be submitted with the request or demand for testimony, as the state or local law enforcement office already was provided the appropriate tax information per the ID Theft consent submitted to CI.
 3. No disclosure of any related CI or other IRS activity will be authorized.
 4. Local Counsel approval is not necessary.

11.3.41.16
(08-26-2021)

Other Case Types

- (1) Disclosure caseworkers may be called upon to work other specialized types of cases. This section will provide guidance on who works specialized cases and the case processing steps.

11.3.41.16.1
(12-08-2022)
Forwarding Letters for Humane Reasons

- (1) The addresses of taxpayers are return information and can only be disclosed in a manner authorized by the IRC. In circumstances where a humane purpose may be served, the IRS may forward a letter for the requester. Requesters may include federal, state and local government agencies. See Policy Statement 11-96 (Formerly P-1-187), **Forwarding letters for private individuals, organizations, or corporations and Federal, state and local government agencies without disclosure of address**, found in IRM 1.2.1.11.11, and Rev. Proc. 2012-35.
- (2) Under these procedures, the IRS cannot provide the requester with information concerning the results of its efforts, to do so would violate IRC 6103.
- (3) It is IRS policy **not** to forward letters that serve to seek reparation for obligations due the requester or for court processing services.
- (4) The receiving office will decide if the request meets the humane purpose criteria. Examples of humane purpose criteria include:
 - a. Someone seeking to find a missing person to convey a message of an urgent or compelling nature, such as notification of serious illness, imminent death or the death of a close relative, or a person seeking a missing relative.
 - b. A matter involving the health and well-being of a number of persons, such as persons being sought for a medical study to detect and treat medical defects or diseases.

Note: A family member attempting to trace their family tree does not qualify as a humane purpose nor does an attempt to locate coworkers, friends, etc., for reunion purposes.

- (5) If the receiving office has determined that the request meets the humane purpose criteria, the IRS will provide a written or telephonic acknowledgment of receipt of the request to the requester. If acknowledged telephonically, document the case history notes appropriately.
- (6) When an SSN is furnished, the disclosure caseworker will search IRS records to determine if the IRS has an address.
- (7) If an address is found, forward the letter in an IRS envelope. If the letter to be forwarded does not include a disclaimer, advise the recipient that:

“We are forwarding the letter in accordance with current IRS policy. We did not divulge your address, nor any other tax information. IRS has no involvement in the matter aside from forwarding the letter, and the decision of whether to respond is entirely up to you.”

Note: In certain compelling circumstances (e.g., death bed situations), IRS officials are free to attempt to contact the proposed recipient by telephone or other communication vehicle in order to provide more timely notice. The recipient should still be advised of the general information in the IRS disclaimer statement.

- (8) If an address cannot be found or the communication is returned as undeliverable, the requester will not be notified of this action.

- (9) If a request involves more than one potential recipient, the requester should include a disclaimer statement in each letter or notice informing the recipient that the IRS did not disclose their address or any other tax information and is involved only to the extent of forwarding the letter/notice. The disclaimer should be conspicuously placed in the letter/notice so the recipient will not miss it. The following language should be used:
- “In accordance with current policy, the IRS agreed to forward this letter/notice because we do not have your current address. The IRS did not disclose your address or any other tax information and has no involvement in the matter aside from forwarding the letter/notice. Your response to this letter is voluntary.”
- (10) If no disclaimer is required, be sure to follow the procedures in (7) above.
- (11) Requests from private individuals, organizations and corporations involving letter forwarding for humane purposes of less than 50 potential recipients, based on aggregate calendar year volumes, are sent to the GSS. No charge will be made for forwarding less than 50 letters.
- (12) If a requester appears to be structuring/segmenting requests solely to avoid being charged for volume letter forwarding, the requests should not be processed. These requesters will be advised to accumulate requests and submit a Project 753, Computerized Mailout Program, request as detailed in (14) through (16). Instructions for Project 753 should be provided to the requester.
- (13) Congressional inquiries seeking address assistance for humane purposes on behalf of constituents will be responded to in a manner similar to those for a private individual.
- (14) Per Rev. Proc 2012-35, requests involving 50 or more potential recipients will be processed under Project 753. The requester will be charged for this service.
- (15) Such requests should be sent to the address or fax number listed in IRM 11.3.11.11(2), *Forwarding Letters for Humane Reasons*, and should provide the following information:
- a. A brief explanation of the need for letter forwarding;
 - b. The number of potential recipients;
 - c. Whether the requester has the SSN of each individual; and
 - d. A sample of the letter to be forwarded.
- (16) GLDS and IT are authorized by Policy Statement 11-96, (Formerly P-1-187), **Forwarding letters for private individuals, organizations, or corporations and Federal, state and local government agencies without disclosure of address**, found in IRM 1.2.1.11.11.
- (1) The Disclosure Tax Check Program was permanently retired on October 1, 2018. Disclosure no longer processes ad hoc tax check requests from agencies submitting signed disclosure authorizations from individuals under IRC 6103(c) to obtain tax compliance information. IRS developed the enterprise Tax Compliance Check Service (TCCS) to automate the tax checks for tax administration purposes, including employee tax checks, IRS new hire qualification and contractor background investigations. See IRM 25.29.1, *Standard Tax Compliance Checks for Suitability and Monitoring* and IRM

11.3.41.16.2
(12-08-2022)
Tax Checks Service

1.2.1.16.2, *Service-wide Policy Statement Listing 25-3, Standard Tax Compliance Checks for Suitability and Monitoring for Federal Applicants, Employees, and Contractors.*

- (2) Data Services administers the automated Tax Check Service (TCS) in accordance with IRM 25.29.1, *Standard Tax Compliance Checks for Suitability and Monitoring* and executes Memorandums of Understanding with certain federal agencies executed by the White House, Executive Office of the President, State Department and Department of Justice, that require federal tax compliance checks for political appointees requiring Senate confirmation or as a condition of employment. The agencies submit a Form 14767, *Consent to Disclose Tax Compliance Check* and pay a \$3.00 fee for each Tax Compliance Record provided.
- (3) Each Form 14767 is categorized as a Tax Check in the inventory management system.
- (4) Additional information is found in IRM 11.3.31, *Tax Check Reports on Federal Appointees.*
- (5) CAP
 - **Code** - IRC 6103(c)
 - **Authority** - *Delegation Order 11-2*
 - **Procedures** - IRM 11.3.41.4, IRM 11.3.41.16.2 and IRM 11.3.31

11.3.41.16.2.1
(12-08-2022)
**Department of
Commerce Tax Check
Requests**

- (1) Disclosure only process requests from the Department of Commerce for businesses seeking the Malcolm Baldrige Award President “E-Award” where tax compliance is required. These requests require submission of a valid taxpayer disclosure authorization under 6103(c) and no IRS form is used. The case is categorized as 6103(c/e) cases in the inventory management system and are considered priority casework.
- (2) Malcolm Baldrige Award and President “E-Award” requests are typically centralized for processing within Disclosure and not corporate inventory. If a caseworker is assigned one of these requests, they should check with the DM prior to processing.
- (3) The process below should be used by Disclosure employees assigned a 6103 (c/e) case for a Malcolm Baldrige or Presidential “E-Award” request.
- (4) Case processing for these consents by Disclosure includes performing initial analysis, completing IDRS research and providing a final response.
- (5) Priority cases are to be worked within 15 calendar days of receipt.
- (6) For each case, review the inventory management system for duplicates for each request. If you identify a duplicate, follow procedures for duplicate requests found in IRM 11.3.41.3.2, *Initial Analysis*. Commerce employees may make a subsequent request for the same taxpayer to see if the adverse issues have been resolved. Caseworkers should determine if the request is a true duplicate or a subsequent request before closing.
- (7) Caseworkers should do sufficient research in the IDRS to determine if the relevant return or return information exists. See Exhibit 11.3.41-12, *IDRS*

Research Tools, which provides some basic research that should be considered to make an adequate search. Caseworkers should pull transcripts for all years that are not retired as listed on BMFOLI.

- (8) Review IDRS transcripts for the date the return was filed for the years covered by the waiver (review each year individually). If the return was timely filed no further review is needed. If the return is late/not filed, consider the following factors:
- Late filed return(s) must include the actual date(s) return(s) were filed. Caseworkers should consider the actual due date(s) of the return(s), including any extensions to file, when determining the timeliness of filing.
 - Date of extensions.
 - Lack of filing.
 - No filing requirement.
 - Disaster zone declarations.
 - Date of substitute for return(s) filed by the IRS.
 - The cutoff date for late filed returns is often times specified in the waiver. If the waiver states the cutoff date is a specific number of days from the due date (for example 45, 90, or 120 days), then that is the number of days to use in the determination of whether or not the return is late filed. If no cutoff date is specified in the waiver, then a return filed after the IRS's established due date, based on the type of return filed, is considered late filed.
- (9) Review IDRS transcripts for balance due/late payment cases (**each year individually**) for the following factors:
- Late payments (amount and date paid off or date of last payment).
 - Installment agreements.
 - Payments and credits applied.
 - Additional tax, penalty and/or interest.
 - Substitute for Return.
 - Date of final payment when there is a balance due.
 - If the taxpayer has filed bankruptcy, we will report the balance due without commenting on the bankruptcy.
- (10) All responses other than all clear responses must be reviewed and signed by the DM.
- (11) Responses may only be faxed to an authorized individual for the agency, as indicated on the waiver.
- (1) Overview: IRS seals of office are used to authenticate originals or copies of IRS records. IRC 7514 authorizes seals of office and 26 CFR 301.7514-1 governs the use of seals and describes and illustrates the seals. Seals of office may be affixed to certificates to authenticate originals and copies of IRS documents and records for any purpose, including *28 USC 1733(b), Rule 44 of the Federal Rules of Civil Procedure, Rule 902 of the Federal Rules of Evidence, and Rule 27 of the Federal Rules of Criminal Procedure. Delegation Order 11-5 (Rev. 2), Seal of the Office of the Internal Revenue Service and Certification to the Authenticity of Official Documents*, found in IRM 1.2.2.12.5,

11.3.41.16.3
(12-08-2022)
**Requests for
Certification**

designates the persons who may affix the official seal of the IRS. Additional procedures relating to certification of IRS records can be found in IRM 11.3.6, *Seals and Certifications*.

- (2) CAP
 - **Code** - IRC 7514 and *CFR 301.7514-1*
 - **Authority** - *Delegation Order 11-5*
 - **Procedures** - IRM 11.3.41.16 and IRM 11.3.6
- (3) Related Terms/Definitions. Review the following terms/definitions in Exhibit 11.3.41-1, *Terms/Definitions/Acronyms*:
 - Certification
 - Seal
- (4) Occasionally the office of Chief Counsel will need a record certified for court purposes. Requests for certification should generally be sent to the office having custody of the records (i.e., HQ, area, territory, or campus), however if the office having custody of the records is not authorized to certify the record, Disclosure can provide the requested certification. If Disclosure employees receive request(s) for certification, they should reach out to Disclosure management, prior to processing or responding back to Chief Counsel or other Business Units.
- (5) Approved certification methods include the use of the Form 2866, *Certificate of Official Record*; Form 3050, *Certification of Lack of Record*; or the use of the blue ink stamp. See IRM 11.3.6, *Seals and Certifications*, for additional information on certification procedures.

11.3.41.17
(08-26-2021)
Tax Law Specialist (TLS)

- (1) Overview: The specific duties of the tax law specialist (TLS) are determined by the position descriptions. The assignments for a TLS may be more complex or sensitive than assignments of other Disclosure employees. A TLS may also be assigned responsibility for aspects of program management and act for the DM in their absence.

11.3.41.17.1
(08-26-2021)
TLS Case Processing Criteria

- (1) FOIA requests seeking access to the requester's own tax information, locally developed documents, documents that do not have a Servicewide scope/impact, or an appointment affidavit for an executive, will be processed by GS-12 or below staff. All other requests will be worked by the TLS. See Exhibit 11.3.41-11, *Criteria for Assignment to GS-13 Caseworker*.
- (2) FOIA receipts that implicate records from three key offices are assigned to DO-13 for processing by a TLS. The three key offices are:
 - Commissioner's office
 - Chief of Staff Office
 - Counselor to the Commissioner
- (3) Once the search memo is prepared for these three key offices, the following three levels of review and approval are required.
 - a. Designated DM (Required Review) - DO-13
 - b. Area manager Review and approval (copy the TA for corresponding area)

c. AD - Review and approval (copy Senior TA)

- (4) The approval tracking guide must be included at the bottom of the search memo to memorialize the review levels.

11.3.41.17.2
(08-26-2021)

Written Determinations

- (1) IRC 6110 governs the authority for the publication of written determinations and background file documents related to written determinations available to the public. Written Determinations include:

- Private Letter Rulings (PLR)
- TAM
- Determination Letters
- Chief Counsel Advice (CCA)
- Ruling letters issued by the office of Exempt Organizations of TE/GE Division denying or revoking tax-exempt status
- General Counsel Memoranda (GCM)

Note: For more information see Exhibit 11.3.41-20, *Definition of Written Determination and Section 6110(h)*.

- (2) Written Determinations Files - may contain 3 types of documents.

- The written determination - As described in IRM 11.3.41.17.2(1).
- Background file documents - Include the request for a written determination, any written material submitted in support of the request, and any communication (written or otherwise) between the IRS and persons outside the IRS received before issuance of the written determination.
- Internal file documents – Documents created internally by the IRS in processing written determinations.

Note: See CCDM 37.1.1.1.1, *Definitions*, for a list of definitions of written determination files including what are, and are not, considered background file documents.

- (3) Written determinations and applicable background file documents are available to the public under IRC 6110. Revenue Procedure 2012-31 provides guidelines for requesting documents that fall under IRC 6110. Chief Counsel has the authority to respond to records that fall under IRC 6110. Internal file documents are available for request under the FOIA. Chief Counsel obtains and sanitizes these documents and forwards the documents to the Disclosure Office caseworker in response to the issuance of a FOIA Search Memo to Chief Counsel. The Disclosure Office caseworker reviews the documents and responds directly to the requester.

- (4) Review the request and establish if the documents requested fall under IRC 6110, FOIA or both. Contact the requester if it is unclear what type of documents are being requested. The caseworker must also contact the requester to determine the dates of the documents requested if the dates are not identified in the request. Processing requests for documents created prior to November 1, 1976, are handled differently than requests seeking documents created after November 1, 1976, so you must know the dates of the documents requested. Provide an explanation of what documents are available under IRC 6110 and what documents are available under the FOIA. Verify, in writing, if the request is re-scoped from the original request.

- (5) If the requester confirms the request pertains to only records that fall under IRC 6110 and the request seeks written determinations created **after** November 1, 1976, prepare a final response letter using the appropriate pattern letter language. Include a copy of Revenue Procedure 2012-31 with the response.
- (6) If the requester confirms the request pertains to only records that fall under IRC 6110 and the request seeks written determinations created **before** November 1, 1976, send a copy of the request, and any other clarifying information received from the requester to the GLD mailbox for processing. Update the inventory management system to show “Written Determinations Before Nov. 1, 1976” and send the appropriate pattern letter letting the requester know the request has been forwarded to Counsel for processing.
- (7) For requests seeking records that fall under both FOIA and IRC 6110 the caseworker should contact the requester to confirm request is for records that fall under IRC 6110 and the FOIA and if not identified in the request, to determine the dates of the documents requested. Processing requests for documents created before November 1, 1976, are handled differently than requests seeking documents created after November 1, 1976, so the caseworker must know the dates of the documents requested.

Note: Caseworkers should provide an explanation of what documents are available under IRC 6110 and what documents are available under the FOIA. Verify, in writing, if the request is re-scoped from the original request.

- (8) For FOIA and IRC 6110 requests seeking written determinations created **before** November 1, 1976, update the inventory management system to show “Written Determinations Before Nov. 1, 1976.” Prepare response letter using the appropriate pattern paragraph and enclose Notice 393, *Information on an IRS Determination to Withhold Records Exempt from The Freedom of Information Act - 5 U.S.C 552*. Appeal rights must be provided for the FOIA portion of the request and applies to this type of adverse response.
- (9) For FOIA and IRC 6110 requests seeking written determinations created **after** November 1, 1976, prepare an interim response letter using the appropriate pattern letter. Document case notes that the IRC 6110 portion of the case was closed as routine agency procedure and an interim response letter was sent to the requester providing Revenue Procedure 2012-31, and the FOIA portion of the request is being processed. Send a search memo to Chief Counsel for FOIA portion of requested documents. Email the following to the GLD mailbox:
 - Search memo,
 - FOIA request,
 - Interim response letter sent to the requester, and
 - An explanation that IRC 6110 portion of the request has been closed under routine agency procedure.
- (10) Upon receipt of the monthly ZZ report provided by Chief Counsel, update case notes providing information from the ZZ report as to the status of the case. Upon receipt of the responsive records from counsel, review the documents for any applicable redaction requirements. Counsel will send a clean version and a version that was reviewed and sanitized by their staff. Disclosure is still re-

sponsible for the release of the responsive documents and the documents should be reviewed in their entirety for additional redactions as applicable.

Note: Counsel has taken the responsibility for the use and application of exemption (b)(5) invoking either a deliberative process privilege or an attorney-based privilege such as attorney work product or attorney client privilege. The TLS is not required to review the records for that exemption UNLESS they have a belief that the application of exemption (b)(5) was improper or want to spot check Counsel's determination. Any changes to Counsel's recommendation must be discussed with Counsel prior to release and documented in case notes. The focus should be on the application of other exemptions, primarily (b)(6) for privacy interests, knowing that the reference to the author of the documents, if present, is likely already a matter of public record and therefore; would not have any protectable privacy interest.

- (11) Requests seeking records that fall under the FOIA only which apply to records applicable to the internal file documents. These requests rarely occur, and the caseworker should contact the requester to confirm this if not identified in the request, and to determine the dates of the documents requested. Processing requests for documents created prior to November 1, 1976, are handled differently than requests seeking documents created after November 1, 1976, so the caseworker must know the dates of the documents requested.

Note: The caseworker should provide an explanation of what documents are available under IRC 6110 and what documents are available under the FOIA. Verify, in writing, if the request is re-scoped from the original request.

- (12) For FOIA requests seeking written determinations created **before** November 1, 1976, update the inventory management system to show "Written Determinations Before Nov. 1, 1976." Prepare response letter using appropriate pattern language and enclose Notice 393. Appeal rights must be provided and applies to this type of adverse response.
- (13) For FOIA requests seeking written determinations created **after** November 1, 1976, the caseworker must send a search memo to Chief Counsel for the written determination documents that fall under the FOIA. Email the following to the *GLD mailbox*:
- Search memo
 - FOIA request
 - An explanation that the requester has confirmed they are requesting only documents that fall under the FOIA
- (14) Requests seeking written determinations must be reviewed to determine if the requester meets the criteria of a commercial use requester. These types of requests often appear to be from entities who seek records for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is being made. Designation of a requester as a "commercial use requester" therefore looks to the use of the requested information, rather than the identity of the requester. Contact with the requester may be necessary to determine the category of requester if there is not enough information contained in the request to make that determination. If it is determined the requester should be categorized as a commercial use requester and the request states "other" as the category of requester, include

the appropriate pattern paragraph in the response letter. Case notes must document all actions taken applicable to the determination of the category of requester.

11.3.41.17.3
(02-26-2024)
Contracts

- (1) Business Submitters (Contractors) provide information to the IRS that may contain trade secrets and commercial or financial information that is privileged or confidential. The IRS routinely receives FOIA requests for this information and must give the business submitter the opportunity to provide a detailed statement of any objections to disclosure. See IRM 11.3.41.13.8.5, *Contracts/Commercial Information*.
- (2) Review the FOIA request. Make sure you have a valid IRS and/or Treasury contract number listed in the request. The following are valid contract numbers:
 - TIRNO = National Office
 - TIRNE = Northeast
 - TIRSE = Southeast
 - TIRMW = Midwest
 - TIRWR = Western
 - TIRMS = Midstates

The website www.fpds.gov can be utilized to search for valid contract numbers. If the request does not contain a valid contract number, attempt to contact the requester to try and get the information. If the requester does not have the contract number send the Imperfect pattern letter stating the contract number is required to process the request.

- (3) Contract information that may involve commercial considerations include:
 - Studies provided by non-governmental sources
 - Training materials prepared under contract
 - Operating manuals for purchased or leased equipment
 - Transcripts prepared by court stenographers
 - Contracts and related records concerning the purchase of goods or services
 - Computer software (off the shelf or not governmentally produced)
- (4) After verifying the request is valid, prepare a Search Memo and forward it, with a copy of the FOIA request, to the Procurement Contact for processing. Procurement contacts are located on the Disclosure SharePoint site on the RRR under Contracts and Commercial Information.
- (5) Ask procurement to notify you if they estimate the fee to process the request will exceed the fee commitment provided by the requester, or if the fee estimate exceeds \$250. Contact the requester if the estimated fee exceeds the amount cited in the request, or \$250 to obtain approval of additional fees required to process the request or to revise the request to lower the cost.
- (6) The contracting officer (CO) assigned to the request should follow the steps in their checklist, to respond to the request. The CO will contact the business submitter and give them the opportunity to provide a detailed statement of any objections to disclosure of the requested information.

- (7) If the CO is unable to reach out to the business submitter, CO will provide the business submitter's contact information and the caseworker will attempt to contact them by sending the approved 10 Day Letter, phone, and/or email.
- (8) A complete response from the CO should include the following: a completed "attachment 1" of the search memo, CO's response to the request (including the CO's release recommendations and analysis of the documents), business submitter's objections to disclosing the information, and two copies of the responsive documents (clean set and redacted set).
- (9) Import responsive documents into responsive document section of the case. Documents usually requested include:
- Contract/Award
 - Task Orders
 - Modifications
 - Solicitations - Requests for Quotes (RFQ) and Requests for Proposal (RFP). (RFQ and RFP are normally released in full).
 - Winning Proposal - Usually denied in full under (b)(3)/41 USC 4702, unless the proposal is included in the contract, CO will determine this.
- (10) The caseworker will review the records and redact accordingly. Typically, Disclosure will uphold the business submitter's and CO's release recommendations since they are more familiar with the contract records. Give considerable weight to a business submitter's objections to disclosure unless they clearly conflict with legal precedent or obviously lack merit. If a determination is made to release some or all of the business information over the objections of a business submitter, you must notify the business submitter in writing. See IRM 11.3.41.13.8.5, *Contracts/Commercial Information*.
- (11) Exemptions (b)(4) and (b)(6) are often used to redact the contract documents. Items usually redacted include:
- Unit Pricing Information (b)(4)
 - Quantities (b)(4)
 - Key Personnel Information (exception - the information is available on the business submitter's website) (b)(6)
 - Management and Staffing Plans (b)(4) and/or (b)(6)
 - Detailed descriptions of the business submitter's proprietary processes and procedures (b)(4)
- (12) Caseworkers will then prepare a final response letter and forward to the delegated authority for final release determinations. Then follow established procedures for closing.
- 11.3.41.17.4
(08-26-2021)
**Congressional
Correspondence**
- (1) FOIA requests for correspondence between the IRS and members of Congress are considered sensitive and may have Servicewide impact. Requesters may include major media outlets and others with a nation-wide audience. Other requesters may simply be individuals or organizations with an interest in a particular IRS project, issue, or activity. Requesters may be seeking Congressional correspondence from one, several or all members of Congress for a specified time period. Frequently, requesters will deem the responsive documents as newsworthy, or time sensitive, and will therefore request expedited processing and/or a fee waiver.
- (2) Review the request for validity. At a minimum, a valid request must:

- a. Be in writing and signed,
- b. Cite the FOIA,
- c. Be received by the office having jurisdiction over the records,
- d. Have a fee agreement or request to waive fees, and
- e. Reasonably describe the records being sought.

The subject correspondence is considered statements of policy, so no photo identification or actual signature on the request is required for processing. If one or more validity elements are missing, contact the requester to perfect the request.

Note: Search efforts will not include any records that deal with constituent tax issues as those types of replies implicate IRC 6103 and caseworkers should communicate that to the requester.

- (3) Request from or for information related to any member of or committee of Congress will require an SCR. See IRM 11.3.41.3.10.2, *Sensitive Case Report*, for additional information. The Disclosure caseworker is responsible for completing the SCR within 5 days of assignment of the case. A case note should be entered upon completion of the SCR and a copy retained in the case file. Forward the SCR to the DM.
- (4) Requests for expedited FOIA processing or for a fee waiver should be noted in the case history. See IRM 11.3.41.13.3.2, *Expedite Processing*, and IRM 11.3.41.13.3.3, *Fee Waiver*, for additional information.
- (5) Communications & Liaison, Legislative Affairs, has jurisdiction over Congressional records. Prepare a search memo addressed to the FOIA functional contact listed for Communications & Liaison, Legislative Affairs in the most current FFC List. Email the completed search memo and a copy of the FOIA request to the FFC.

Note: Congressional correspondence records on e-Trak are kept for 10 years after the end of the Congressional session (calendar year) and are then destroyed. To the extent the FOIA request seeks records that go beyond the most recent 10 years, the response will include language to advise that the records do not exist as they have been destroyed in accordance with guidance located in Document 12990, *Records Control Schedules (RCS)*.

- (6) Review the request to ensure that the responsive documents received specifically match what was requested with respect to the name(s) of the Congressperson(s) and the IRS Official(s). Remove any non-responsive pages from the documents including:
 - Approval Routing Slips (ARS) - including notes to reviewer.
 - Emails regarding assignment of the inquiry or preparation of the response.
 - IRS compliance action Memoranda to other Business Units.
 - Duplicative response letters **IF** the request does not ask for inquiries or responses from that specific Congressional Office (i.e., if the request is for all correspondence sent to IRS from Congressman John Doe and responses to that correspondence are from IRS Official Jane Doe, there may be inquires that were signed by Congressman Doe and 6 other Congresspersons). The response documents would contain duplicate

responses to each of the six Congresspersons and those addressed to the Congressperson not listed in the request should be deleted.

Note: Legislative Affairs will provide a Congressional Correspondence Log with the responsive documents. The log may be used as a reference to ensure all the responsive inquiries and responses were captured in responsive documents. If the log is a requested FOIA item, review in accordance with the technical guidance provided in this section. If not a FOIA item, import the log into the case research, or correspondence log, as a supporting document.

- (7) Responsive documents should be imported into the responsive documents section in the inventory management system for review and redaction. Case notes should properly reflect what exemptions, if any, are used to withhold the records.
- (8) Review the inquiry for any “legend” marking indicating that the documents are the records of a Congressional Committee and **not** the IRS. If the legend is found, remove the entire inquiry and response from the responsive documents. See IRM 11.3.41.13.5.4, *Joint Committee on Taxation (JCT)*, for additional information.
- (9) Congressional oversight committees are entitled to and do receive, information that is not available to the public.
 - Due to their oversight role, the IRS shares with these committees PII and Law Enforcement Manual (LEM) information, drafts and other types of information that would not be available to the public via FOIA. For this reason, each document responsive to the FOIA request must be reviewed to consider whether any applicable FOIA exemption including, but not limited to (b)(5), (b)(6), (b)(7)(C) or (b)(7)(E) should be asserted. Notate these documents in the case history and discuss with the DM so that a determination can be made as to whether the BU with jurisdiction over the documents should be consulted on the application of the exemptions.
- (10) Review the documents for any additional FOIA exemptions required.
 - Redact any constituent information using exemption (b)(6).
 - Redact any IRC 6103 protected information using exemption (b)(3) with IRC 6103. No need to cite 6103(a) or (e)(7), simply 6103.
 - References to entities where the Congressperson clearly does not indicate that the entity is their constituent should not be redacted. For example, if a Congressperson is asking about ABC Foundation for their own personal knowledge, the name of this entity does not need to be redacted.
 - Redact any constituent information using exemption (b)(6) if the constituent is raising an issue about a specific organization. If the constituent is making general policy recommendations, then the constituent’s contact information should be redacted but not the constituent’s name. This may or may not also be exempt under exemption (b)(3) with IRC 6103.
- (11) Prepare the final response letter using approved pattern letters and follow established procedures for closing.

11.3.41.18
(08-26-2021)
**Disclosure Manager
(DM) Roles and
Responsibilities**

- (1) Overview: DMs are responsible for implementing activities that promote privacy principles and/or improve the efficiency of tax administration (program management) and provide for timely and accurate responses to requests for information (casework). The DM serves as the first line manager over a staff of employees who provide disclosure services to IRS employees and other internal and external stakeholders. This IRM section will address the DM's roles and responsibilities as they apply to case processing only.

Note: The case management responsibilities for caseworkers are described throughout various sections in IRM 11.3. This IRM section will describe specific case and program management and the actions necessary to carry out these responsibilities.

- (2) DMs are responsible for the Supervisory duties as described in IRM 11.3.38, *Role and Responsibilities of Disclosure Managers*.
- (3) The supervisory responsibilities of the DM will include:
- a. Ensure employee case actions are timely and in accordance with current law, policies, and procedures.
 - b. Ensure employees maintain high standards of professionalism in all their contacts with the public, internal and external customers and coworkers.
 - c. Ensure employees observe taxpayer rights.
 - d. Ensure employees are aware of ongoing changes to the laws, policies, and procedures that relate to their responsibilities (preferably during group meetings).
 - e. Address systems issues that impact either internal or external customer needs.
 - f. Ensure cases are assigned timely and employee workload does the following:
 1. Reflects current priorities.
 2. Reflects employee experience and skill level.
 3. Addresses Service wide objections.
 4. Protects public interest.
 5. Allows for effective case processing.
 - g. Ensure employees are accountable for the appropriateness of their actions.

11.3.41.18.1
(08-26-2021)
**Case Management
Responsibilities**

- (1) DMs will ensure that all Disclosure requests for IRS agency records are processed according to the appropriate Code, Authority and Procedure (CAP) requirements. DMs will also ensure that actions required by this IRM (and other Disclosure technical IRMs) have been taken when reviewing cases.
- (2) The oversight and monitoring of any workload by a DM is an ongoing task which involves but is not limited to the following:
- Managing priorities
 - Personnel availability and knowledge level
 - Planning and scheduling
 - Using tools such as reports and Outlook to plan and schedule meetings and reviews
 - Adapting to using new technology as it becomes available
 - Stakeholder Interaction

11.3.41.18.2
(08-26-2021)

**Report
Recommendations**

- (1) Overview: DMs must become familiar with all inventory management reports available to themselves and their staff. DMs may require their staff to utilize specific reports to assist with case management.

11.3.41.18.3
(02-26-2024)

**Specific Casework Roles
and Responsibilities**

(1) **FOIA**

- a. DMs and/or their delegated official are required to review and approve in a timely manner FOIA Fee Waiver requests and Expedite processing requests. This is done in the inventory management system in accordance with the timeframes provided in the "Notes" below. See IRM 11.3.41.18.3(1)(c).

Caution: Expedite determinations must be provided to requesters within 10 calendar days of a perfected FOIA request. Because of this, DM's and/or their delegated official should make any appropriate determinations before the 10 calendar days.

- b. DMs and/or their delegated official are required to review and approve all "no record" responses to FOIA requests.
- c. DMs and/or their delegated officials are required to review all FOIA responsive records that are being withheld in full or in part through the inventory management system.

Note: Requests for expedite processing must be completed within 10 calendar days of receipt of a valid expedite request.

Note: Requests for FOIA Fee Waiver, no record responses and responsive records that are being withheld in full or in part should be reviewed as soon as possible.

(2) **Ex Parte Court Orders**

- a. DMs and/or their delegated official are required to review and sign either the Disclosure Authorization Memo or final response letter for all ex parte court orders.

(3) **Subpoenas**

- a. Testimony Authorizations must be signed by the DM prior to signature of the area manager.
- b. In requests for tax records, withholdings require DM signature if IRC 6103 is implicated and being withheld under (c) and (e)(7).

(4) **IRC 6103(c)/(d)/(e)**

- a. IRC 6103(c), 6103(d) and 6103(e)(7) withholdings based on serious impairment to federal tax administration must be signed by the DM.

(5) **Privacy Act**

- a. PA withholdings require DM signature if IRC 6103 is implicated and being withheld under (c) and (e)(7).

Exhibit 11.3.41-1 (02-26-2024)

Terms/Definitions/Acronyms

Term	Definition
Attorney-in-fact	An agent authorized by a principal under a power of attorney to perform certain specified act(s) or kinds of act(s) on behalf of the principal.
Basic Agreement	Agreement on Coordination of Tax Administration executed by the Commissioner of the IRS and the head of a state tax agency to encompass required procedures and safeguards of IRC 6103(d)(1) and 6103(p)(4).
Certification	A certificate attesting the truth of some statement or event.
Consent	(verb) An affirmative and voluntary act that communicates an agreement to, approval of, assent for, or permission, authorizing the disclosure of a taxpayer's return or return information, or (noun) – A written document prepared and submitted in accordance with CFR 301.6103(c)-1, agreeing to or authorizing the disclosure of a taxpayer's return or return information. In both forms, the person authorized to consent to the disclosure of the taxpayer's return or return information must be a person with a material interest defined in IRC 6103(e)(1) through (5), CFR 301.6103(c)-1(e)(4), and IRM 11.3.2, Disclosure to Persons with a Material Interest.
Delegation of Authority	An act performed by a recognized representative whereby authority given under a power of attorney is delegated to another recognized representative. After a delegation is made, both the original recognized representative and the recognized representative to whom a delegation is made will be able to represent the taxpayer.
Demand	Any subpoena or other order from any court (including a military court), administrative agency or other authority, or the Congress, or a committee or subcommittee of the Congress, and any notice of deposition.
Designee	An individual, trust, estate, corporation, partnership, or other third-party entity that has the written consent of a taxpayer to receive specific tax information.
Direct Partner	A partner that holds an interest directly in a Partnership or Pass-Through Entity.
Disclosure	The making known to any person in any manner whatever a return or return information. See IRC 6103(b)(2) for the statutory definition of disclosure.
Discretionary Disclosure	Administrative discretion to release information where the release is not prohibited by law.

Exhibit 11.3.41-1 (Cont. 1) (02-26-2024)**Terms/Definitions/Acronyms**

Term	Definition
Federal Tax Matter	Matter between the taxpayer or their authorized representative and the IRS relating to the taxpayer's return or to a transaction concerning the application or interpretation of - (1) Any provision of law impacting a person's obligations under the internal revenue laws and regulations, including but not limited to the person's liability to pay tax or obligation to file returns; or (2) Any other law or regulation administered by the IRS.
Head of Federal Agency	The executive with the final review and control authority over the agency.
Implementing Agreement	Agreement, complementing the basic agreement, entered into between the IRS and the head of a state tax agency with which the IRS has finalized a written agreement on coordination of tax administration.
Indirect Partner	A partner in a Partnership or Pass-Through Entity that itself holds an interest directly.
Individual	A citizen of the United States or an alien lawfully admitted for permanent residence (including sole proprietors). The PA does not apply to any entity which is not a natural person, such as a partnership, corporation, decedent, estate or trust.
Investor Level Statute Controls	An ILSC pass-through entity is any S corporation, or partnership that does not fall under the provisions of TEFRA or elects out of the BBA provisions.
IRS Matter	Any matter before any court, administrative agency or other authority in which the United States, the Commissioner, the IRS, or any officer or employee acting in an official capacity, or any IRS officer, or employee (including an officer or employee of the IRS Office of Chief Counsel) in their individual capacity, if the United States DOJ or the IRS has agreed to represent or provide representation to the IRS officer or employee, is a party and that is directly related to official business of the IRS or to any law administered by or concerning the IRS. This includes, but is not limited to, judicial and administrative proceedings described in IRC 6103(h)(4) and IRC 6103(l)(4).
IRS Records or Information	Any material (including copies thereof) contained in the files (including paper, electronic, or other media files) of the IRS, any information relating to material contained in the files of the IRS, or any information acquired by a current or former IRS officer, employee, or contractor, while an IRS officer, employee, or contractor as a part of the performance of official duties or because of that IRS officer's, employee's, or contractor's official status with respect to the administration of the internal revenue laws or any other laws administered by or concerning the IRS.
Judicial and Administrative Tax Proceeding	A proceeding before a federal or State Court or magistrate (including the U.S. Tax Court) regarding tax administration. It includes any proceeding about tax matters under the authority of a court.

Exhibit 11.3.41-1 (Cont. 2) (02-26-2024)

Terms/Definitions/Acronyms

Term	Definition
Material Interest	An important interest which is generally, but not always, financial in nature. However, in the legal sense, the interest needs to be substantial or of consequence.
Notice of Exempt System	Rules promulgated by a head of agency to exempt any system of records from provisions of the PA pursuant to 5 USC 552a(j) and/or (k).
Power of Attorney	A document signed by the taxpayer, as principal, by which an individual is appointed as attorney-in-fact to perform certain specified act(s) or kinds of act(s) on behalf of the principal. The following are types of powers of attorney: <ul style="list-style-type: none"> • General power of attorney • Durable power of attorney • Limited power of attorney
Primary Disclosure Office	Disclosure office manager responsible for negotiating agreements and overseeing disclosures with the state tax agency.
Principal	A person (i.e. taxpayer) who appoints an attorney-in-fact under a power of attorney.
Privilege	A special right or advantage available to a particular group or person.
Record	Defined in IRC 5 USC 552a(a)(4) as any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to education, financial transactions, medical history, and criminal or employment history and that contains name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.
Related Statute	The term "related statutes" in IRC 6103(b)(4) is not defined in the Code. However, it generally includes those sections of the U.S. Code, other than Title 26 (IRC), which, if violated, impede the administration of the internal revenue laws, and which directly relate to a tax matter.
Request	Any request for testimony by an IRS officer, employee, or contractor for production of IRS information, oral or written, by any person, which is not a demand.
Return	Any tax or information return, declaration of estimated tax, or claim for refund required by, or provided for or permitted under, the provisions of title IRC 6103 which is filed with the Secretary by, on behalf of, or with respect to any person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to, or part of, the return so filed. See IRC 6103(b) for additional information.

Exhibit 11.3.41-1 (Cont. 3) (02-26-2024)

Terms/Definitions/Acronyms

Term	Definition
Return Information	<p>The definition of Return Information is very broad and includes such things as a taxpayer's identity, the nature, source, or amount of their income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments; whether the taxpayer's return is subject to collection, examination, investigation, or any other actions taken by the Secretary with respect to federal filing requirements. See IRC 6103 (b)(2) for statutory definition of return information.</p> <p>Note: Return information does not include data in a form, which does not identify, directly or indirectly, a particular taxpayer, such as an amalgamation of returns or return information of a number of taxpayers. See IRC 6103(b)(2). Merely removing taxpayer identity information from a document which is return information, however, does not change its status as return information. See <i>Church of Scientology of California v. IRS</i>, 484 U.S. 9 (1987)</p>
Return Information (Other than Taxpayer Return Information)	<p>Return information not provided to the IRS by or on behalf of the taxpayer. This term is sometimes shortened to "other than taxpayer return information." For examples, see IRM 11.3.28.1.5.2, <i>Examples of Other than Taxpayer Return Information</i>.</p> <p>Note: Generally, information obtained from the taxpayer is considered taxpayer return information. See IRM 11.3.28.1.5.2 examples (9) and (10) for exceptions. If the source of the information cannot be determined, the information must be regarded as taxpayer return information.</p>
Routine Uses	<p>The disclosure of a record outside the Department of the Treasury for a purpose which is compatible with the purpose for which it was collected. Routine Uses must be published in the Federal Register as part of the System of Records Notice.</p>
Rule of 3	<p>The same IRS records that have been requested 3 or more times in a FOIA request.</p>
Seal	<p>An embossed emblem, figure, symbol, word, letter, etc. used as attestation or evidence of authenticity.</p>

Exhibit 11.3.41-1 (Cont. 4) (02-26-2024)

Terms/Definitions/Acronyms

Term	Definition
State	Any of the 50 states, the District of Columbia, American Samoa, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, Guam, the United States Virgin Islands, and any municipality with a population in excess of 250,000, as determined by the most recent decennial United States census data available, that imposes a tax on income or wages and with which the Commissioner of the IRS has entered into an agreement regarding disclosure. The definition of state also includes any governmental entity formed and operated by a qualified group of municipalities that includes two or more municipalities each of which imposes a tax on income or wages and administers the law relating to the imposition of taxes through such entity and that collectively have a population in excess of 250,000.
State Tax Administration	The administration, management, conduct, direction, and supervision of the execution and application of the revenue laws (or related statutes) of the state; the development and formulation of state tax policy relating to existing or proposed revenue laws or related statutes of the state, including assessment, collection, enforcement, litigation, and statistical gathering functions under such laws and statutes.
System of Records	A group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.
System of Records Notice	Information which is required to be published in the Federal Register by 5 USC 552a(e)(4).
Tax Administration	The administration, management, conduct, direction, and supervision of the execution and application of the internal revenue laws or related statutes (or equivalent laws and statutes of a state) and tax conventions to which the United States is a party, and the development and formulation of federal tax policy relating to existing or proposed internal revenue laws, related statutes, and tax.
Taxpayer Identity	The name of a person with respect to whom a return is filed, their mailing address, their taxpayer identification number or any combination thereof.

Exhibit 11.3.41-1 (Cont. 5) (02-26-2024)

Terms/Definitions/Acronyms

Term	Definition
Taxpayer Return Information	<p>Return information filed with or furnished to the IRS by or on behalf of the taxpayer to whom such information relates. All books, records and the contents of oral statements received by the IRS from, or on behalf of, the taxpayer to whom such data relates are taxpayer return information. This includes information obtained as a result of a summons served on the taxpayer or their representative. In addition, any data, in written form or otherwise, obtained by any officer or employee of the IRS from these books, records, and oral statements are also taxpayer return information.</p> <p>A third party is deemed to be acting on behalf of a taxpayer, and the data presented by that third party is considered taxpayer return information, if the third party, at the time of the IRS's request for the information, was acting as an authorized representative or agent for the taxpayer. Examples include a bookkeeper, return preparer, and an employee, or relative of the taxpayer acting for the taxpayer in connection with the preparation of a return or as custodian of the taxpayer's records. The information presented by the third party must be the taxpayer's own data, which the taxpayer provided to the third party as a representative or agent for the taxpayer, or which such third party derived from information so furnished. See IRM 11.3.28.1.5.1, <i>Examples of Taxpayer Return Information</i>.</p>
Tolling	A provision of the FOIA which allows the 20-day statutory time period of a case to stop for perfected requests.

Acronym	Definition
ACS	Automated Collection System
AD	Associate Director, Disclosure
AFOIA	Automated Freedom of Information Act
AIMS	Audit Information Management System
ALS	Automated Lien System
AM	Area Manager
ANMF	Automated Non-Master File
ARS	Approval Routing Slips
ART	Account Research Tools, on Disclosure SharePoint
AUR	Automated Underreporter
AUSA	Assistant United States Attorney
BAA	Business Application Administrator
BBA	Bipartisan Budget Act
BMF	Business Master File

Exhibit 11.3.41-1 (Cont. 6) (02-26-2024)

Terms/Definitions/Acronyms

Acronym	Definition
BSA	Bank Secrecy Act
BU	IRS Business Unit
CAF	Centralized Authorization File
CAP	Code, Authority, and Procedure
CAU	Caution Upon Contact
CCA	Chief Counsel Advice
CCDM	Chief Counsel Directives Manual
CDP	Collection Due Process
CEAS	Correspondence Examination Automation Support
CFR	Code of Federal Regulations
CI	Criminal Investigation
CIMIS	Criminal Investigation Management Information System
CJE	Critical Job Element
CMIR	Report of International Transportation of Currency or Monetary Instruments
CO	Contracting Officer
CP	Computer Paragraph
CPO	Chief Privacy Officer
CR	Contact Recording
C-Site	Consolidated Files Site
CTDWA	Control-D Web Access
CTR	Currency Transaction Report
CTRC	Currency Transaction Report by Casinos
CTRC-N	Currency Transaction Report by Casinos Nevada
DA	Disclosure Assistant/Disclosure Analyst
DAS	Discriminant Analysis System
DEQY	Detailed Earnings Query
DIF	Discriminant Index Function
DLN	Document Locator Number
DM	Disclosure Manager

Exhibit 11.3.41-1 (Cont. 7) (02-26-2024)

Terms/Definitions/Acronyms

Acronym	Definition
DO	Delegation Order
DOB	Date of Birth
DOEP	Designation of Exempt Person
DOJ	Department of Justice
DQMS	Disclosure Quality Management System
DS	Disclosure Specialist
EA	Enrolled Agent
EEO	Equal Employment Office
EGC	Employee Group Code
EIN	Employer Identification Number
ELF	Electronically Filed
EOAD	Examination Operational Automation Data Store
EOI	Exchange of Information
EPF	Employee Performance Folder
EQRS	Embedded Quality Review System
ERO	Electronic Return Originator
ESCO	Executive Secretariat Correspondence Office
FAR	Federal Acquisition Regulation
FBAR	Report of Foreign Bank and Financial Accounts
FBI	Federal Bureau of Investigation
FFC	FOIA Functional Coordinator
FICA	Federal Insurance Contributions Act
FinCEN	Financial Crimes Enforcement Network
FIS	Federal Investigative Standards
FOIA	Freedom of Information Act
FRC	Federal Records Center
FRCP	Federal Rules of Criminal Procedure
FSA	Field Service Advice
FX	FOIAXpress
GAO	Government Accountability Office
GCM	General Counsel Memoranda

Exhibit 11.3.41-1 (Cont. 8) (02-26-2024)

Terms/Definitions/Acronyms

Acronym	Definition
GIS	Government Information Specialist
GLDEP	Governmental Liaison Data Exchange Program
GLDS	Governmental Liaison, Disclosure and Safeguards
GSS	GLDS Support Services
HCO	Human Capital Office
HQ	Headquarters
IAT	Integrated Automation Technologies
ICE	Informant Claim Examination
ICS	Integrated Collection System
IDRS	Integrated Data Retrieval System
ILSC	Investor Level Statute Controls
IMF	Individual Master File
IP	Internet Provider
IPSO	Identity Protection Strategy & Oversight
IPSU	Identity Protection Specialized Unit
IRB	Internal Revenue Bulletin
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
IRMF	Information Returns Master File
IRP	Information Returns Processing
IRS	Internal Revenue Service
IS	Innocent Spouse
ITIN	Individual Taxpayer Identification Number
JCT	Joint Committee on Taxation
LB&I	Large Business and International
LEM	Law Enforcement Manual
LGM	Litigation Guideline Memoranda
MA	Management Assistant
MF	Master File
MFT	Master File Transaction

Exhibit 11.3.41-1 (Cont. 9) (02-26-2024)**Terms/Definitions/Acronyms**

Acronym	Definition
MLAT	Mutual Legal Assistance Treaty
MOU	Memorandum of Understanding
MSB	Registration of Money Services Business
NARA	National Archives and Records Administration
NMF	Non-Master File
NRS	Non-Requesting Spouse
NSD	No Source Document
NTFL	Notice of Federal Tax Lien
OCCP	Offshore Credit Card Project
OGIS	Office of Government Information Services
OIC	Offer in Compromise
OIP	DOJ Office of Information Policy
OIRA	Office of Information and Regulatory Affairs
OJI	On the Job Instructor
OMB	Office of Management and Budget
OPF	Official Personnel File
OPM	Office of Personnel Management
PA	Privacy Act
PAL	Public Access Link
PATRA	Privacy Act Transcript Request Activity
P&A	Counsel Procedure and Administration
PBC	Primary Business Code
PDT	Potentially Dangerous Taxpayer
PGLD	Privacy, Governmental Liaison and Disclosure
PII	Personally Identifiable Information
PIL	Public Information Listing
PINEX	Penalty and Interest Notice and Explanation
PLR	Private Letter Rulings
POA	Power of Attorney
PPO	Disclosure Policy and Program Operations
PR	Partnership Representative

Exhibit 11.3.41-1 (Cont. 10) (02-26-2024)

Terms/Definitions/Acronyms

Acronym	Definition
PTIN	Preparer Tax Identification Number
PUD	Potential Unauthorized Disclosure
RA	Revenue Agent
RACS	Revenue Accounting Control System
RAIVS	Return and Income Verification Services
RAR	Revenue Agent Report
RCS	Records Control Schedules
RFP	Request for Proposal
RFQ	Requests for Quotes
RGS	Report Generation Software
RICS	Return Integrity and Compliance Services
RIM	Records and Information Management
RMSB	Registration of Money Services Business
RO	Revenue Officer
ROTERS	Records of Tax Enforcement Results
RRA 98	Revenue Reconciliation Act of 1998
RRR	Records Retrieval Resources, on Disclosure SharePoint
RS	Requesting Spouse
RWMS	Resource Workload and Management System
SA	Special Agent
SAAS	Security Audit and Analysis System
SAC	Special Agent in Charge
SAR	Suspicious Activity Report
SBC	Secondary Business Code
SB/SE	Small Business/Self Employed
SBU	Sensitive But Unclassified
SCA	Service Center Advice
SCR	Sensitive Case Report
SDA	Senior Disclosure Analyst
SDLN	Source Document Locator Number

Exhibit 11.3.41-1 (Cont. 11) (02-26-2024)**Terms/Definitions/Acronyms**

Acronym	Definition
SDS	Senior Disclosure Specialist
SDT	Secure Data Transfer
SEID	Standard Employee Identification
SERFE	Selection of Exempt Organization Returns for Examination
SETR	Single Entry Time Reporting
SFR	Substitute for Return
SIDN	Site Identification Number
SORs	Systems of Records
SORN	System of Records Notice
SPEC	Stakeholder Partnerships, Education and Communication
SSA	Social Security Administration
SSN	Social Security Number
TA	Disclosure Area Technical Advisor
TAM	Technical Advice Memoranda
TC	Transaction Code
TCCS	Tax Compliance Check Service
TCE	Tax Counseling for the Elderly
TCS	Tax Check Service
TDA	Taxpayer Delinquent Account
TDI	Taxpayer Delinquency Investigation
TDS	Transcript Delivery System
TEFRA	Tax Equity and Fiscal Responsibility Act
TEGE	Tax Exempt/Government Entities
TFA	Taxpayer First Act
TFRP	Trust Fund Recovery Penalty
TIGTA	Treasury Inspector General for Tax Administration
TIN	Taxpayer Identification Number
TLS	Tax Law Specialist
TMP	Tax Matters Partner
TP	Taxpayer
TPC	Transactional Processing Center

Exhibit 11.3.41-1 (Cont. 12) (02-26-2024)

Terms/Definitions/Acronyms

Acronym	Definition
TRAC	Transactional Records Access Clearinghouse
TRACMS	Task Request and Case Management
TTB	Tobacco Tax and Trade Bureau
UCMJ	Uniform Code of Military Justice
UIDIF	Underreported Income DIF
UNAX	Unauthorized Access
URCL	Undeliverable Refund Check Listing
USA	United States Attorney
USC	United States Code
VITA	Volunteer Income Tax Assistance
WO	Whistleblowers Office
W&I	Wage and Investment
WIIC	Withholding and International Individual Compliance

Exhibit 11.3.41-2 (08-26-2021)
IRC 6103(c) Case Processing Checklist

Disclosures to Designee (IRC 6103(c))	Case Processing Considerations
Initial Analysis	<ul style="list-style-type: none"> • Written request is for tax information in a non-tax matter (requests for tax matters may be verbal). • The request contains sufficient information to identify the taxpayer(s) (e.g., name, TIN, address, and/or DOB). • The request specifies the tax years requested. • Valid consent is attached to the request and includes TP name, address and TIN. <p>Note: If for non-tax purpose, consent must be signed within 120 days of the date on the consent form.</p> <ul style="list-style-type: none"> • Case is categorized as IRC 6103(c)/(e) in the inventory management system. • Review for duplicate is complete. • Records can be obtained under a Routine Agency Procedure. • Additional Initial Analysis Considerations.
Research/Search	<ul style="list-style-type: none"> • Requested records are within IRS jurisdiction. • IRS systems have been researched to confirm identity of taxpayer(s) as well as locate information requested. • Research does not indicate any impairment or ID theft indicators. • Document search efforts in case notes. • Returns and return information have been ordered. • Requester is provided timely update on status of case.
Review and Edit	<ul style="list-style-type: none"> • Responsive records have been associated with the case. • Secure clearance from function with an open control on any year or period requested. • Redact relevant information. Do not use FOIA exemptions for IRC 6103(c) case types.
Respond and Close	<ul style="list-style-type: none"> • Final (or interim) response letter is completed. • Status update is provided every 30 business days until case is closed. • Response letter and responsive records have been provided via an approved transmission method (separate password letter must be completed if records are sent via encrypted software).

For all items on checklist, make sure case note documentation provides adequate justification for what decisions were made and why. This checklist is not all inclusive and the Disclosure caseworker and manager must make sure the case is correctly processed.

Exhibit 11.3.41-3 (02-26-2024)
IRC 6103(d) Case Processing Checklist

State and Local Requests (IRC 6103(d))	Case Processing Considerations
Initial Analysis	<ul style="list-style-type: none"> • Requests are routinely received on Form 8796-A and must have a valid authorization signature from the state agency. Review the State Authorization Listing. The signature may be in an electronic format. However, a valid authorization signature from the state must be on the Form 8796-A for processing. • Basic and Implementing Agreements allow disclosure. • The request contains sufficient information to identify the taxpayer(s) (e.g., name, TIN, address, and/or DOB). Information such as Tax Returns, RARs, requests to speak with IRS Personnel (RAs and ROs) as well as administrative files may be requested. • The request must specify the tax years requested. • Need and Use Statement/Justification provided, or nexus has been established for records of a taxpayer that lives in another state. • Case is categorized as IRC 6103(d) in the inventory management system. • Review for duplicate is complete. • Additional Initial Analysis Considerations.
Review and Edit	<ul style="list-style-type: none"> • Responsive records have been associated with the case. • Secure clearance from function with an open control on any year or period requested. • Redact relevant information. Do not use FOIA exemptions for IRC 6103(d) case types.
Respond and Close	<ul style="list-style-type: none"> • Final (or interim) response letter is completed. • Status update is provided every 30 business days until case is closed. • Response letter and responsive records have been provided via an approved transmission method. For information on Secure Data Transfer transmission see IRM 11.3.41.5.3. • Accounting requirements completed.

For all items on checklist, make sure case note documentation provides adequate justification for what decisions were made and why. This checklist is not all inclusive and the Disclosure caseworker and manager must make sure the case is correctly processed.

Note: A routine agency procedure does not apply when processing an IRC 6103(d) request. However, some state agencies have access to TDS and should be referred to that process if they are only seeking transcripts or information found on transcripts.

Exhibit 11.3.41-3 (Cont. 1) (02-26-2024)
IRC 6103(d) Case Processing Checklist

Additional reference material:

- *Agreements and MOUs*
- IRM 11.3.37, *Recordkeeping and Accounting for Disclosures*

Exhibit 11.3.41-4 (08-26-2021)
IRC 6103(e) Case Processing Checklist

Disclosures to Person with Material Interest (IRC 6103(e))	Case processing Considerations
Initial Analysis	<ul style="list-style-type: none"> • Request is in writing and access and authentication requirements are met. • The request contains sufficient information to identify the taxpayer(s) (e.g., name, TIN, address, and/or DOB). • The request specifies the tax years requested. • If request is from a Power of Attorney (POA), appropriate authorization is provided (e.g., Form 2848). • Case is categorized as IRC 6103(c)/(e) in the inventory management system. • Review for duplicate is complete. • Records can be obtained under a Routine Agency Procedure. • Additional Initial Analysis Considerations.
Research/Search	<ul style="list-style-type: none"> • Requested records are within IRS jurisdiction. • IRS systems have been researched to confirm identity of taxpayer(s) as well as locate information requested. • Research does not indicate any impairment or ID theft indicators. • Document search efforts in case notes. • Returns and return information have been ordered. • Requester is provided timely update on status of case.
Review and Edit	<ul style="list-style-type: none"> • Responsive records have been associated with the case. • Secure clearance from function with an open control on any year or period requested. • Redact information not authorized to disclose under IRC 6103(e). Do not use FOIA exemptions for IRC 6103(e) case types.
Respond and Close	<ul style="list-style-type: none"> • Final (or interim) response letter is completed. • Status update is provided every 30 business days until case is closed. • Response letter and responsive records have been provided via an approved transmission method (separate password letter must be completed if records are sent via encrypted software).

For all items on checklist, make sure case note documentation provides adequate justification for what decisions were made and why. This checklist is not all inclusive and the Disclosure caseworker and manager must make sure the case is correctly processed.

Exhibit 11.3.41-5 (02-26-2024)

IRC 6103(i)(1) Case Processing Checklist

Ex Parte Court Order (IRC 6103(i)(1))	Case Processing Considerations
<p>Initial Analysis: Information Required in an Application</p>	<ul style="list-style-type: none"> • Applications should not be solicited simply to check for adherence with the statute and are not required to be provided to Disclosure. Only the officials listed in IRM 11.3.28, <i>Disclosure to Federal Agencies for Administration of Non-Tax Criminal Laws</i>, or someone officially “acting in their absence” may approve the application. If the application is not valid because it was not approved by the correct official, follow the procedures in IRM 11.3.28.3(1), <i>Procedures for Access to Returns and Return Information</i>. • When the AUSA applies for the Order, they must show the following required information to the court: <ul style="list-style-type: none"> • There is reasonable cause to believe, based on information believed to be reliable that a specific federal non-tax criminal act has been committed. • There is reasonable cause to believe that the return or return information is or may be relevant to a matter relating to the commission of that non-tax criminal act. • The return or return information is sought exclusively for use in a federal non-tax criminal investigation or proceeding concerning that act, and cannot reasonably be obtained, under the circumstances, from any other source. Remember that the case needs to be a non-tax case. If the order is for possible violations of statutes with tax implications, the records cannot be obtained through the ex parte Court Order process.

Exhibit 11.3.41-5 (Cont. 1) (02-26-2024)
 IRC 6103(i)(1) Case Processing Checklist

Ex Parte Court Order (IRC 6103(i)(1))	Case Processing Considerations
<p>Initial Analysis Information Required in an Ex Parte Court Order</p>	<ul style="list-style-type: none"> • Request is in writing and approved by a Federal District Court Judge or Magistrate (may be electronic signature). • Review the order to ensure that there are no tax violations included. • If the Order is not valid, continue processing, however contact the requester and obtain an amended Order: <ul style="list-style-type: none"> • Any order citing only Title 26 (tax) violation is considered invalid. Contact requester and advise that ex parte process cannot be used for tax violations. • If Title 26 (tax) violation is cited in conjunction with other non-tax statutes, contact the requester and advise that we cannot process Ex Parte for tax violations. If tax violations were listed in error, request that a written withdrawal of the tax violations on DOJ letterhead be provided to the caseworker. • Title 18 USC 1956(a)(1)(A)(ii) is one of a number of Title 18 and Title 31 code sections that have tax implications. If the Order lists Title 18 or 31 violations contact requester and get verbal confirmation that only non-tax violations are part of the investigation. <p>Note: No disclosure of tax information can be released under IRC 6103(i) if it is to be used for sentencing purposes only. If a “sentencing only” request is received contact the AUSA and explain that no disclosure of information can be made.</p> <ul style="list-style-type: none"> • The Order contains sufficient information to identify the taxpayer(s) (e.g., name, TIN, address, and/or DOB). <p>Note: IRC 6103(i) does not require the requester to provide a TIN. As long as other sufficient information is provided, the Order can be honored. If a TIN is not provided in the Order contact the AUSA and attempt to obtain the TIN. Disclose returns and return information only if certain that they pertain to the taxpayer and tax years named in the Order.</p> • The order should specify the tax years requested. • Prepare and forward the DM Authorization Memo for DM review and approval. Make sure the signed memo is put in the case file.

Exhibit 11.3.41-5 (Cont. 2) (02-26-2024)
IRC 6103(i)(1) Case Processing Checklist

Ex Parte Court Order (IRC 6103(i)(1))	Case Processing Considerations
	<ul style="list-style-type: none"> • If no AUSA is specifically named in the order, a verbal statement from the United States Attorney indicating the name of the AUSA assigned to the case is acceptable. Contact with the AUSA is required and will include at minimum the following actions: <ul style="list-style-type: none"> • Acknowledge receipt of the ex-parte court order. • Verify returns/return information needed. • Determine the court date. • Advise AUSA that initial response does not include certified copies of returns but certification can be requested at a later date if needed, however, determine whether Form 3050 is needed for non-filed returns. • Determine whether transcripts or alternative product in lieu of returns are acceptable. • Discuss need for original signatures and that Electronically Filed (ELF) returns do not include signatures. The TRDVB shows the processing dates that the return was accepted or rejected. • Document specific actions and results of the discussion with AUSA in case notes. • Continued discussion with AUSA with progress regarding status of the order, estimated completion date and other pertinent information at least once every 30 business days. <p>Note: Contacts with the requesting official will not include any discussion of fact of filing or other return information until such disclosures are approved by the DM.</p> <ul style="list-style-type: none"> • Case is categorized as IRC 6103(i) in the inventory management system. • Review for duplicate is complete. • Additional Initial Analysis Considerations.
Research/Search	<ul style="list-style-type: none"> • Requested records are within IRS jurisdiction. • IRS systems have been researched to confirm identity of taxpayer(s) as well as locate information requested. • Research does not indicate any impairment or ID theft indicators. • Document search efforts in case notes. • Returns and return information have been ordered.

Exhibit 11.3.41-5 (Cont. 3) (02-26-2024)
IRC 6103(i)(1) Case Processing Checklist

Ex Parte Court Order (IRC 6103(i)(1))	Case Processing Considerations
Review and Edit	<ul style="list-style-type: none"> • Responsive records have been associated with the case. • Secure clearance from function with an open control on any year or period requested. • Form 3050, <i>Certified Lack of Record</i>, has been signed and embossed. • Redact information not authorized to disclose under IRC 6103(i). Do not use FOIA exemptions for IRC 6103(i) case types.
Respond and Close	<ul style="list-style-type: none"> • Final (or interim) response letter is completed (manager must sign letter if Authorization Memo was not previously approved). • If BSA information is contained in response, BSA Warning paragraph must be included in final (or interim) response letter. • Notate any 30, 60 or 90-day search for documents that have come into existence from date of judge’s signature, if such extension of cut-off date is applicable. • Response letter, responsive records and applicable certified lack of record documents have been provided via an approved transmission method (separate password letter must be completed if records are sent via encrypted software). • Accounting requirements completed.

For all items on checklist, make sure case note documentation provides adequate justification for what decisions were made and why. This checklist is not all inclusive and the Disclosure caseworker and manager must make sure the case is correctly processed.

Note: A routine agency procedure does not apply when processing an IRC 6103(i) request.

Additional reference material:

- *BSA Re-dissemination Guidelines Memo (08-23-2018)*
- 6103(i) - BSA Warning Statement
- IRM 11.3.37, *Recordkeeping and Accounting for Disclosures*

Exhibit 11.3.41-6 (08-26-2021)

IRC 6103(i)(2) Case Processing Checklist

Head of Agency Request (IRC 6103(i)(2))	Case Processing Considerations
Initial Analysis	<ul style="list-style-type: none"> • Request is in writing and signed by the head of a federal agency, or other authorized official. • The request contains the name and address of the taxpayer with respect to whom the requested return information relates. • The request specifies the tax years requested. • Prepare and forward the DM Authorization Memo to the DM for review and approval. • Contact must be made with the requester and following actions must be taken: <ul style="list-style-type: none"> • Acknowledge receipt of the written request. • Clarify what is needed in response to the written request (IRC 6103(i)(2) only permits disclosure of return information, other than taxpayer return information). <p>Note: Contacts with the requesting official will not include any discussion of fact of filing or other return information until such disclosures are approved by the DM.</p> <ul style="list-style-type: none"> • Case is categorized as IRC 6103(i) in the inventory management system. • Review for duplicate is complete. • Additional Initial Analysis Considerations.
Research/Search	<ul style="list-style-type: none"> • Requested records are within IRS jurisdiction. • IRS systems have been researched. • Research does not indicate any impairment or ID theft indicators.
Respond and Close	<ul style="list-style-type: none"> • Final (or interim) response letter is completed (manager must sign letter if Authorization Memo was not previously approved). • Response letter, and responsive records have been provided via an approved transmission method (separate password letter must be completed if records are sent via encrypted software). • Accounting requirements completed.

For all items on checklist, make sure case note documentation provides adequate justification for what decisions were made and why. This checklist is not all inclusive and the Disclosure caseworker and manager must make sure the case is correctly processed.

Note: A routine agency procedure does not apply when processing an IRC 6103(i) request.

Exhibit 11.3.41-7 (08-26-2021)
 IRC 6103(i)(3)(A) Case Processing Checklist

Head of Agency Referral (IRC 6103(i)(3)(A) and IRC 6103(i)(3)(C))	Case Processing Considerations
Initial Analysis	<ul style="list-style-type: none"> • When an IRS employee discovers information that may include evidence of a potential non-tax federal criminal violation outside the IRS’s jurisdiction, the employee will report the information by memorandum through functional channels to the appropriate Disclosure Office. The memorandum prepared should contain the following information about the violation: <ol style="list-style-type: none"> 1. Name, SSN, address, and any aliases, of subject. To the extent necessary, the subject’s DOB may also be disclosed. 2. Subject’s business or occupation, if known. 3. Summary of the facts and circumstances surrounding the non-tax federal criminal violation. 4. U.S. Code sections potentially violated, if known. 5. Specific source of the information (i.e., third-party, taxpayer, taxpayer’s representative, taxpayer’s return), and how the information was obtained. 6. The tax years where the information applies (e.g. the year(s) where an examination or criminal activity took place). If unknown, indicate that in the memorandum. <p>Note: This information will be used to account for any authorized disclosures.</p> 7. The agency that would have an interest in this violation, (i.e., U.S. Department of Homeland Security, other agency (specify)). 8. System of Records where information was obtained. 9. Determination whether disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation.

Exhibit 11.3.41-7 (Cont. 1) (08-26-2021)
IRC 6103(i)(3)(A) Case Processing Checklist

Head of Agency Referral (IRC 6103(i)(3)(A) and IRC 6103(i)(3)(C))	Case Processing Considerations
	<ul style="list-style-type: none"> • Confirm what type of facts/information is being referred and the source. <ul style="list-style-type: none"> • Is it “other than taxpayer return information”? • When did the employee making the referral get the information? • Is it independently available to the other federal agency, outside of IRS records? • Does the other federal agency have access to this same information/database (i.e., BSA through FinCEN court documents, business licenses, property ownership)? • Can the information stand on its own outside of IRS documentation (if it cannot stand by itself outside of IRS information the referral cannot be made)? • Exception: IRC 6103(i)(3)(A)(ii) allows for the release of identity information. IRC 6103(b)(6) identifies taxpayer identity information as name, mailing address, taxpayer identification number (SSN/EIN) or a combination thereof. • Did the information come from a third party? <ul style="list-style-type: none"> • Note: Be alert to Grand Jury, informant, or BSA information. • Limit disclosure of information to just enough facts to apprise the agency of a possible non-tax violation. • Non-tax violation must apply to the agency to whom we are making the referral. <ul style="list-style-type: none"> • What are the possible violations? • Does the federal agency have jurisdiction/responsibility for the statute? • Note: The DOJ is an investigatory agency. There is no statute for which there is a violation that is specifically under their jurisdiction. • Note: No referrals may be made to contractors of the federal agency • Contact the IRS employee making referral to ensure Disclosure understands all relevant aspects of the referral. • Case is categorized as IRC 6103(i) in the inventory management system.

Exhibit 11.3.41-7 (Cont. 2) (08-26-2021)
 IRC 6103(i)(3)(A) Case Processing Checklist

Head of Agency Referral (IRC 6103(i)(3)(A) and IRC 6103(i)(3)(C))	Case Processing Considerations
	<ul style="list-style-type: none"> Additional Initial Analysis Considerations Note: IRM Exhibit 11.3.28-3, <i>Non-tax Federal Criminal Referral Check List IRC 6103(i)(3)(A) or (i)(3)(C)</i>, may be used as a guide to analyze the information provided for an IRC 6103(i)(3)(A) referral.
Respond and Close	<ul style="list-style-type: none"> IRC 6103(i)(3)(A) states that the referral must be in writing. There is no provision for providing oral/verbal information. The IRS employee making the initial referral cannot be given authorization to speak with someone at the other federal agency. There is no provision under IRC 6103(i)(3)(A) that allows for the verbal communication between the IRS and the other agency. Prepare and forward the appropriate sample pattern letter to the DM for review and approval. Per <i>Delegation Order 11-2</i> the authority cannot be re-delegated below the DM. Taxpayer identity information (i.e., name, address and SSN) may not be disclosed under IRC 6103(i)(3)(A) unless return information, other than taxpayer return information is also disclosed. Example: A referral to Department of Homeland Security pertaining to illegal activity in the United States consisting of only the name, address and TIN of the individual (other than taxpayer return information), without other independently verifiable non-tax information, is not permitted under IRC 6103(i)(3)(A). Referral must be made to the head of the federal agency. Example: Director of Homeland Security, Director of Immigration & Customs Enforcement, Secretary of State. However, generally the letter will include information on a local person/department in the agency over the specific program. Response letter, and responsive records have been provided via an approved transmission method (separate password letter must be completed if records are sent via encrypted software). Accounting requirements completed.

For all items on checklist, make sure case note documentation provides adequate justification for what decisions were made and why. This checklist is not all inclusive and the Disclosure caseworker and manager must make sure the case is correctly processed.

Exhibit 11.3.41-7 (Cont. 3) (08-26-2021)
IRC 6103(i)(3)(A) Case Processing Checklist

Note: A routine agency procedure does not apply when processing an IRC 6103(i) request.

Exhibit 11.3.41-8 (08-26-2021)

Freedom of Information Act Case Processing Checklist

Disclosure to requester under FOIA (5 USC 552)	Case Processing Considerations
Initial Analysis:	<ul style="list-style-type: none"> • Request is in writing and cites the FOIA. • Request is signed by requester and establishes identity by: <ul style="list-style-type: none"> • Copy of driver’s license • Notarized statement affirming identity • Valid perjury statement • The request reasonably describes the records. <p>Note: If states “all records pertaining to/concerning me” see IRM 11.3.41.13.3.11, <i>Requests for All Records Concerning Me</i>.</p> • The request contains sufficient information to identify the taxpayer(s) (i.e., name, TIN, address, and/or DOB), and provides address where information is to be sent. • The request specifies the tax years and tax matters requested. • Request asks for copies of records. • Identifies category of requester and agrees to relevant fees. • Fee-waiver processing is requested. <p>Note: Make sure this is captured correctly in the inventory management system</p> • Expedite processing is requested. <p>Note: Make sure this is captured correctly in the inventory management system and addressed timely.</p> • If request is from third party, appropriate authorization is provided for tax or privacy protected records (i.e., Form 2848). • Case is categorized as FOIA in the inventory management system. • Review for duplicate is complete. • Review for outstanding fees is complete. • Additional Initial Analysis Considerations.

Exhibit 11.3.41-8 (Cont. 1) (08-26-2021)

Freedom of Information Act Case Processing Checklist

Disclosure to requester under FOIA (5 USC 552)	Case Processing Considerations
Research/Search	<ul style="list-style-type: none"> • Requested records are within IRS jurisdiction. • The IRS systems have been researched to confirm identity of taxpayer(s) as well as locate information requested. • Research does not indicate any impairment or ID theft indicators. • Backlog and Subject Categories have been identified. • Document search efforts in case notes. • Returns and return information have been ordered. • Other IRS non-tax records have been identified and requested from the appropriate Business Unit. • Requester is provided timely update on status of case.
Review and Edit	<ul style="list-style-type: none"> • Responsive records have been associated with the case. • Secure clearance from function with an open control on any year or period requested. • For other IRS non-tax records, receive release recommendations from appropriate function. • Redact relevant information. Use appropriate FOIA exemptions and discuss reasonable harm. • Managerial review has been completed for no records or denial of record response. • Discretionary Disclosure was considered and if a discretionary disclosure was made, case notes in the inventory management system have been documented appropriately.
Respond and Close	<ul style="list-style-type: none"> • Final (or interim) response letter is completed and signed by Delegated official. • Appropriate closing disposition has been selected. • Fee language has been included if applicable. • Notice 393 is being provided, as applicable. • Fee Waiver request has been addressed (if applicable). Note: If valid fee waiver request was denied response must include a Notice 393. • Expedite request has been addressed (if applicable). Note: If valid expedite request was denied response must include a Notice 393. • Response letter and responsive records have been provided via an approved transmission method (separate password letter must be completed if records are sent via encrypted software).

For all items on the checklist, make sure case note documentation provides adequate justification for what decisions were made and why. This checklist is not all inclusive and the Disclosure caseworker and manager must make sure the case is correctly processed.

Exhibit 11.3.41-8 (Cont. 2) (08-26-2021)

Freedom of Information Act Case Processing Checklist

Additional reference material:

- FOIA and the PA
- *What every IRS employee needs to know about the FOIA*
- *Respond Directly*

Exhibit 11.3.41-9 (08-26-2021)
Privacy Act Case Processing Checklist

Disclosure to requester under PA (5 USC 552a)	Case Processing Considerations
Initial Analysis	<ul style="list-style-type: none"> • Request is in writing. • Requester has provided their name and address. • Requester has provided their SSN if the system being accessed is accessed by SSN. Requests for records maintained in the name of two or more individuals (such as husband and wife) must contain the names, addresses and SSNs (if necessary) of both individuals. • Requester has signed the request and met identification requirements. • If request is from a third party, appropriate PA consent is provided. <p>Note: If the request is for tax records the third party must also have access under IRC 6103.</p> <ul style="list-style-type: none"> • Request has been clearly marked, "Request for Notification and Access." • Request cites the PA and specifies the name and location of the system of records. • Indicate whether the requester wishes merely to be notified whether the system contains a record pertaining to that requester; whether the requester wishes to inspect the record in person; or whether the requester wishes to have a copy made and furnished by the IRS. If the individual requests copies, the request must include an agreement to pay the fee for copying records, if such fee is anticipated to be for \$25.00 or more. • Case is categorized as PA in the inventory management system. • Determine if the PA provides the requester the greatest access possible to their records. <p>Note: If FOIA provides greater access make sure case is worked as a FOIA request.</p> <ul style="list-style-type: none"> • Review for duplicates is complete. • Records can be obtained under a Routine Agency Procedure. • Additional Initial Analysis Considerations.
Research/Search	<ul style="list-style-type: none"> • Requested records are within IRS jurisdiction. • The IRS systems have been researched to confirm identity of requester as well as locate information requested. • Research does not indicate any impairment or ID theft indicators. • Document search efforts in case notes. • Responsive records have been ordered. • Requester is provided timely update on status of case.

Exhibit 11.3.41-9 (Cont. 1) (08-26-2021)
Privacy Act Case Processing Checklist

Disclosure to requester under PA (5 USC 552a)	Case Processing Considerations
Review and Edit	<ul style="list-style-type: none"> • Responsive records have been associated with the case. • Secure clearance from function with an open control on any year or period requested. • Redact relevant information. Use PA exemptions to withhold relevant information (do not use FOIA exemptions for PA case types).
Respond and Close	<ul style="list-style-type: none"> • Final (or interim) response letter is completed. • Response letter and responsive records have been provided via an approved transmission method (separate password letter must be completed if records are sent via encrypted software).

For all items on checklist, make sure case note documentation provides adequate justification for what decisions were made and why. This checklist is not all inclusive and the Disclosure caseworker and manager must make sure the case is correctly processed.

Note: A routine agency procedure may apply when processing a PA request.

Additional reference material:

- IRM 10.5.6, *Privacy Act*
- *System of Records Job Aid*

**Exhibit 11.3.41-10 (08-26-2021)
Subpoena Case Processing Checklist**

<p>Disclosure pursuant to request for IRS records or testimony (26 CFR 301.9000-1 through 301.9000-7)</p>	<p>Case Processing Considerations</p>
<p>Initial Analysis</p>	<ul style="list-style-type: none"> • Request is in writing and includes these items, as applicable (i.e., production of records vs. testimony): <ul style="list-style-type: none"> • A description of parties to and subject matter of the proceeding. • A summary of the testimony or records sought, the relevance to the proceeding and an estimated volume of records. • The time that will be required to present testimony. • Whether any of the IRS records is return or return information as defined in IRC 6103. • Whether any of the IRS information is tax convention information as defined in IRC 6105. • Valid consent attached to disclose pursuant to IRC 6103(c) or reason why such consent is not necessary. • Whether declaration or affidavit by IRS employee would suffice in lieu of testimony. • Whether deposition or testimony is necessary or is certified IRS records sufficient for rules of evidence. • Whether IRS records or information is available from other sources. • Statement that the request or demand allows reasonable time for compliance (generally, at least 15 business days). • Permissible waiver – area manager may waive requirements for written statement for good cause. • IRS matter – If subpoena involves IRS matters, request should be forwarded to Office of Chief Counsel. • Non-IRS matter – If subpoena involves Non-IRS matters, request must be processed by Disclosure. • Case is categorized as Subpoena/Testimony in the inventory management system. • Review for duplicates is complete. • Records can be obtained under a Routine Agency Procedure. • Additional Initial Analysis Considerations.

Exhibit 11.3.41-10 (Cont. 1) (08-26-2021)
Subpoena Case Processing Checklist

Disclosure pursuant to request for IRS records or testimony (26 CFR 301.9000-1 through 301.9000-7)	Case Processing Considerations
Research/Search	<ul style="list-style-type: none"> • Requested records are within IRS jurisdiction. • Research does not indicate any impairment or ID theft indicators. • Tax records – Request for returns or return information as defined in IRC 6103(b). <ul style="list-style-type: none"> • If no consent provided contact requester to explain records cannot be provided without authorization. Discuss use of Form 8821 or Form 2848 or the use of routine agency procedures (Form 4506 or Form 4506-T). Ask requester to withdraw the subpoena. • If consent is provided the subpoena can be processed. Contact the requester to discuss the use of routine agency procedures (Form 4506 or Form 4506-T). • PA records – Request for PA protected information. <ul style="list-style-type: none"> • If no consent is provided contact the requester to explain the records cannot be provided without authorization. Discuss the use of a PA consent or the use of routine agency procedures. Ask requester to withdraw the subpoena. • If consent is provided the subpoena can be processed. Contact the requester to discuss the use of routine agency procedures or provide requested records as appropriate. • Treaty records – Request for tax convention information as defined in IRC 6105. <ul style="list-style-type: none"> • Conduct a search to secure records. Review records to withhold sensitive information as appropriate. Coordinate LB&I prior to any release of information. • Agency records – Request for agency records. <ul style="list-style-type: none"> • Conduct a search to secure records. Review records to withhold sensitive information as appropriate. Consider all applicable disclosure laws. • Grand Jury (GJ) records – Request for Grand Jury information as defined in the FRCP. <ul style="list-style-type: none"> • GJ information is not considered IRS information subject to the provisions of 301.9000, direct the requester to the DOJ.

Exhibit 11.3.41-10 (Cont. 2) (08-26-2021)
Subpoena Case Processing Checklist

Disclosure pursuant to request for IRS records or testimony (26 CFR 301.9000-1 through 301.9000-7)	Case Processing Considerations
	<ul style="list-style-type: none"> • BSA records – Request for BSA information. <ul style="list-style-type: none"> • BSA Forms are not IRS information subject to the provisions of 301.9000, direct the requester to FinCEN. • IRS records containing BSA information can only be disclosed pursuant to the BSA Re-dissemination Guidelines. • Consider other applicable disclosure laws such as IRC 6104, 6110 and 4424. • The IRS systems have been researched to confirm identity of taxpayer(s) as well as locate information requested. • Document search efforts in case notes. • Returns and return information have been ordered. • For testimony, court witness cadre process has been followed to secure an IRS approved witness.
Review and Edit	<ul style="list-style-type: none"> • Responsive records have been associated with the case. • Secure clearance from function with an open control on any year or period requested. • Redact relevant information. Do not use FOIA exemptions for subpoena case types. • Determine if Counsel needs to be involved to respond or potentially quash the subpoena. • Non-IRS matter – If testimony authorization is required, prepare relevant Authorization Memo and forward through formal approval process. Note: Area Counsel must review the authorization memo as part of the process. • Form 3050, <i>Certification of Lack of Record</i>, has been signed and embossed.
Respond and Close	<ul style="list-style-type: none"> • Final (or interim) response letter is completed. Note: For testimony authorization, all approving officials must sign the memo before forwarding to court witness. • Response letter, responsive records and applicable certified lack of record documents have been provided via an approved transmission method (separate password letter must be completed if records are sent via encrypted software). • Accounting requirements completed, if appropriate.

Exhibit 11.3.41-10 (Cont. 3) (08-26-2021)

Subpoena Case Processing Checklist

For all items on checklist, make sure case note documentation provides adequate justification for what decisions were made and why. This checklist is not all inclusive and the Disclosure caseworker and manager must make sure the case is correctly processed.

Exhibit 11.3.41-11 (08-26-2021)
Criteria for Assignment to GS-13 Caseworker

(1)

Criteria	Description
Requesters that Meet GS-13 Work	<ul style="list-style-type: none"> • Major media outlets and others with a nation-wide audience. <i>Local media requesting issues that are local in scope should be processed by field offices and coordinated through local Media Relations.</i>
Request Types that Meet GS-13 Work	<ul style="list-style-type: none"> • International Issues - Requests that involve Tax Treaty information • Background documents pertaining to Written Determinations - Written determinations include PLR, CCCA, TAM, Revenue Procedures (Rev. Proc.), Revenue Rulings (Rev. Rul.) • Contracts • Requests for Statistical Compilations • IRS Executive information - other than PIL information or an appointment affidavit. <i>(An executive is someone listed in the Discovery Directory in the ES or EX series)</i> • Chief Counsel Litigation Files (System of Records 90.002) • National decisions and policy statements including the Chief Counsel legal background documents for these decisions and policies • Congressional correspondence or Congressional correspondence logs (Legislative Affairs records), Commissioner’s correspondence or Operating Division Executive Correspondence • Whistleblower Records • Functional Training Material • Federal Witness Security Program • Subpoenas for the Production of Records or Testimony involving an IRS Executive or IRS HQ employee

Exhibit 11.3.41-11 (Cont. 1) (08-26-2021)
Criteria for Assignment to GS-13 Caseworker

Criteria	Description
Requests with Unique Characteristics	<ul style="list-style-type: none">• Requester has been in the media or is the subject of a Congressional inquiry• NTEU asking for national data or information on a national policy or program• National political issues (i.e., Does the request imply the IRS took an action based on political pressure or for political reasons?)• If upper management determines the request should be processed by a GS-13

Exhibit 11.3.41-12 (08-26-2021)
IDRS Research Tools

(1) For FOIA requests involving tax files the minimum required recommended IDRS research includes:

- INOLE and INOLEX
- SUMRY + N - for NMF
- IMFOLI
- IMFOLB - to restore retention modules to the master file
- IMFOLT - for any year covered in the request
- AMDIS or AMDISA - for Exam Files
- SUMRY
- UNLCER - for Trust Fund Recovery Penalty files
- ENMOD
- TDINQ - for Collection files

(2) If there is an “R” to the left of years noted in IMFOLI, the account has gone to retention. The account can be retrieved by using IMFOLB to request that period. This will eliminate the delay of waiting for the receipt of microfilm on years recently moved to retention.

(3) If the outcome of the above indicates a need for further research, the following IDRS Command Codes may be used to locate records and documents:

(4) **Collection Files:** Use TDINQ or review transcripts for Collection Status Codes or transaction codes.

Example: Status 53 or TC 530 indicates a “Currently Not Collectible” file exists in the office corresponding to the DLN of the TC 530; TC 140 indicates a TDI file.

See Document 6209, Section 8, for Collection Status Codes.

(5) Trust Fund Recovery Penalty Files with an assessed penalty can be located by identifying MFT 55 on IMFOLI, then reading the IMFOLT specific transcript to check for a closing code of 618 pertaining to the TC 240. The DLN of the TC 240 will indicate where the penalty was assessed. Another method is to pull up UNLCER for either the EIN of the company or the SSN of the officer.

Note: A taxpayer with a proposed TFRP penalty may also be authorized to access TFRP documents, the case-worker must make sure to do adequate research on IDRS to determine if there is a TFRP file, do not reply no records exist unless you have confirmed with thorough research.

(6) **Examination Files:** Command Code AMDIS or AMDISA will show if a particular tax year is under examination. AIMS status code 12 indicates an open audit. TC 420 series indicates exam activity. TC 922 indicates Underreporter activity. The closing code will identify those with exams. TCs 976 and 977 indicate duplicate or amended returns. To determine whether there has been any other exam activity, reference Document 6209, Section 12, for additional exam codes.

(7) **Criminal Investigation Files:** TC in the 900 series, AIMS Status 17, or a **Z** freeze indicates CI activity. Due to the expanded role CI is taking in various compliance activities, that Division should also be searched for activity not reflected on IDRS. See IRM 11.3.41.13.8.8, **CI Indicator**, regarding the redaction procedures for TC 900 series located on transcripts.

(8) **Taxpayer Advocate Files:** Control history notes on TXMODA or assignment codes on ENMOD could indicate Taxpayer Advocate activity. The 10-digit assignment code indicating Taxpayer Advocate activity begins with a 2-digit office number, followed by a 3-digit number between 980- 989. The Taxpayer Advocate service intake analyst can also be contacted for information on open or closed cases, including Congressional cases.

Exhibit 11.3.41-13 (08-26-2021)
Exam/AIMS/AMDISA Status Codes

AIMS Status	Description
06	Awaiting Classification
07	Transfer
08	Selected
10	Selected, not assigned
12	Selected, assigned
13	30-Day Notice
17	Fraud
18	CI Accepted
20	Mandatory Review
22	30-Day Notice
24	Statutory Notice of Deficiency (SND)
25	Pre-SND
26	JCT
27	TEFRA
28	TEFRA
29	TEFRA
32	Fraud
34	TEFRA
36	Grand Jury
38	ID Theft
51	Transit to Tech Services
52	Centralized Case Processing
53	Centralized Case Processing
54	Centralized Case Processing
55	Centralized Case Processing
56	Suspense - Disaster & ID Theft
58	Centralized Case Processing
59	Centralized Case Processing
80	Nondocketed Appeals

Exhibit 11.3.41-13 (Cont. 1) (08-26-2021)
Exam/AIMS/AMDISA Status Codes

AIMS Status	Description
81	Not Assigned Appeals
82	Docketed Appeals
88	Tried - Area Counsel
90	Exam Closed

Exhibit 11.3.41-14 (08-26-2021)
Collection Status Codes

Status	Description
22	Automated Collections System (ACS)
24	Awaiting assignment to a RO/ ICS
26	Assigned to a RO/ ICS
53	Closed Collections Case File Currently Not Collectible (CNC)
60	Closed Collection Case file - Payment Agreement status
71	OIC Pending
72	Litigation

Exhibit 11.3.41-15 (12-08-2022)

Case Type Timeliness

Case Type	Complete Activity	At Earliest Opportunity but no later than (indicates business days unless otherwise noted):	Measured From	Measured To
FOIA/Privacy Act	Initial Analysis	3 days	Assignment	Analysis
FOIA/Privacy Act	Records Ordered	3 days	Analysis	Records Ordered
FOIA/Privacy Act	Records Pending Follow Up	2 days	Records Due Date	Records Receipt
FOIA/Privacy Act	Substantiative Action	Continuous	Records Receipt	Closure
FOIA/Privacy Act	Final Closure	1 day	Final Action	Closure
FOIA/Privacy Act	Responsive Communications	1 day	Incoming Contact	Response to the Customer
6103(i)(1), 6103(i)(2) and 6103(i)(3)	Initial Analysis	3 days	Assignment	Analysis
6103(i)(1), 6103(i)(2) and 6103(i)(3)	AUSA Contact	7 days	Assignment	AUSA Contact
6103(i)(1), 6103(i)(2) and 6103(i)(3)	Records Ordered	14 days	Assignment	Records Ordered
6103(i)(1), 6103(i)(2) and 6103(i)(3)	Closure	5 days after Cutoff stated in Order not to exceed 90 days	Assignment	Closure
6103(i)(1), 6103(i)(2) and 6103(i)(3)	AUSA Status Update	Every 30 days	Assignment	Closure
6103(i)(1), 6103(i)(2) and 6103(i)(3)	Responsive Communication	1 day	AUSA or Agent Attempted Contact	Response to the AUSA or Agent
Subpoenas/Testimony Authorizations	Initial Analysis	24 hours	Assignment	Analysis for Validity
Subpoenas/Testimony Authorizations	Requester Contact	7 days	Assignment	Requester Contact

Exhibit 11.3.41-15 (Cont. 1) (12-08-2022)

Case Type Timeliness

Case Type	Complete Activity	At Earliest Opportunity but no later than (indicates business days unless otherwise noted):	Measured From	Measured To
Subpoenas/Testimony Authorizations Valid - Processing	Court Witness Coordination	1 day	Validity Determination	Secure Witness
Subpoenas/Testimony Authorizations Valid - Processing	Testimony Authorization Approval	7 days - Prior to court date	Receipt of Subpoena	Submission for Approval
Subpoenas/Testimony Authorizations Invalid - Processing	Closure	7 days	Analysis	Closure
Subpoenas/Testimony Authorizations	Responsive Communication	1 day	Incoming Contact	Response to the Customer
6103(c)/(e), 6103(d), 6103(h)(4) and 6103(l)(1)(A)	Initial Analysis/ Ordering of Records	10 days	Assignment	Records Ordered
6103(c)/(e), 6103(d), 6103(h)(4) and 6103(l)(1)(A)	Review	30 days - Calendar	Assignment	Closure
6103(c)/(e), 6103(d), 6103(h)(4) and 6103(l)(1)(A)	Status Update	Every 30 days	Assignment	Response to the Customer
6103(c)/(e), 6103(d), 6103(h)(4) and 6103(l)(1)(A)	Responsive Communications	1 day	Incoming Contact	Response to the Customer
Disclosure Manager Role and Responsibilities IRM 11.3.38	Responsive Communications	1 day	Incoming Contact	Response to the Customer

Exhibit 11.3.41-16 (Cont. 1) (08-26-2021)
IRC 6103(l)(1)(A) Request Template

Claimant Name and Address:	Social Security Number:
<p>Fact of Filing:</p> <p><input type="checkbox"/> Have returns been filed for the periods listed below showing earnings from self-employment and/or the payment of self-employment taxes? If yes, provide the dates filed.</p> <p>Periods Requested:</p>	<p>IRS Response:</p> <p><input type="checkbox"/> Yes, the following tax years have returns filed showing self-employment income and/or payment of self-employment taxes: _____</p> <p>The dates filed are:</p> <p><input type="checkbox"/> No returns for the following periods have been filed that show self-employment income and/or payment of self-employment tax.</p>

Exhibit 11.3.41-17 (08-26-2021)
FOIA and Privacy Act Decision Matrix

(1)

Situation Described	Release or Withhold
No PA and No FOIA exemption apply	<u>Release</u> under PA or FOIA whichever is cited in request
PA exemption applies but no FOIA exemption applies	<u>Release</u> under FOIA
For PA records – No PA exemption applies but FOIA exemption applies	<u>Release</u> under PA
PA exemption and FOIA exemption applies	Withhold citing appropriate FOIA and PA exemption(s)

Exhibit 11.3.41-18 (08-26-2021)

FOIA and Title 26 Cases with CTRs or Data Extracted from CTRs

(1)

Type of Data	Used in Tax Case?	Will Release Impair?	Release? /Cite
CTR (actual return/report)*	No	Do not have to consider impairment since not used in case	No - FOIA (b)(3) with 31 USC 5319
CTR (actual return/report)*	Yes	Yes	No - if FOIA, use (b)(3) with IRC 6103(e)(7) and (b)(7)(A) and (b)(3) with 31 USC 5319; if not FOIA, use IRC 6103(e)(7)
CTR (actual return/report)*	Yes	No	No - FOIA (b)(3) with 31 USC 5319
Data extracted from CTR**	No	Do not have to consider impairment since not used in case	No - FOIA (b)(3) with 31 USC 5319
Data extracted from CTR**	Yes	Yes	No - if FOIA, use (b)(3) with IRC 6103(e)(7) and (b)(7)(A); if not FOIA, use IRC 6103(e)(7)
Data extracted from CTR**	Yes	No	Release

* The term CTR includes the documents listed in IRM 11.3.41.13.8.1, *Title 31 Reports - CTRs, CMIRs, FBARs, and SARs*.

** Examples (not all inclusive) of data extracted from a CTR could be IRMF/IRP transcripts that include CTR data and/or data taken from the CTR and included in a history note or the RAR.

Note: If TP does not invoke FOIA during ongoing tax enforcement proceedings, the case agent may disclose investigatory material, including reports under Title 31 or information extracted from these reports, unless an IRC 6103(e)(7) impairment call is made.

Exhibit 11.3.41-19 (08-26-2021)**Procedures for Processing Requests for 23c/RACS006**

Receiving offices will process all requests for Form 23-C/RACS006 or other assessment documents in the same manner. This procedure addresses 23C/RACS006 requests only. The chart below shows what you must provide based on the wording in the request:

Record(s) Requested	RACS006 from appropriate Campus	TDS Account Transcript	Conduct NMF Research	Other Important Considerations
23C Document	Yes	Yes	Yes	If NMF assessment is located, a user-friendly transcript* must be provided with the 23C/RACS006.
Summary Record of Assessment (SRA)	Yes	Yes	Yes	If NMF assessment is located, a user-friendly transcript* must be provided with the 23C/RACS006.
23C, RACS006, SRA, etc. with supporting document	Yes	Yes	Yes	If NMF assessment is located, a user-friendly transcript* must be provided with the 23C/RACS006.
Section 6203 Information	No	Yes	Yes	If NMF assessment is located, a user-friendly transcript* must be provided Do not send 23C/RACS006
All Supporting Documents	No	Yes	Yes	Explain details of 23C/RACS006. If NMF assessment is location, a user-friendly transcript* must be provided. Do NOT send 23C/RACS006.

**Exhibit 11.3.41-19 (Cont. 1) (08-26-2021)
Procedures for Processing Requests for 23c/RACS006**

Record(s) Requested	RACS006 from appropriate Campus	TDS Account Transcript	Conduct NMF Research	Other Important Considerations
23C, RACS006, SRA specific to me, pertaining to me or my SSN	No	Yes	Yes	Explain details of 23C/RACS006. If NMF assessment is located, a user-friendly transcript* must be provided. Do NOT send 23C/RACS006.
Does Not Want RACS006, phony documents, etc.	No	Yes	Yes	If NMF assessment is located, a user-friendly transcript* must be provided. Do NOT send 23C/RACS006.

* An NMF “user friendly transcript” is available through ANMF.

Note: Form 23-C/RACS006 Reports need to be provided for all assessments on each tax year. This includes tax, interest, penalties, lien fees, etc., not just tax assessments. Any assessment without a money amount (i.e., .00) will not have an associated Form 23-C/RACS006 Report.

Exhibit 11.3.41-20 (08-26-2021)**Definition of Written Determination and IRC 6110(h)**

(1) Section 6110 procedures apply only to written determinations. Written determinations generated in response to requests submitted prior to November 1, 1976, are not to be produced until Congress appropriates funds for that purpose. IRC 6110(h)(2)(B).

Before considering whether to process a request for records dated before November 1, 1976, first consider whether the records sought are written determinations. Records which are proactively generated and made public by the IRS are generally not considered “written determinations,” as this term generally applies to documents that were created with respect to a specific taxpayer request or a specific set of facts.

(2) Is it a written determination:

Determination	Description	Yes/No
PLRs	A written statement issued to a taxpayer that interprets and applies tax laws to the taxpayer’s specific set of facts.	Yes
TAMs	Guidance furnished by the Office of Chief Counsel upon the request of an IRS director or area director, Appeals, in response to technical or procedural questions that develop during a proceeding.	Yes
Determination Letters	Letters issued to taxpayers seeking confirmation that the taxpayer’s activity is in compliance with the law, commonly generated for employee retirement plans. Ruling letters for 501(c)(3) status are also called “determination letters.”	Yes
Ruling Letters	Letters issued by TE/GE denying or revoking tax-exempt status, including applications and supporting documents.	Yes
CCA Includes (but not limited to): <ul style="list-style-type: none"> • Field Service Advice (FSAs) • Service Center Advice (SCAs) • Technical Assistance (to the field) • Litigation Guideline Memoranda (LGMs) • Bulletins 	Advice or instructions prepared by National Office, issued to field counsel or service center employees, conveying legal interpretations or official policies or positions with regard to any revenue provision, or any interpretation of any law relating to assessment or collection of any liability under any revenue provision. IRC 6110(i)(1)(A).	Yes
Notices	A public announcement that may contain guidance involving substantive interpretations of the Code or other provisions of law.	No

Exhibit 11.3.41-20 (Cont. 1) (08-26-2021)

Definition of Written Determination and IRC 6110(h)

Determination	Description	Yes/No
Announcements	A public pronouncement of only immediate or short-term value that, among other things, may summarize existing law, declare impending publication of substantive guidance, or notify taxpayers of impending deadlines published in the IRB.	No
Revenue Rulings	An official interpretation by the IRS of the Code, related statutes, tax treaties, and regulations published in the IRB.	No
Revenue Procedures	Official statement of a procedure published in the IRB.	No
Treasury Decisions	A document that contains the text of a final or temporary CFR, published in the IRB.	No
Actions on Decisions	A formal memorandum prepared by the IRS Office of Chief Counsel announcing a future litigation position based on a given court decision. Results are published in the IRB.	No
Regulations	Guidance and instructions on new and existing Code sections and other laws affecting the IRS and Treasury practice and procedure, published in the Federal Register.	No
Advance Pricing Agreements	An agreement between the taxpayer and the Secretary to resolve anticipated transfer pricing issues. Includes applications and background information thereof. IRC 6110(b)(1)(B).	Yes
Closing Agreements under IRC 7121	A binding agreement between the IRS and a taxpayer that settles a tax issue. Includes background information thereof. IRC 6110(b)(1)(B).	Yes

