

ORRIN G. HATCH, UTAH, CHAIRMAN

CHUCK GRASSLEY, IOWA  
MIKE CRAPO, IDAHO  
PAT ROBERTS, KANSAS  
MICHAEL B. ENZI, WYOMING  
JOHN CORNYN, TEXAS  
JOHN THUNE, SOUTH DAKOTA  
RICHARD BLURR, NORTH CAROLINA  
JOHNNY ISAKSON, GEORGIA  
ROB PORTMAN, OHIO  
PATRICK J. TOOMEY, PENNSYLVANIA  
DANIEL COATS, INDIANA  
DEAN HELLER, NEVADA  
TIM SCOTT, SOUTH CAROLINA

RON WYDEN, OREGON  
CHARLES E. SCHUMER, NEW YORK  
DEBBIE STABENOW, MICHIGAN  
MARIA CANTWELL, WASHINGTON  
BILL NELSON, FLORIDA  
ROBERT MENENDEZ, NEW JERSEY  
THOMAS R. CARPER, DELAWARE  
BENJAMIN L. CARDIN, MARYLAND  
SHERRILL BROWN, OHIO  
MICHAEL F. BENNETT, COLORADO  
ROBERT P. CASEY, JR., PENNSYLVANIA  
MARK R. WARNER, VIRGINIA

# United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

CHRIS CAMPBELL, STAFF DIRECTOR  
JOSHUA SHEINKMAN, DEMOCRATIC STAFF DIRECTOR

January 20, 2016

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

Commissioner Koskinen:

The Senate Finance Committee has the responsibility to conduct oversight and investigations of the Internal Revenue Service. As you know, we have endeavored to conduct oversight and investigations related to the IRS that are both fair and thorough. Above all, our oversight of the IRS and its employees aims to ensure that taxpayers are treated fairly, the Internal Revenue Code is administered correctly and efficiently, and that the agency is managed effectively.

According to January 15, 2016 court filings, in April of last year the IRS “sanitized” a hard drive subject to a litigation hold related to a matter before U.S. District Court for the Western District of Washington. In this instance, an IRS official that may have possessed documents responsive to a FOIA request departed the agency in August 2014. Under standard IRS practice, his hard drive should have been recycled by the end of September 2014. For unknown reasons, the hard drive in question was not recycled, and in December of that year a FOIA request was issued that may have pertained to documents on the hard drive. In April 2015, the IRS subsequently “sanitized” the hard drive, in potential violation of IRS procedure and the relevant litigation hold.

This disclosure comes months after the IRS deleted electronic evidence related to a Finance Committee investigation. During the Committee’s bipartisan investigation into the treatment of tax-exempt organizations, the IRS accidentally destroyed 422 back-up tapes and up to 24,000 emails subject to our document requests. The IRS’s missteps in preserving documents – whether they be the subject of a congressional investigation, court order, or FOIA request – are concerning, and necessitate further oversight into the agency’s document preservation practices.

To assist the Committee in its investigation of this matter, we ask that you provide the following documents and information:

1. The hard drive in question – that of Samuel Maruca – was collected in August 2014, held until April 2015, and “sanitized” at that point. Please provide a narrative of the custody of that hard drive, including the names of each IRS official who had custody of the hard drive during this period, the time for which they held it, the location that it was stored.
2. Describe the steps the IRS is taking to recover Mr. Maruca’s records from back-up tapes or any other means used to back up his records.
3. Provide an explanation of why the hard drive was destroyed in April 2015. Include the name of the individual(s) responsible for recycling it, along with any orders, memoranda, or other documents concerning its recycling in April 2015.
4. Provide an explanation of why the hard drive was not recycled or destroyed by the end of September 2014.

5. Provide the litigation hold in question, as well as any documents and memoranda by which the hold was communicated to agency employees.
6. Please provide all documents produced in response to the FOIA requests to which this litigation hold is applicable.
7. Provide any documents or memoranda governing how a hard drive is handled after an employee departs the IRS, including, but not limited to, Chief Counsel Notice CC-2012-017.
8. Provide an update of any efforts the IRS has or is undertaking to better maintain electronic records in light of previous issues with electronic records retention.
9. Explain the difference between recycling and sanitizing hard drives.
10. How long has the IRS had a policy of destroying (including but not limited to recycling or sanitizing) employee hard drives one month after their separation from the agency? Why was this policy created? Who created this policy? When and how is it administered?
11. What measures are in place to ensure that hard drives subject to destruction (including but not limited to recycling or sanitizing) are in fact destroyed?

We also ask that you make the IRS officials responsible for the capture of the documents subject to the litigation hold in question available for staff interview by no later than February 19, 2016.

Please respond to this request by no later than February 5, 2016, and supply the requested documents by no later than February 19, 2016. We make this request pursuant to the authorities under Internal Revenue Code Section 6103(f).

Thank you in advance for your assistance with this request. If you have any questions, please

Sincerely,



Orrin G. Hatch  
Chairman



Ron Wyden  
Ranking Member