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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

June 24, 2022

VIA ELECTRONIC TRANSMISSION

The Honorable Merrick Garland
Attorney General
U.S. Department of Justice

The Honorable Christopher A. Wray
Director
Federal Bureau of Investigation

Dear Attorney General Garland and Director Wray:

Just over a year ago, the news website ProPublica began publishing stories that appear to be based upon taxpayer information leaked or hacked from the IRS. In the first story published on June 8, 2021, ProPublica claimed to have “obtained a vast trove of Internal Revenue Service data on the tax returns of thousands of the nation’s wealthiest people, covering more than 15 years.”¹ Denunciations of any abuse of taxpayer data swiftly followed. The following day, June 9, 2021, Attorney General Garland appeared before the Senate Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies and testified to the apparent leak or hack of confidential taxpayer information, stating “This is an extremely serious matter. People are entitled, obviously, to great privacy with respect to their tax returns.”²

On June 11, 2021, Ranking Member Grassley, Republican Leader Mitch McConnell and Finance Committee Ranking Member Mike Crapo wrote both of you requesting that you investigate this matter and “[f]ind those responsible for these disclosures and ensure they are punished as directed by law.”³ On June 16, 2021, several members of this Committee wrote both of you requesting information on the thorough and determined investigation into the leak or hack of taxpayer information that was surely underway.⁴ The only response to both letters was essentially the same form letter that read in part, “While we understand how important this issue

¹Jesse Eisinger, Jeff Ernsthansen, and Paul Kiel, “The Secret IRS Files: Trove of Never-Before-Seen Records Reveal How the Wealthiest Avoid Income Tax,” PROPUBLICA, (June 8th, 2021), available at <https://www.propublica.org/article/the-secret-irs-files-trove-of-never-before-seen-records-reveal-how-the-wealthiest-avoid-income-tax>.

² Tucker Higgins, “Attorney General Garland vows billionaire tax leak to ProPublica will be ‘top of my list’ to investigate,” CNBC, (June 9th, 2021), available at <https://www.cnbc.com/2021/06/09/propublica-tax-leak-investigation-will-be-priority-attorney-general-garland-says.html>.

³ Letter from Mitch McConnell et al. to Attorney General Garland and Director Wray, (June 11, 2021), available at <https://www.republicanleader.senate.gov/imo/media/doc/Letter%20to%20the%20AG%20and%20Director%206.11.2021.pdf>.

⁴ Letter from Senator Grassley et al. to Attorney General Garland and Director Wray, (June 16, 2021), available at https://www.grassley.senate.gov/imo/media/doc/grassley_et_al.todojfbirsrecordsdisclosure.pdf.

is to you, longstanding Department policy will preclude us from providing your office with any information related to this matter outside the public record.”⁵ However, it appears there is more information in the public record than either of you were willing to disclose to members of the legislative branch of our government. According to a story published by Fox Business last year, “[t]he Federal Bureau of Investigation has opened an inquiry into the leak of personal income and tax data of some of the wealthiest Americans, a law enforcement source tells Fox News.”⁶ This statement published by a reporter is more definitive than anything in either of the letters we received from the Department of Justice.

As we have now eclipsed a year since there was a massive leak or hack of confidential taxpayer data from the IRS, no information has been made available. That frustration was apparent during a recent hearing before the House Committee on Ways and Means where Treasury Secretary Janet Yellen testified to defend the administration’s FY 2023 budget request. Responding to questioning about the leak or hack, Secretary Yellen stressed that the investigation was in the hands of independent agencies, and that:

I am -- I am as anxious as you are to find out what happened. I have asked – Have asked when findings may be available. I don’t have any -- I don’t have anything to do on that.⁷

It is frustrating that the Treasury Secretary is also anxious to learn what happened and doesn’t have any idea of when an investigation will conclude. The security of taxpayer data in the hands of the IRS is an extremely important matter. At the end of the recently concluded 2022 filing season, the IRS reported that more than 145 million individual income tax returns had been received.⁸ As long as the source of the taxpayer information obtained by ProPublica remains unexplained and unaccounted for, it is questionable how secure these tax returns actually are. Though ProPublica has generally focused on information from wealthy individuals, we don’t know the scope of any potential vulnerability at the IRS or of the information that may have been leaked or hacked from the IRS.

The fact that we know nothing about a potentially massive leak or hack at the IRS is completely unacceptable. All Americans regardless of their income, popularity, or other characteristic that might attract the ire of activists deserve to have their privacy rights observed. It is outrageous that millions of American families and individual taxpayers are required to continue to provide sensitive details regarding their lives to the IRS when neither the Treasury Department nor any other investigative agency is able to explain how information was obtained from the IRS and whether the data being provided to the IRS is secure. The website Reason recently published a story about the lack of progress in the investigation of this leak or hack that read in part:

⁵ Letter from Joe Gaeta, Deputy Assistant Attorney General, (August 10, 2021), available at https://www.grassley.senate.gov/imo/media/doc/2021-08-10_doj_to_grassley_-_propublica_leaks.pdf.

⁶ Jonathan Garber, “FBI opens investigation into IRS tax data leak,” FOX BUSINESS, (June 16, 2021), available at <https://www.foxbusiness.com/politics/fbi-opens-investigation-into-irs-tax-data-leak>.

⁷ House Committee on Ways and Means, “House Ways and Means Committee Holds Hearing on Fiscal Year 2023 Department of Treasury Budget Request,” (June 8, 2022), CQ Congressional Transcripts.

⁸ IRS, “Filing Season Statistics for Week Ending, (May 20, 2022),” available at <https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-may-20-2022>.

Many of us complain about the bite the government takes out of our paychecks. Even more pernicious, though, is that the information tax collectors force us to surrender is likely to be turned against us by politicians, government agents, and activists who see the details of our finances as tools with which to achieve their goals. The IRS isn't just a powerful federal agency, it's a weapon against the public.⁹

Americans should not worry that the information they are required by law to provide to the IRS will be weaponized against them. Given the passage of more than a year since we first wrote to you both on this matter we ask that you show urgency and transparency in what efforts you've undertaken so far, and provide answers to the following questions by July 15, 2022.

1. Has it been confirmed whether or not any information provided to ProPublica originated at the IRS?
2. What is the full scope of confidential taxpayer information that was provided to ProPublica or otherwise improperly accessed or disclosed?
3. If taxpayer information that originated at the IRS was provided to ProPublica, was that information deliberately leaked from within the IRS, or was it stolen as the result of a data breach?
4. Is the current data that's being provided to the IRS, including the more than 145 million tax returns filed as part of the 2022 filing season, safe and secure?
5. Is the Department of Justice planning to prosecute any individuals related to a leak or hack of information from the IRS?
6. Please provide an accounting by month, of the number of full-time equivalent employees at the Department of Justice working on this matter, broken down by bureau or agency.
7. Please provide an estimate of when you expect any investigations into these matters to be concluded, and what you expect a successful conclusion to entail.

Unfortunately some of these questions were asked in our earlier letter, but as they remain unanswered we are asking them again. Thank you for your attention to this important matter.

⁹ J.D. Tuccille, "One Year Later, No One Has Been Punished for the IRS Leak of Billionaires' Tax Data," REASON, (June 3, 2022), available at <https://reason.com/2022/06/03/irs-leak-of-billionaires-tax-data/>.

Sincerely,



Chuck Grassley
Ranking Member



Ted Cruz
United States Senator



Ben Sasse
United States Senator



Thom Tillis
United States Senator