

Opening Statement
Oversight and Government Reform Chairman Jason Chaffetz
*Examining the Allegations of Misconduct
Against IRS Commissioner John Koskinen, Part I*
May 24, 2016

I want to thank Chairman Goodlatte for holding today's hearing.

The information I am here to present is the result of years of work by the Oversight and Government Reform Committee, as well as the Ways and Means Committee and the Senate Finance Committee.

Much of that work occurred under the strong leadership of another member of this Committee, Congressman Darrell Issa.

We wouldn't be here today without his leadership on this issue.

This all started with the IRS using its authorities to target certain conservative groups for their beliefs, and in turn suppressing their First Amendment rights through the Exempt Organizations division under the direction of Lois Lerner.

But the heart of this matter is how Commissioner Koskinen responded to the congressional investigations that followed the targeting.

Mr. Koskinen misled Congress about how he allowed thousands of Lois Lerner's emails to be destroyed, despite open investigations by OGR, Ways and Means, Senate Finance, the Inspector General, and the Department of Justice.

I. The IRS Targeted Conservative Groups Applying for 510(c)(4) Status.

I want to begin today by reminding people why we are here and why this is so important.

In early 2010, as the conservative Tea Party movement began to gain momentum, the Exempt Organizations division of the IRS began to impose unfair scrutiny on groups applying for 501(c)(4) status.

Under the direction of Lois Lerner, the division developed special criteria to hold any 501(c)(4) application that was identified as part of the Tea Party movement.

This included terms like, “Tea Party,” “Patriots,” or “9/12.”

In emails, Ms. Lerner stated the “Tea Party matter [was] very dangerous” and believed her office in Cincinnati “should probably NOT have these cases,” implying they should be handled by IRS headquarters here in Washington, DC.

A guide sheet was developed to handle the Tea Party related group applications, but by November 2011, there was a backlog of up to 170 applications pending.

And at that point, things got much worse.

To process the applications, the IRS started sending these groups requests for information, including request for lists of their donors, volunteers, board membership, and political affiliations.

These requests raised a number of red flags and people started publically questioning why the IRS was doing this.

The Oversight and Government Reform Committee requested the Treasury Inspector General for Tax Administration (or TIGTA) review how the Exempt Organization Division was reviewing 501(c)(4) groups applications.

That review by TIGTA found:

- Beginning in 2010, the IRS started using inappropriate criteria to identify Tea Party organizations applying for tax exempt status.
- This criteria was based on the names or policy positions of the group instead of indications of potential political campaign intervention.
- Management at the IRS allowed inappropriate criteria to be developed and stay in place for more than 18 months resulting in substantial delays in processing certain applications and unnecessary information results to be issued.

The day before TIGTA planned to release its findings, on May 10, 2013, Lois Lerner planted a question during a speech at an American Bar Association meeting.

The question was designed to allow her to acknowledge her division had targeted groups based on their political beliefs.

In response to the planted question, she stated:

They used names like Tea Party or Patriots and they selected cases simply because the applications had those names in the title. That was wrong, that was absolutely incorrect, insensitive, and inappropriate.

And initially, President Obama strongly agreed it was wrong.

He stated:

It's inexcusable, and Americans are right to be angry about it, and I am angry about it. I will not tolerate this kind of behavior in any agency, but especially the IRS, given the power that it has and the reach that it has into all of our lives.

At the same time, the Justice Department announced an investigation.

Lois Lerner was placed on administrative leave on May 23, 2013.

At this point, a number of investigations were open into the IRS targeting, including: several House and Senate Committees; an internal IRS investigation; and investigations by the IG and the Justice Department.

Following Lois Lerner's remarks, the Oversight Committee subpoenaed Ms. Lerner to testify.

At the hearing, Ms. Lerner began by announcing she "had done nothing wrong" and had "broken no laws."

After asserting her innocence, she invoked her Fifth Amendment right not to testify.

Given her self-serving opening statement professing her own innocence, the Committee determined she waived her ability to invoke the Fifth Amendment.

She again refused to testify and the House held her in contempt on May 7, 2014.

America would not learn how the IRS had targeted certain groups for their political beliefs directly from Lois Lerner.

The Committee needed to see her emails to understand the full story of how the IRS had attempted to suppress these First Amendment rights.

II. Commissioner Koskinen failed to comply with a congressional subpoena and allowed Lois Lerner's emails to be destroyed.

Mr. Koskinen prevented Congress – and the American people – from ever learning exactly how and why their First Amendment rights were violated.

Over the course of our investigation, Mr. Koskinen has misled us about the efforts taken to locate and preserve Lois Lerner's emails.

His actions are in contradiction of the initial promises he made during his Senate confirmation hearings.

During those hearings he promised he would “be transparent about any problems we run into; and the public and certainly this committee will know about those problems as soon as we do.”

That was not the case.

After the IRS failed to comply with a voluntary request, OGR sent a subpoena to the agency on August 2, 2013 requesting all of Lois Lerner's emails.

Once Mr. Koskinen was confirmed in December of 2013, the Committee reissued the subpoena to him in February 2014.

That same month, on February 2, 2014, Catherine Duvall – Counselor to the Commissioner – noticed a huge gap in the Lerner emails being produced.

- She saw there were few emails for Lois Lerner dated *before* 2011 due to Ms. Lerner’s hard drive crashing around that time.
- The emails lost to the hard drive crash were substantial.
- The agency had collected 16,000 emails from the period *after* April 2011 and *less than* 100 from the period before April 2011.
- Most concerning, the time period of missing emails was the height of when Lois Lerner’s division was targeting conservative groups – the most relevant period.
- It was during this time she referred to the Tea Party groups as “very dangerous” and requested a review of Crossroads GPS’s application by her senior staff.

At the same time Ms. Duvall realized the Lois Lerner emails were missing, the President was on national television telling the American people “not even a smidgen of corruption” existed in the IRS targeting scandal.

This was a complete about-face from his initial comments that the targeting was “inexcusable.”

When the agency knew the emails were missing, they notified the White House and the Treasury Department in April.

They did not notify Congress till June.

Mr. Koskinen testified to our Committee the agency was aware that a substantial number of Ms. Lerner’s emails were missing in February 2014.

Did the IRS full its legal obligation to comply with the subpoena?

The Inspector General testified about the emails that the IRS “simply didn’t look for them.”

One month after discovering Lois Lerner emails were missing, on March 4, IRS employees working the midnight shift at a facility in Martinsburg, West Virginia magnetically erased 422 back-up tapes containing Lois Lerner’s emails.

- Those tapes contained as many as 24,000 Lerner emails responsive to the Committee’s subpoena.
- No one told them there was a legal hold order in place and not to destroy the back-up tapes.
- No one told them there were a number of investigations open by Congress, the IG, and the Justice Department and that all potentially responsive emails should be preserved.

Despite a huge gap in the collection of Lois Lerner’s emails, on March 26, Mr. Koskinen appeared before the Oversight Committee and promised to produce all of Lois Lerner’s emails.

- He made no mention of the missing emails during his testimony.
- He assured us the IRS would produce all of Lois Lerner’s emails.
- He openly misled our Committee.

It wasn’t until June 13, 2014 that Mr. Koskinen sent a letter to the Senate Finance Committee acknowledging Lois Lerner’s hard drive had crashed and emails were missing.

That admission was buried in an attachment to the letter.

But on June 20, 2014 Mr. Koskinen testified before the Ways and Means Committee stating “since the start of this investigation, every email has been preserved. Nothing has been lost. Nothing has been destroyed.”

He asserted the agency had gone to “great lengths” to restore Lois Lerner’s emails.

Nothing could be further from the truth.

The IRS didn’t even bother to look for the Lois Lerner emails in some very obvious places.

- When TIGTA opened its investigation into the destruction of the tapes, it took them only **15 days** to find 744 back-up tapes that contained some of Lois Lerner’s emails.
- These tapes were located at the IRS facility in Martinsburg and attendants at the facility confirmed **no one had ever asked for the tapes**, but they’d been there all along.

Nor did the “great lengths” Mr. Koskinen described include looking in other obvious places.

- In its investigation, TIGTA found the IRS failed to look in **five of the six total places** where Lois Lerner emails could have existed, including the backup tapes, her blackberry, the server, the back-up server, and the loaner laptop.
- In searching those items, TIGTA was able to locate around 1,000 additional unique Lois Lerner emails.
- When asked why the IRS hadn’t turned over those emails, TIGTA testified before our Committee the agency “simply hadn’t looked for them.”

Mr. Koskinen received a subpoena from OGR and did nothing to ensure full compliance with it.

Yet, at the same time, he testified numerous times before Congress that his agency was going to “great lengths” to comply with the subpoena and locate the missing Lois Lerner emails.

Congress cannot allow the head of one of the most powerful agencies to shirk his legal obligation to comply with a subpoena.

Despite all this, the environment for targeting at the IRS still exists.

Last July, the Government Accountability Office found **nothing** had been done at the agency to make sure the targeting of certain beliefs wouldn’t happen again.

- Specifically, GAO determined “the control deficiencies GAO found increase the risk that [the Exempt Organizations unit] could select organizations for examinations in an unfair manner – for example, based on an organization’s religious, educational, political, or other views.”¹
- So nothing has changed; Americans can still expect to be targeted by the IRS for their beliefs.

Mr. Koskinen was sent to the IRS to clean it up, but it’s gotten worse.

As members of Congress we have no reason to have any confidence that Mr. Koskinen will run one of the most powerful agencies with any integrity.

Nor can the American people feel confident the agency won’t misuse its power under his direction.

For these reasons, it is time for Congress to act and remove him as head of the agency.

¹ Government Accountability Office, *IRS Examination Selection: Internal Controls for Exempt Organization Selection Should be Strengthened*, July 2015.