

VIA FACSIMILE

June 13, 2017

IRS FOIA Request
HQ FOIA
Stop 211
PO Box 621506
Atlanta, GA 30362-3006
Fax: 877-807-9215

Dear FOIA Officer,

This letter constitutes a request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552(a)(3), and is submitted on behalf of the Electronic Privacy Information Center (“EPIC”) to the Internal Revenue Service (“IRS”).

Section 32102 of the Fixing America’s Surface Transportation (FAST) Act requires the IRS to contract with third parties to collect a subset of overdue taxes on the IRS’s behalf.¹ The IRS subsequently announced contracts with four private debt collection companies, but did not publish details of the deals. Outsourcing debt collection to the private sector, which may not be subject to the full range of legal restrictions on the IRS, risks inefficiency, harassment, increasing impersonation scams, and even data security concerns.²

EPIC seeks documents detailing the responsibilities and restrictions on private debt collectors under IRS contract.

Documents Requested

- (1) Contracts between the IRS and CBE Group, Conserve, Performant, and Pioneer for private debt collection; and
- (2) All IRS policies and procedures related to phone contacts between taxpayers and CBE Group, Conserve, Performant, or Pioneer.

¹ Fixing America’s Surface Transportation Act of 2015, Pub. L. No. 114-94, § 32102, 129 Stat. 1312, 1733 (2015).

² Jessica Silver-Greenberg & Stacy Cowley, *IRS Enlists Debt Collectors to Recover Overdue Taxes*, N.Y. Times (Apr. 20, 2017), <https://www.nytimes.com/2017/04/20/business/dealbook/taxes-debt-collection-internal-revenue-service.html>.

Background

In September 2016, the IRS announced contracts with four private agencies - CBE Group, Conserve, Performant, and Pioneer - to collect certain overdue debts.³ The private debt collectors will generally target older debts and debts the agency itself has too few resources to collect.⁴ Despite the sensitive nature of tax collection, the full details of the arrangement between the IRS and these private debt collection companies are not public.

The IRS collects a vast quantity of personal data in order to accurately collect taxes and enforce U.S. internal revenue laws – from income, social security number, and address, to family data and even information concerning health coverage. As a result, the IRS is subject to extensive legal constraints. Yet the limitations on private debt collection agencies under IRS contract are far from clear. While the IRS states the companies “must follow provisions of the Fair Debt Collection Practices Act and should be courteous and respect taxpayer rights,”² other restrictions on the IRS may not apply. For instance, private agencies may contact tax debtors by telephone, prohibited for the IRS.³ Similarly, transferring taxpayer data to private debt collectors risks exacerbating already rising cases of identity theft and scams impersonating the IRS.⁵

The IRS’s prior, unsuccessful efforts to outsource tax collection duties and the history of one private contractor’s involved in the IRS’s current project also raise red flags. Two prior IRS efforts to outsource collections, one in 1996 and one in 2006, were shut down.⁶ Indeed, the New York Times reported the second program “cost millions more than it took in” and “generated thousands of complaints.... including one horror story about an older couple who received more than 150 phone calls in less than a month.”⁷ Finally, a tax collection contract between Pioneer, one of the companies under IRS contract today, and the U.S. Department of Education was terminated after the DOE determined the company “provide[ed] inaccurate information to borrowers.”⁸

Request for Expedition

EPIC is entitled to expedited processing of this request. 5 U.S.C. § 552(a)(6)(E)(v)(II). Under the IRS’s FOIA regulations, a FOIA request should be granted expedited processing when: (1) there is an “urgency to inform the public concerning actual or alleged Federal government

³ *IRS Private Debt Collection*, IRS.gov (June <https://www.irs.gov/businesses/small-businesses-self-employed/private-debt-collection> (last visited Jun. 8, 2017)).

⁴ *Id.*

⁵ *Id.*

⁶ Jessica Silver-Greenberg & Stacy Cowley, *supra* note 2.

⁷ *Id.*

⁸ *U.S. Department of Education to End Contracts with Several Private Collection Agencies*, ED.gov (Feb. 27, 2017).

activity,” and (2) where the request is “made by a person primarily engaged in disseminating information.” 6 C.F.R. § 601.702(c)(6)(i)(B);

First, there is “urgency to inform the public concerning actual or alleged Federal government activity.” 6 C.F.R. § 601.702(c)(6)(i)(B). The “actual...federal government activity” at issue is the IRS’s outsourcing debt collection to private agencies, and oversight of those contracts. This activity is acknowledged in both the Fixing America’s Surface Transportation Act and on the IRS’s own website, announcing the contracts.⁹

“Urgency” to inform the public about this activity is clear. Transferring public debt collection to the private sector previously wasted millions in taxpayer dollars, companies misled borrowers, and thousands complained.¹⁰ Further, these companies are reportedly permitted to contact debtors via phone, unlike the IRS.¹¹ As a result, these new contracts risk exacerbating phone impersonation of the IRS, a practice the agency itself calls a “serious threat” to taxpayers.¹² The public must know the full authority and any limitations on the private debt companies in order to accurately and promptly report misuse of their personal data, harassment, or scams.

The Taxpayer Bill of Rights, adopted by the IRS, also obligates the IRS to protect taxpayers’ rights to both “Confidentiality” and “Privacy.”¹³ The Right to Confidentiality guarantees that any information [taxpayers] provide to the IRS will not be disclosed unless authorized by the taxpayer or by law,¹⁴ and the Right to Privacy guarantees that “any IRS inquiry, examination, or enforcement will comply with the law and be no more intrusive than necessary.” The public has a right to know whether and how the IRS is protecting these rights when it defers public duties to the private sector.

Second, EPIC is an organization “primarily engaged in disseminating information.” § 16.5(e)(1)(ii). As the Court explained in *EPIC v. Dep’t of Def.*, “EPIC satisfies the definition of ‘representative of the news media’” entitling it to preferred fee status under FOIA. 241 F. Supp. 2d 5, 15 (D.D.C. 2003).

In submitting this detailed statement in support of my expedited processing, I certify that this explanation is true and correct to the best of my knowledge and belief.

⁹ Fixing America’s Surface Transportation Act § 32102; *IRS Private Debt Collection*, *supra* note 5.

¹⁰ Jessica Silver-Greenberg & Stacy Cowley, *supra* note 2.

¹¹ *Id.*

¹² *Phone Scams a Serious Threat; Remain on the IRS “Dirty Dozen” List of Tax Scams for 2017*, Irs.gov (Feb. 2, 2017), <https://www.irs.gov/uac/newsroom/phone-scams-remain-serious-threat-no-2-on-the-irs-dirty-dozen-list-of-tax-scams-for-2017>.

¹³ *Taxpayer Bill of Rights*, IRS.gov, <https://www.irs.gov/taxpayer-bill-of-rights> (last visited Jun. 8, 2017).

¹⁴ *Id.*

Request for “News Media” Fee Status and Fee Waiver

EPIC is a “representative of the news media” for fee classification purposes. *EPIC v. Dept of Def.*, 241 F. Supp. 2d 5 (D.D.C. 2003). Based on EPIC’s status as a “news media” requester, EPIC is entitled to receive the requested record with only duplication fees assessed. 5 U.S.C. §552(a)(4)(A)(ii)(II).

Further, any duplication fees should also be waived because (1) “disclosure of the requested information” is in “the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the IRS” and (2) disclosure is not “primarily in the commercial interest of the requester.” 6 C.F.R. § 601.702(i); § 552(a)(4)(A)(iii).

First, “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government.” § 601.702(i). The public must know the authority and limits on companies performing tax collection for the IRS, a significant public function. As discussed at length in the sections above, private collection of public debts raises concerns about data security, privacy, the protection of taxpayer rights, and public efficiency.¹⁵ There are real risks of harassment, particularly given the comparatively lax restrictions on phone contacts for private companies, and of exacerbating IRS impersonation phone scams.¹⁶ This is a matter of widespread, significant public interest - IRS’s operations affect and are of interest to all Americans; indeed, nearly every worker in the United States must report his or her income to the IRS. Nonetheless, the authority of and constraints on private collection agencies contracting with the IRS have not been made public. As a result, disclosure of the requested information will “significantly” contribute to the public understanding of the IRS’s private debt collection arrangement.

Second, disclosure of the requested information is not “primarily in the commercial interest of the requester.” § 601.702(i). EPIC has no commercial interest in the requested records. EPIC is a registered non-profit organization committed to privacy, open government, and civil liberties.¹⁷

Conclusion

Thank you for your consideration of this request. I anticipate your determination on our request within ten calendar days. 5 U.S.C. § 552(a)(6)(E)(ii)(I).

¹⁵ See *supra* sections on “Background” and “Request for Expedition.”

¹⁶ *Phone Scams a Serious Threat; Remain on the IRS “Dirty Dozen” List of Tax Scams for 2017*, *supra* note 18.

¹⁷ About EPIC, EPIC.org, <http://epic.org/epic/about.html>.

For questions regarding this request I can be contacted at 202-483-1140 x111 or FOIA@epic.org.

Respectfully submitted,

Sophia McGowan
EPIC Clerk