

VIA FACSIMILE

April 5, 2019

Internal Revenue Service
Central Processing Unit, Stop 211
PO Box 621506
Atlanta, GA 30362-3006
Fax: 877-807-9215

Dear FOIA Officer:

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

EPIC seeks the release of records related to Representative Richard Neal’s (D-Mass) April 3, 2019, letter to IRS Commissioner Charles Rettig seeking six years of President Donald Trump’s personal and business tax returns.¹

Documents Requested

Records related to Congressman Richard Neal’s April 3, 2019 request to the IRS regarding the tax returns of President Donald Trump, including both (1) copies of records provided to Congressman Neal by the agency and (2) records associated with the processing the Congressman’s request.

Copies of the requested records may be furnished to EPIC in electronic format, either by emailing to FOIA@epic.org or mailing a disc to the address at the top of this letter.

Background

On April 3, 2019, House Ways and Means Committee Chairman Richard Neal (D-MA) sent a letter to IRS Commissioner Charles Rettig seeking President Trump’s personal and business tax returns from 2013 through 2018.² The Chairman asserts that his committee, consistent with its oversight and legislative authority over federal tax laws, “is considering legislative proposals and conducting oversight related to our Federal tax laws, including, but not limited to, the extent to which the IRS audits and enforces the Federal tax law against a

¹ Letter from Rep. Richard E. Neal, Chairman, House Ways and Means Comm., to Charles P. Rettig, Commissioner, Internal Revenue Serv. (Apr. 3, 2019), [https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/Neal%20Letter%20to%20Rettig%20\(signed\)%20-%202019.04.03.pdf](https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/Neal%20Letter%20to%20Rettig%20(signed)%20-%202019.04.03.pdf) [hereinafter Neal Letter].

² *Id.*

President.”³ The Chairman states it is necessary to obtain President Trump’s tax information to conduct oversight of the IRS. The letter cited to Section 6103 of the Federal Tax Code, which authorizes the disclosure of tax returns to the House Committee on Ways and Means. Under Section 6103(f), the Chairman of the committee has authority to request and receive tax returns.⁴

In the letter, Chairman Neal requested the personal tax returns of President Trump and tax returns of President Trump’s trust and seven of his business entities. The entities include:

- The Donald J. Trump Revocable Trust
- DJT Holdings LLC
- DJT Holdings Managing Member LLC
- DTTM Operations LLC
- DTTM Operations Managing Member Corp
- LFB Acquisition Member Corp
- LFB Acquisitions LLC
- Lamington Farm Club, LLC d/b/a Trump National Gold Club—Bedminster⁵

The letter also requested administrative files, including audit materials, examiner notes, correspondences, and working papers.⁶ Chairman Neal stated that the release of this information “is critical to ensure the accountability of our government and elected officials.”⁷

Chairman Neal gave the IRS an April 10, 2019 deadline to comply with the committee’s request for information.⁸

Since the intelligence community concluded that Russian foreign actors meddled in the 2016 U.S. presidential election aimed to elect then-Presidential candidate Trump, the public has scrutinized whether the President had any dealings with Russia. President Trump has consistently refused to disclose any personal tax records or the tax records of his businesses, leaving the American public “in the dark”⁹ on his financial entanglements with Russia.

President Trump’s failure to release his tax records is unprecedented and goes directly against the long-standing tradition of candidates for the U.S. presidency.¹⁰ He was the first major

³ *Id.* at 1.

⁴ Democratic Staff, House Ways & Means, *Frequently Asked Questions: Chairman Neal’s Section 6103 Request 1* (Apr. 3, 2019), <https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/2019-04-03%20FAQs%20FINAL.pdf> [hereinafter Neal Request FAQ].

⁵ Neal Letter, *supra* note 1, at 2.

⁶ Neal Request FAQ, *supra* note 4, at 2.

⁷ Press Release, Rep. Richard Neal, Neal Statement on Request President Trump’s Tax Returns (Apr. 3, 2019), <https://neal.house.gov/press-releases/neal-statement-requesting-president-trump-s-tax-returns>.

⁸ Neal Letter, *supra* note 1, at 2.

⁹ *EPIC v. IRS*, 261 F. Supp. 3d 1, 3, 2 (D.D.C. 2017) (“Like many Americans, Plaintiff Electronic Privacy Information Center wants to see President Donald J. Trump’s personal income-tax returns.”).

¹⁰ Julie Hirschfeld Davis, *Trump Won’t Release His Tax Returns, a Top Aide Says*, N.Y. Times (Jan. 22, 2017), <https://www.nytimes.com/2017/01/22/us/politics/donald-trump-tax-returns.html>.

party presidential candidate in 40 years not to make his returns available for public review.¹¹ Though he initially promised to release his tax information, President Trump withdrew this commitment after his election.¹²

The contents of the President's tax records are of exceptional interest to Americans, who favor their disclosure by a wide margin.¹³ Over 1 million people signed a petition urging the federal government to "[i]mmediately release Donald Trump's full tax returns, with all information needed to verify emoluments clause compliance."¹⁴ According to a ABCNews poll, three-quarters of Americans say the President should release his returns.¹⁵ Still, the White House has refused to make these records available.

The importance of public access to President Trump's tax records has only grown over the past three years. Since at least May 2017, President Trump, the President's campaign, and many of the President's closest associates have been under federal investigation for allegedly coordinating with the Russian government to interfere in the 2016 U.S. presidential election.¹⁶ Special Counsel Mueller's investigation into Russian meddling has produced indictments of at least 34 people and three companies.¹⁷ On March 22, 2019, Special Counsel Mueller concluded his investigation into Russian election interference.¹⁸

Meanwhile, President Trump has issued provably false denials about his financial entanglements with Russia. The President actually stated:

For the record, I have ZERO investments in Russia.¹⁹

¹¹ *Id.*

¹² *Id.*

¹³ *CNN Poll: 73% Think Trump Should Release Tax Returns*, CNN (Dec. 20, 2017) (finding that 73% Americans think President Trump should "release his tax returns for public review"), available at <https://youtu.be/02694Tusp3g?t=18m38s>; accord *CNN December 2017* at 7, CNN (Dec. 19, 2017), available at <http://cdn.cnn.com/cnn/2017/images/12/18/rel12a.-.trump.and.taxes.pdf>.

¹⁴ A.D., *Immediately release Donald Trump's full tax returns, with all information needed to verify emoluments clause compliance.*, We the People (Jan. 20, 2017), <https://petitions.whitehouse.gov/petition/immediately-release-donald-trumps-full-tax-returns-all-information-needed-verify-emoluments-clause-compliance>.

¹⁵ Gary Langer, *Public Splits on Trump's Ethics Compliance; Three-Quarters Want Tax Returns Released (POLL)*, ABC News (Jan. 16, 2017), <http://abcnews.go.com/Politics/public-splits-trumps-ethics-compliance-quarters-tax-returns/story?id=44811545>.

¹⁶ See, e.g., Rod J. Rosenstein, *Order No. 3915-2017: Appointment of Special Counsel to Investigate Russian Interference with the 2016 Presidential Election and Related Matters* (May 17, 2017), available at <https://www.justice.gov/opa/press-release/file/967231/download>.

¹⁷ Jesus Rodriguez & Beatrice Jin, *The Mueller Indictments So far: Lies, Trolls, and Hacks*, Politico (Dec. 7, 2018), https://www.politico.com/interactives/2018/interactive_mueller-indictments-russia-cohen-manafort/.

¹⁸ Eric Tucker, Michael Balsamo, & Chad Day, *Mueller Concludes Russia-Trump Probe With No New Indictments*, Assoc. Press (Mar. 22, 2019), <https://www.apnews.com/99cb78f4c67b431b9f3823b06a89179b>.

¹⁹ *EPIC*, 261 F. Supp. 3d at 4 (quoting @realDonaldTrump, Twitter (July 26, 2016, 3:50 PM)).

Russia has never tried to use leverage over me. I HAVE NOTHING TO DO WITH RUSSIA—NO DEALS, NO LOANS, NO NOTHING!²⁰

However, his own law firm has described numerous financial relationships between the President and Russian organizations.²¹ The public urgently requires as much information about President Trump's finances as the IRS can lawfully release.

Request for Expedited Processing

EPIC is entitled to expedited processing under the FOIA. 5 U.S.C. § 552(a)(6)(E)(v)(II); 26 C.F.R. § 601.702(c)(6). Specifically, expedited processing is justified because this request involves an “urgency to inform the public concerning actual or alleged Federal government activity . . . made by a person primarily engaged in disseminating information.” 26 C.F.R. § 601.702(c)(6)(i)(B).

First, there is an “urgency to inform the public concerning actual or alleged Federal government activity.” 26 C.F.R. § 601.702(c)(6)(i)(B). The “actual or alleged Federal government activity” is the IRS's auditing and enforcement of federal tax laws against the President of the United States. There is an urgency to inform the public about the IRS's activities because President Trump's potential financial entanglements with Russia are of enormous public interest. They attest to the President's compliance with the Internal Revenue Code and the Emoluments Clause of the U.S. Constitution, his potential conflicts of interest, and his dealings with foreign governments and businesses. Such records would offer the public significant context to understand a vast array of foreign and economic policy decisions that President Trump has made since entering office.

Senator Grassley (R-IA), Chairman of the Senate Finance Committee, also has authority under Section 6103(f) to request tax return information. He has stated that if the “House of Representatives are going to get [President Trump's tax returns], then I want the Senate Finance Committee to have them.”²² Section 6103 does not provide for Chairman Neal to share tax information with other committees so other committees may very well also use the same authority to seek President Trump's tax returns. Immediately after Chairman Neal delivered his letter to the IRS, it was reported that the White House could attempt to block the release of the requested information and Chairman Neal's request could lead to a court battle.²³

²⁰ *Id.* (quoting @realDonaldTrump, Twitter (Jan. 11, 2017, 4:31 AM)).

²¹ Letter from Sheri A. Dillon & William F. Nelson, Tax Partners, Morgan Lewis & Bockius LLP, to President Donald J. Trump (Mar. 8, 2017) (letter from President Trump's attorneys detailing the President's numerous Russian sources of income).

²² Aaron Lorenzo, *Grassley Would Request Trump's Tax Returns as Check on House Dems*, Politico (Mar. 6, 2019), <https://www.politico.com/story/2019/03/06/grassley-trump-tax-returns-1207706>.

²³ Erica Werner, Damian Paletta, & Jeff Stein, *White House Maneuvers to Block Release of Trump's Tax Returns*, Wash. Post (Apr. 4, 2019), https://www.washingtonpost.com/business/economy/white-house-maneuvers-to-block-release-of-trumps-tax-returns/2019/04/04/047b19e0-56f4-11e9-8ef3-fbd41a2ce4d5_story.html.

Further, these records “pertain to a matter of current exigency” well beyond “the public's right to know about government activity generally.” 26 C.F.R. § 601.702(c)(6)(i)(B). It is difficult to imagine a more acute public need for information. The President and his closest associates were under federal investigation for allegedly coordinating with the Russian government to interfere in the 2016 U.S. presidential election.²⁴ The Special Counsel recently concluded his investigation but the release of the full report that may contain information about President Trump’s ties to Russia has been the subject to an intense political fight.²⁵ Since the beginning of the special counsel’s investigation, President Trump has continued to make demonstrably false statements about his financial entanglements with Russia.²⁶ Release of the requested records is urgently needed to inform the public about the President’s culpability in the matter. The public also has an immediate need to know the sitting President’s record of satisfying—or failing to satisfy—his full tax liabilities.

Second, EPIC is an organization “primarily engaged in disseminating information.” 26 C.F.R. § 601.702(c)(6)(i)(B). As the court explained in *EPIC v. DOD*, “EPIC satisfies the definition of ‘representative of the news media.’” entitling it to preferred fee status under the FOIA. *EPIC v. DOD*, 241 F. Supp. 2d 5, 15 (D.D.C. 2003). EPIC routinely seeks information from the government and disseminates the information obtained from the FOIA through its website, newsletter, and national news outlets.²⁷

In submitting this detailed statement in support of expedited processing, I certify that this explanation is true and correct to the best of my knowledge and belief. 26 C.F.R. § 601.702(c)(6)(ii); 5 U.S.C. § 552(a)(6)(E)(vi).

Request for ‘News Media’ Fee Status and Fee Waiver

EPIC, which is “organized and operated to publish . . . information about current events or of current interest to the public,”²⁸ is a “representative of the news media” for fee classification purposes. *EPIC v. DOD*, 241 F. Supp. 2d at 15. Based on EPIC’s status as a “news media” requester, EPIC is entitled to receive the requested records with only duplication fees assessed. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

²⁴ See, e.g., Rod J. Rosenstein, *Order No. 3915-2017: Appointment of Special Counsel to Investigate Russian Interference with the 2016 Presidential Election and Related Matters* (May 17, 2017), available at <https://www.justice.gov/opa/press-release/file/967231/download>.

²⁵ See e.g., Ashley Parker, Ellen Nakashima, Devlin Barrett, & Carol D. Leonnig, *Potentially Damaging Information in Mueller Report Ushers in New Political Fight*, Wash. Post (Apr. 4, 2019), https://www.washingtonpost.com/politics/potentially-damaging-information-in-mueller-report-ushers-in-new-political-fight/2019/04/04/10ea64f0-56f0-11e9-9136-f8e636f1f6df_story.html.

²⁶ E.g., *EPIC v. IRS*, 261 F. Supp. 3d 1, 4 (D.D.C. 2017) (quoting @realDonaldTrump, Twitter (Jan. 11, 2017, 4:31 AM)) (“Russia has never tried to use leverage over me. I HAVE NOTHING TO DO WITH RUSSIA—NO DEALS, NO LOANS, NO NOTHING!”).

²⁷ See e.g., EPIC, *EPIC.org*, <https://epic.org/>; EPIC, *EPIC Alert*, <https://epic.org/alert/>; EPIC, *EPIC in the News*, https://epic.org/news/epic_in_news.php/.

²⁸ 26 C.F.R. § 601.702(f)(3)(ii)(B).

Any duplication fees should also be waived as (1) the records “are likely to contribute to the general public's understanding of the agency's operations” and do not consist of “information . . . already available to the general public”; and (2) disclosure “is not primarily in the commercial interest of the requester.” 26 C.F.R. § 601.702(f)(2)(i).

First, “the releasable records are likely to contribute to the general public's understanding of the agency's operations or activities.” 26 C.F.R. § 601.702(f)(2)(i)(C). The President has stated numerous times that he cannot release his tax information because the IRS is conducting an audit yet his former personal lawyer, Michael Cohen, has stated under oath that he does not believe the president is under audit.²⁹ The release of the requested information will shed light on whether the IRS has been auditing President Trump as expected under the law and the status of these audits. The release of these records will contribute to the public’s understanding of whether the IRS has been properly auditing the president.

Further, the requested records will contribute “significan[tly] . . . to the general public's understanding” of President Trump’s financial entanglements and the IRS’s interactions with the President in his role as a taxpayer. 26 C.F.R. § § 601.702(f)(2)(i)(D). There is little information available to the public about the IRS’s transactions with President Trump or about the President’s past and present tax liabilities. By publishing the requested records on the EPIC website³⁰ or having news media organizations write about the records obtained through this FOIA request,³¹ EPIC will add substantially to the store of public knowledge about the IRS and the chief executive who oversees the agency.

Second, as to the “existence and magnitude of the requester's commercial interest . . . being furthered by the releasable records,” EPIC has no commercial interest in the requested records. 5 U.S.C. § 552(a)(4)(A)(iii). EPIC is a registered non-profit organization committed to privacy, open government, and civil liberties.³²

For these reasons, a fee waiver should be granted.

²⁹ David Morgan, *Cohen: Trump Feared Audit if He Released Tax Returns*, Reuters (Feb. 27, 2019), <https://www.reuters.com/article/us-usa-trump-russia-taxes/cohen-trump-feared-audit-if-he-released-tax-returns-idUSKCN1QG2X7>.

³⁰ EPIC, *EPIC.org*, <https://epic.org/>.

³¹ EPIC, *EPIC in the News*, https://epic.org/news/epic_in_news.php/.

³² EPIC, *About EPIC*, <http://epic.org/epic/about.html>.

Conclusion

Thank you for your consideration of this request. EPIC anticipates your determination on its request within ten calendar days. 26 C.F.R. § 601.702(6)(C)(iv); 5 U.S.C. § 552(a)(6)(E)(ii)(I). For questions regarding this request contact Enid Zhou at 202-483-1140 x104 or Zhou@epic.org, cc: FOIA@epic.org.

Respectfully submitted,

/s Enid Zhou

Enid Zhou

EPIC Open Government Counsel