



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

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OFFICE OF
INSPECTOR GENERAL

MEMORANDUM FOR RICHARD K. DELMAR
DEPUTY INSPECTOR GENERAL

FROM: Sally Luttrell /s/
Assistant Inspector General for Investigations

SUBJECT: Inquiry into the U.S. Department of the Treasury Receipt, Handling,
and Responses to Chairman Richard E. Neal of the House Ways &
Means Committee

OIG Inquiry Number: DO-20-0026-I

Introduction and Background

On September 30, 2019, the U.S. Department of the Treasury (Treasury), Office of Inspector General (OIG), received a letter from Chairman Richard Neal regarding Treasury's actions concerning the mandatory audit program – the mandatory examination by the Internal Revenue Service (IRS) of the President's tax returns. Following correspondence between Treasury OIG and Chairman Neal's office, Treasury OIG clarified its proper role regarding oversight and review of Treasury programs and operations, as well as the scope of its jurisdiction under the Inspector General Act. The Treasury OIG Office of Investigations (TIG) initiated an inquiry into Treasury's receipt, processing, and responses to Chairman Neal's requests to Treasury for U.S. President Donald J. Trump's Federal tax information. Although peripheral to the understanding between Chairman Neal's office and Treasury OIG as to the scope of the inquiry, TIG also reviewed within a limited scope the Treasury's handling of Chairman Neal's later request for records pertaining to 6103(f) and the mandatory audit program.

Scope of Inquiry and Methodology

The scope of the inquiry: (a) examined the Treasury process for handling Congressional correspondence and requests; (b) identified Treasury officials substantively involved or solicited in connection with Chairman Neal and Treasury's correspondence; (c) asked about any unsolicited input on the correspondence or process; and (d) inquired about the production of records, or lack thereof, to Chairman Neal's office.

The scope of the inquiry did not examine the legal opinions in formulating responses to Chairman Neal, nor attempt to identify or interpret the basis for Treasury's decisions to

produce, or not produce, records. It is our understanding that the underlying issue regarding production is currently in litigation.¹

Initially, TIG obtained pertinent documents from Chairman Neal's office in addition to a Treasury official's email records. TIG conducted targeted queries of the email records and identified Treasury officials who appeared to be substantively involved in the receipt, processing, and responses from Treasury to Chairman Neal's office. Interviews were conducted of those key individuals, many of whom were, or still are, within the Treasury Office of General Counsel (OGC). Other Treasury officials who received or sent emails relating to Chairman Neal's correspondence, for example, those within Treasury Public Affairs, were not interviewed as there was no evidence those individuals had any substantive involvement in the process.

In total, TIG interviewed eight Treasury officials: one in the Office of Legislative Affairs (OLA) and seven in the OGC. A second OLA official assisted with some research on the matter and an eighth OGC official received, sent, or was copied, on related emails. Neither of those officials still work for Treasury and there was no indication either significantly influenced Treasury's actions.

TIG interviews determined of the seven OGC officials a) four worked on the review, processing, and responses b) one was involved in connection with Chairman Neal's requests for records and subpoena and c) two had limited involvement in the process and primarily assisted with compiling information for various appendices attached to Treasury's responses.

Factual Findings of the Inquiry

1. The Treasury Process for Handling Congressional Correspondence and Requests

TIG interviews of OLA and OGC officials determined there is a general, but undocumented, process, in which the OLA primarily receives Congressional correspondence.

Upon receipt of Congressional correspondence, the Deputy Assistant Secretary (DAS) for OLA notifies their counterparts in OGC, ExecSec, and the Office of Public Affairs (Public Affairs). OLA works with OGC to ensure the information provided by Treasury is legally correct and sufficient and within the appropriate scope. OLA consults OGC when anything other than a policy position is conveyed in response to Congressional correspondence. One Treasury official noted when a Congressional request only addresses policy, but is significant enough to reach the levels of a DAS to an Under Secretary, OGC will also review the matter.

The Treasury office responsible for drafting responses to Congress varies on the nature of the matter. The OLA opines on legislative matters and the OGC makes a final determination regarding to legal issues or questions that arise. As referenced, this process is not formally

¹ *Committee on Ways and Means, United States House of Representatives v. United States Department of the Treasury, et al.* 1:19-cv-01974-TNM (D.D.C.)

documented, however, OLA reported Treasury Directive 28-02 provides the legal requirements for legislative matters. Treasury Directive 28-02, titled "Legislative Procedures", establishes, in part:

...procedures and assigned responsibilities that govern Departmental review and coordination of the following documents and transmittals that express official legislative views of the Department of the Treasury...

The specified list of "documents and transmittals" include "congressional correspondence" and "congressional testimony."

2. The Treasury Process for Handling Chairman Neal's Requests for Presidential Tax Records

The TIG inquiry determined Treasury's receipt, handling, and responses to Chairman Neal's letters and requests followed the general process with the occasional change in Treasury officials involved. TIG found these changes expected based on statements made by OLA and OGC employees, the transition of Chairman Neal's requests for records into his subpoena to compel production of the records, the scope of the records requested and subpoenaed, and the addition or departure of officials in the OLA and OGC.

The OGC collaboratively reviewed and processed Chairman Neal's letters, requests, and subpoena to Treasury. On occasion, an OGC official would assume a lead role but as an OGC official stated, "no matter is handled by one person in the OGC." A number of OGC officials similarly reported a collaborative process. The General Counsel for OGC maintains the authority to make final legal decisions.

3. The Treasury Decision to Consult the U.S. Department of Justice, Office of Legal Counsel

Upon receipt and review of Chairman Neal's requests for Presidential tax returns, the OGC, in consultation with Secretary Steven Mnuchin, decided to consult the DOJ OLC. OGC officials stated DOJ OLC is the counsel for the Executive Branch of the government.² The TIG inquiry did not examine the legal bases for decisions made by Treasury or OGC, however, one OGC official said DOJ OLC was consulted due to the legality of Chairman Neal's request. TIG notes the specific reasons for OGC consulting DOJ OLC were provided in letters from Secretary Mnuchin to Chairman Neal dated April 10, 2019 and April 23, 2019.

² 28 U.S.C. 512

4. The Treasury Decision to Rely on DOJ OLC's Legal Opinion

In order for OGC to submit a timely response to Chairman Neal, the DOJ OLC provided OGC with a legal opinion on the matter prior to publicly publishing the opinion. One OGC official stated it is routine for DOJ OLC to do so. The DOJ OLC opinion given to Treasury was to deny Chairman Neal's request for the President's tax information. Notwithstanding the language of 26 U.S.C. § 6103(f), OLC opined that Chairman Neal's request lacked a legitimate legislative purpose and absent the legitimate purpose, 26 U.S.C. § 6103(a) barred Treasury from disclosing the President's tax information in response to Chairman Neal's requests or his subpoena.

An OGC official stated Secretary Mnuchin, informed by legal advice from OGC, made the final decision to rely on DOJ OLC's opinion. The same official said the DOJ OLC opinion is "binding" because, as described, DOJ OLC is the counsel for the Executive branch. A second OGC official specified it was a matter of "complying with the law" in respect to Treasury's actions to rely DOJ OLC's opinion.

5. Unsolicited Opinions and Effect on Treasury's Decision

The OGC received an unsolicited letter from the President's attorney, William Consovoy, regarding Chairman Neal's requests for the President's tax information. OGC leadership stated the letter did not affect Treasury or OGC in any manner. In addition, all of the OGC officials we asked about, or who were aware of the letter, stated it had no effect on Treasury or OGC's processing, decisions, or responses. Treasury produced a copy of this letter from Consovoy in response to one of Chairman Neal's requests for records.

Upon conclusion of the OGC and OLA interviews, we conducted a broader review of the referenced Treasury official's email records, and located two additional and presumed unsolicited contacts to Treasury regarding Chairman Neal's requests for the President's tax information. The two contacts were of opposite opinions regarding Treasury complying with Chairman Neal's request.

On April 3, 2019, a letter was sent from Representative Kevin Brady of the House Ways and Means Committee to Secretary Mnuchin. Representative Brady detailed his concerns with Chairman Neal's requests for the President's tax returns and relayed appreciation of Treasury's consideration of his concerns.

On May 14, 2019, a letter was sent from Senator Ron Wyden, Ranking Member, Senate Finance Committee, expressing Senator Wyden's concerns with Treasury not producing the President's tax return information to Chairman Neal. The letter asked a number of questions and requested documentation from Treasury.

Outside of the unsolicited letter received by Treasury from William Consovoy and the letters from Representative Brady and Senator Wyden, there was no indication from the interviews

we conducted, or from our review of emails, of any other unsolicited opinions or attempts to influence the process.

TIG notes that notwithstanding these contacts, the apparent fundamental basis for Treasury to consult and rely on DOJ OLC appears to have originated from within OGC. For example, TIG located an email from an official in OGC leadership distributed to OGC and OLA in which the legal concerns for consulting DOJ OLC were specified in detail. The supporting appendix attached to the letter also appears to have been prepared by the OGC. The final draft of this letter and appendix was sent from Secretary Mnuchin to Chairman Neal on April 23, 2019.

6. Chairman Neal's Request to Treasury for 6103(f) Information

As described, TIG conducted a limited scope inquiry into the Treasury handling of Chairman Neal's request for records pertaining to 6103(f) and the mandatory audit program. In connection with Chairman Neal's request, the OGC contacted the appropriate Treasury individuals. One OGC official stated most of the documents produced in response to Chairman Neal's request were generated by Treasury as a result of previous requests made by Chairman Neal.

Conclusions of the Inquiry

Based on the interviews conducted and review of relevant emails, TIG found Treasury's receipt, processing, and responses to Chairman Neal's requests for records and subpoenas to be consistent with Treasury's general process for handling Congressional correspondence and requests to include Secretary Mnuchin supervising the matter. OGC reported that matters arise to various levels in Treasury dependent upon the significance of the request.

Ultimately, Treasury consulted with, and relied on, the legal opinion of DOJ OLC to withhold the President's tax records. OGC reported that Secretary Mnuchin made the decision to rely on DOJ OLC's legal opinion, however, it was a matter of "complying with the law" in deciding to adhere to the opinion.