

ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

June 11, 2013

The Honorable Daniel I. Werfel
Acting Commissioner
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Dear Acting Commissioner Werfel:

Pursuant to Rules X and XI of the United States House of Representatives, the Committee on Energy and Commerce is investigating allegations that the Internal Revenue Service (IRS), in the course of executing a search warrant at a California health care provider's corporate headquarters in March 2011, improperly seized the personal medical records of millions of American citizens in possible violation of the Fourth Amendment to the United States Constitution.

According to a March 14, 2013, report by courthousenews.com, the unnamed health care provider is now suing the IRS and 15 unnamed agents in California Superior Court alleging that the agents stole more than 60 million medical records from more than 10 million American patients during a search conducted March 11, 2011.¹ The warrant authorizing that search was apparently limited to the financial records of a former employee of the company and in no way authorized the sweeping confiscation of the personal medical records of millions of Americans who had no connection to the initial IRS investigation. The complaint further alleges that, despite warnings regarding the confidential and privileged nature of the records, and regardless of the fact that the company was a HIPAA secure facility, IRS agents "nonetheless searched and seized the records without making any attempt to segregate the [medical] files from those that could possibly be related to the search warrant."² Furthermore, the complaint asserts that "[d]espite knowing that these medical records were not within the scope of the warrant, [the IRS agents]

¹ See Rebekah Kearn, *Class Calls IRS Rude, Crude and Abusive*, Courthouse News Serv. (Mar. 14, 2013), <http://www.courthousenews.com/2013/03/14/55707.htm>.

² Complaint at 3, *John Doe Co. v. John Does 1-15*, No. 37-2013-00038750-CU-CR-CTL (Ca. Super. Ct. Mar. 11, 2013).

threatened to 'rip' the servers containing the medical data out of the building if [company] IT personnel [did] not voluntarily hand them over."³

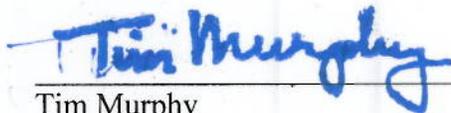
While HIPAA privacy rules restrict the ability of a covered entity to release protected health information, those rules appear to impose no restrictions on the IRS's ability to use such information after it is obtained. In light of these allegations and in anticipation of the IRS's increased role in implementing health care under the Patient Protection and Affordable Care Act, we are writing to request information regarding your agency's ability to both protect the confidential medical information of millions of Americans and respect the safeguards imposed by HIPAA.

In order to better understand how the IRS is preserving and treating these records, we request that you provide written answers to the following requests for information no later than June 21, 2013:

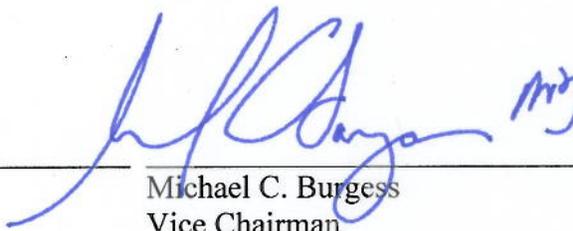
1. Please outline the IRS's current policies and procedures for requesting and examining protected health information from a HIPAA covered entity.
2. In the opinion of the IRS, does the term "return information," as defined in 26 U.S.C. § 6103, include electronic medical records which are obtained pursuant to a legally authorized warrant? Does the term "return information," as defined in 26 U.S.C. § 6103, include electronic medical records which are obtained improperly or inadvertently during the execution of a legally authorized warrant?
3. In the event the IRS obtains protected health information not authorized by a court order, subpoena, summons or warrant, what policies or procedures does the IRS have in place to ensure that such information remains confidential and private? Is the IRS obligated to maintain such information as confidential under 26 U.S.C. § 6103? Is the IRS obligated to return such information?

Please do not hesitate to contact Karen Christian or Daniel Tyrrell with the Committee staff at (202) 225-2927 with any questions regarding this letter.

Sincerely,

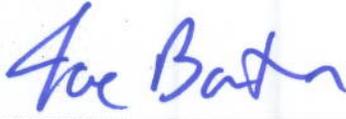


Tim Murphy
Chairman
Subcommittee on Oversight
and Investigations



Michael C. Burgess
Vice Chairman
Subcommittee on Oversight
and Investigations

³ *Id.*



Joe Barton
Chairman Emeritus



Marsha Blackburn
Vice Chairman

cc: The Honorable Dave Camp, Chairman
Committee on Ways and Means

The Honorable Sander Levin, Ranking Member
Committee on Ways and Means

The Honorable Diana DeGette, Ranking Member
Subcommittee on Oversight and Investigations