



Wood LLP Tax Alert



Robert W. Wood

THE TAX LAWYER

TAXES 8/26/2014

Lost & Found IRS Emails Suggest Smidgen Of Confusion, Or Worse

The IRS probably would like to forget Lois Lerner and her emails, but it looks like they may exist after all. Despite the hue and cry, the lost emails are backed up, claims Judicial Watch. The former Director of Tax Exempt Organizations, Lerner allegedly flagged tax-exemption applications of conservative organizations, including Crossroads GPS. But when the whole mess came to light, she refused to testify and was held in [contempt of Congress](#). She could be prosecuted and face jail, though that's unlikely.

The IRS told Congressional investigators that many of Lois Lerner's emails prior to 2011 are missing. Her computer crashed and her hard drive was 'recycled.' The IRS says it went to great lengths and spent nearly \$10 million to produce more than 750,000 documents. Those are \$10 million of our tax dollars, correct?



Hard drive-bottom (Photo credit: Wikipedia)

Exasperated, President Obama said there was “not even a smidgen of corruption” [to Fox News in February](#). Congress requested all Ms. Lerner’s emails from early 2009 to April 2011. After promising to turn them over, on Friday June 13th, the IRS said it couldn’t find them. IRS Commissioner John Koskinen testified that they were just gone.

But now, a government lawyer says the long-missing emails were backed up after all. Judicial Watch is suing the IRS over its failure to provide the records to Congress. The organization’s President Tom Fitton told [Fox News](#) ‘that it turns out the federal government backs up all computer records in case something terrible happens in Washington and there is a catastrophe, so the government can continue operating.’

The DOJ attorney said ‘it would be too hard to go and get Lois Lerner’s emails from that backup system. So everything we’ve been hearing about scratched hard drives, about missing emails of Lois Lerner, [and] other IRS officials, other officials in the Obama administration,’ Fitton told Fox, ‘it’s all been a pack of malarkey.’

‘And there’s no such thing as Lois Lerner’s missing e-mails,’ he insisted. ‘It’s all been a big lie. They’ve been lying to the courts, to the American people and to Congress.’ IRS Commissioner John Koskinen told a congressional panel June 20th that Ms. Lerner’s hard drive ‘was recycled then destroyed’ because ‘it was determined that it was dysfunctional and that, with experts, no emails could be retrieved.’

The FBI is investigating whether Lerner or others broke federal laws by targeting conservative groups or covering it up. Federal Judge Emmet Sullivan required IRS officials to sign sworn statements describing efforts to recover the Lerner emails. Not one mentioned a backup system where the emails might still exist.

‘We want to know why they hadn’t told the court about this backup system,’ Fitton told Fox. ‘If this backup system is working, Lois Lerner’s emails are there.’ Judicial Watch could ask Judge Sullivan to rule that the Obama administration has gone out of its way to avoid turning over documents that it knew were readily available.

An IRS information technology official, Stephen Manning, wrote that there was ‘no record of any attempt by any IRS IT employee to recover data from any Blackberry device assigned to Lois Lerner in response to the congressional investigations or this litigation.’ IRS [sworn declarations](#) were filed [in response](#) to Judge Emmet G. Sullivan’s order. Meanwhile, House Oversight and Government Reform Committee Chairman Darrell Issa (R-Calif.) and Regulatory Affairs Subcommittee Chairman Jim Jordan (R-Ohio) today [sent a letter](#) to U.S. Attorney General Eric Holder.

You can reach me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.