

LB&I Direct Release Requests for Open Compliance Files Practice and Procedure

This is a collaborative document regarding LB&I direct release requests for open compliance files. It reflects IRC §6103 compliance as well as IRM practices and procedures.

Note: This is a list of the LB&I Business Units involved with the collaboration of this document. Other than the ALL Team, the individuals listed are NOT points of contact.

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A. Direct Release Request - Background and LB&I

Under IRC §6103(e), the IRS may disclose to taxpayers their own return information to the extent that disclosure will not impair Federal tax administration.

The FOIA Obligations and Transparency Memo notes the IRS’s commitment to openness in government and every employee’s responsibility to promote transparency under the Freedom of Information Act (FOIA). The Memo also states that “**open compliance files**” should be made available to taxpayers or their authorized representatives without directing them to the FOIA. This is known as the “Direct Release” of records by the IRS to the taxpayer.

LB&I is open and transparent in responding to Direct Release and FOIA requests. LB&I employees must be careful not to read a request so narrowly that the requester is denied information that the agency knows exists. For example, a taxpayer may request “all the documents in my examination administrative file.” Many people would look to the paper file that was closed to Technical Services or just look to the documents in Integrated Management System (IMS) for an open examination. There’s more to the examination administrative file than these documents and we discuss them below under **Requests Seeking Examination Administrative File**.

B. Requests Seeking Examination Administrative File

The examination of a **return and return information** creates an examination administrative file. IRC §6103(b)(1) and (2) define **return and return information**. The examination administrative file consists of all documents received, gathered, or

created during an examination conducted to determine a taxpayer's tax liability, **i.e., return, and return information.**

Return information in the file includes all records received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense. See IRC §6103(b)(2)(A).

Return information, whether received, created, or collected by LB&I employees are agency records.

- 1. Examples of Return Information:** Emails, Standard Audit Index Number (SAIN) Lead Sheets, activity records, meeting notes, reports, schedules, memoranda, appraisals, any agency record created or received on account of the IRS examination of the taxpayer, regardless of the format (electronic, paper, thumb drive, disc, etc.).

Records regarding penalties, assertion of penalties, etc., are return information, if collected, received, secured, or created in the examination of the taxpayer and are part of the examination administrative file.

- 2. Example of Documents that are Extraneous to the Examination**

Administrative File: The Territory Manager receives a report via email on the open examinations in his/her territory and forwards this information to the Director. *Emails and reports that are programmatic records are not responsive to a request asking for examination administrative files (return information).*

C. What is an Open Compliance File and Who Provides Records to the Taxpayer?

For purposes of a Direct Release request, the terms "compliance file," "audit file," "examination file," and "administrative file" have the same meaning. Taxpayers, representatives, and IRS employees may have slightly different understandings of what such a file includes. This document clarifies what LB&I considers is an "open compliance file" and what documents LBI will provide to taxpayers and their representatives in response to a Direct Release Request.

The Audit Inventory Management System (AIMS) categorizes examination cases by status code. The status codes are divided between groups.

- AIMS 09-19 – Examination Group
- AIMS 20-29 – Technical Services Group
- AIMS 30-39 – Technical Services – Suspense Group
- AIMS 33-34 – Campus Group
- AIMS 51-59 – Centralized Case Processing Group
- AIMS 80-89 – Appeals Group
- AIMS 90 – Closed Group

LB&I considers an “open compliance file” (an open examination administrative file) to be an examination file in AIMS Status Codes 09-89.

Once a return is placed in AIMS Status Code 90, the return is considered closed. Taxpayers may not request copies of their tax return information directly from the examination team if the return is under AIMS Status Code 90. Taxpayers may request closed files through FOIA.

The examination team has the most complete examination administrative file throughout the “open” AIMS Status 09-89 and is in the best position to respond to a Direct Release Request for an “open compliance file,” and, as such, will respond to and provide taxpayer with the requested return information.

D. Direct Release Request versus a FOIA Request

Direct Release requests differ from FOIA requests. FOIA has statutory time frames for responses and provides for administrative appeals if documents are fully or partially withheld. Taxpayers should not be encouraged to file a FOIA request to obtain copies of their open administrative file since a Direct Release is generally the most efficient method of providing these records.

While FOIA has a statutory timeline for the agency response, there are no prescribed timeframes for responding to requests under a Direct Release request. We encourage agents to respond within 60 days or less; however, if the timing of the request is in close proximity to the timeframe for completion of the revenue agent’s report or other time-sensitive activities, the compilation and release of the compliance file is to be deferred until after the completion of those time-sensitive activities.

With a Direct Release Request, LB&I does not have to provide a “harm statement” on withheld/redacted documents; documents, or portions of documents, may be withheld/redacted under IRC §6103(e)(7). However, be advised that any determination made through Direct Release still may be subject to FOIA and would require support of a harm statement if implicated under FOIA.

For example, with a FOIA request, IRS employees provide their responsive records to PGLD with release recommendations and harm statements (what harm would the IRS incur if the document were released in full to the requester?). Under 5 USC §552, PGLD determines which of the nine FOIA exemptions or three FOIA exclusions may be asserted to withhold the redacted material and responds to the requester. The requester has statutory administrative appeal rights regarding the withholding of documents.

In a Direct Release request, IRC 6103(e)(7) provides the IRS employee may release records or portions of records if the disclosure would not seriously impair Federal tax administration. IRM 4.2.5.6(4) provides that any summoned document and/or third-party contact information is return information and can be withheld if the IRS determines that its release would jeopardize collection of any tax, involve reprisal against any person, or jeopardize any pending criminal investigation.

Please note “Direct Release” is in-place to facilitate taxpayers’ access to their record(s) in the most efficient manner possible and is not intended to be utilized parallel to FOIA – i.e., for the same records. In the event the IRS identifies a request has been submitted through both “Direct Release” and FOIA, for essentially the same record(s), the IRS may not honor future “Direct Release” requests from the requester, the requester’s firm or the taxpayer on whose behalf the request is made for a period of 12 months.

E. Responding to a Direct Release Request – What to Provide to the Taxpayer

Use this link to see an example of a Direct Release Request.

1. Documents that will not be provided in response to a Direct Release Request:

- a. Documents that the IRS provided, or will provide, to the taxpayer during the examination and documents that the taxpayer submitted to the IRS **will not be provided** to the taxpayer or representative in response to a Direct Release Request. Examples of these documents are:
 - i. Tax and information returns
 - ii. Correspondence between the taxpayer and the IRS
 - iii. Information Document Requests and the taxpayer’s responses
 - iv. Revenue Agent Reports
 - v. Examination Reports
 - vi. Engineering Reports
 - vii. 60-Day Letters
 - viii. Summary Reports
 - ix. Notices of Proposed Adjustment, Notices of Proposed Partnership Adjustment, Notices of Final Partnership Administrative Adjustment, Notices of Final Partnership Adjustment, and similar documents containing proposed adjustment by the IRS
 - x. Any appraisals, reports, analyses, studies, or similar materials relating to the real or personal property held by the taxpayer that the IRS provided to the taxpayer during the examination or that the taxpayer provided to the IRS

- b. Documents that are internal communications that reflect pre-decisional, deliberative documents **will not be provided** to the taxpayer or representative in response to a Direct Release Request if their disclosure could impair Federal tax administration under IRC §6103(e)(7). Examples of these documents are:
 - i. Drafts of documents -- review to determine if the entire document or only portions require redaction. See Item F.
 - ii. Certain communications between IRS employees and/or Counsel -- review to determine if the entire document or only portions require redaction. See Item F.
 - iii. IDRS documents with DIF terms and other IRS-related official use only information.

2. The examination team generally will provide the following records from the administrative file in response to a Direct Release Request:

- a. Standard Audit Index Number (SAIN) Lead Sheets
- b. Activity records
- c. Workpaper Index
- d. Employee workpapers
- e. Notes of meetings
- f. Notes of interviews
- g. Internal communications (emails or texts) not meeting the pre-decisional, deliberative process privilege, the attorney-client privilege, or that would not impair tax administration if disclosed (See E.1.b. above)
- h. Other written documents that would not impair tax administration if disclosed

Note -- The LB&I employee must review each of these documents and redact the portions of the documents that should not be disclosed to the taxpayer.

The portions redacted are those that are privileged, or if disclosed to the taxpayer, would impair Federal tax administration, involve reprisal against any person, or impair any pending investigation. See IRC §6103(e)(7) and IRM 4.2.5.6.

One specific item that may impair tax administration or cause reprisal against another is **third-party contact information** and related documentation (interview notes for example) under IRC §7602. The **LB&I employee must review the records and determine** if the taxpayer is aware of the third-party contact information, if there is any possible reprisal to the third party or if any other impairment to tax administration would exist, if released to the taxpayer.

Please contact the LB&I FOIA and Direct Release Coordinator if there are any whistleblower or grand jury investigation records. These documents are not released to the taxpayer.

See IRM 4.2.5.6, [Requests for File and Workpapers](#), and this [Quick Guide](#), which is designed to assist you in making disclosure decisions when responding to requests for administrative files. Whether a request is a Direct Release Request or a FOIA Request, certain records are subject to disclosure restrictions and should only be released following those guidelines.

F. Review and Redact

As long as the examination case is “open” (AIMS Status 09-89), LB&I employees are most familiar with the records received, gathered, or created in their cases. They are in the best position to determine what records should be released/disclosed and which information should not.

The original documents must remain intact and unchanged in the Examination File. Therefore, employees will make a copy of the document(s) requiring redactions and make any redactions on the copy and not on the original. The redacted copy is provided to the taxpayer. The reason(s) for any redactions will be

provided on the cover letter to the taxpayer. (LB&I has a Cover Letter Template for your use.) **Be sure that redactions on the copy you release to the taxpayer are truly opaque and non-removable.**

G. Keep Your Files Clean

1. Delete unused, duplicate records or files.
2. Delete draft documents, if not needed.
3. Identify documents that would need release recommendations in the event of a Direct Release or a FOIA Request.
 - a. Identify the documents on your hard drive.
 - b. Identify the documents in IMS.

Note – Agents will follow proper file maintenance procedures. However, consistent with the disclosure requirements of FOIA, once a FOIA request is received, responsive documents that are otherwise eligible for deletion must be included in the materials provided to PGLD for responding to the FOIA request.

H. LB&I Steps for Responding to a Direct Release Request

1. Identify a **Lead LB&I employee who will act as the single point of contact (POC)** for responding to the Direct Release Request.
2. The POC will:
 - a. Determine the person requesting access to the examination file has legal authorization for access to the information.
 - b. Inform the LB&I Direct Release Coordinator of the request via email.
 - i. Provide the taxpayer's name, EIN, and examination year.
 - ii. Provide a copy of the request.
 - c. Identify all LB&I employees with responsive records.
 - i. See E. 2 for record examples.
 - ii. Contact LB&I employees for their responsive records.
 - d. Create a **SAIN "001-01 - Direct Release Request"** in IMS, if the case is open in IMS.
 - e. Create a Direct Release Index (Taxpayer does NOT receive a copy of this Index):
 - i. Identify the records provided to the requester in response to the Direct Release Request, as discussed in Item E. 2. (Workpaper Index, SAIN Lead Sheets, employees' workpapers, meeting notes, employees' activity records, and other similar documents, which should be identified.)
 - ii. Identify the redacted records provided to the requester in response to the Direct Release Request, as discussed in Item F. (Employees will make a copy of the document before redacting any portions so that the original document stays unchanged.)

Note -- A copy of the original document and the copy produced to the taxpayer will be maintained in a separate file, in the event the taxpayer makes another request for the administrative file. See saving/storage in Item 8 below.

3. Employees will be responsible for the review and redaction of their own records and provide them to the POC.
4. Employees may contact assigned Counsel for assistance with redactions. If Counsel is not assigned to the case, local Counsel may be contacted.
5. For general disclosure guidance, employees may contact the Disclosure Help Desk at [REDACTED] or [REDACTED]. Do not include returns or return information in a submission to the Help Desk. The Disclosure Office will not address functional policy questions.
6. The POC will complete the Direct Release Request Cover Letter and submit it to their supervisor for review.
7. After receiving approval from the supervisor, the POC will send the Cover Letter to the requester with the passcode-protected enclosure containing the responsive records. Under separate cover, the POC will provide the requester with the passcode.
8. The POC will save and store the Cover Letter, Direct Release Index and the original and its redacted version documents (Items H. 2.e. above) in **IMS, SAIN "001-01 – Direct Release Request."** See Time Reporting in Item I.1. below.
Note – documents not redacted in whole or in part are not saved in **SAIN 001-01**; only a document (the original) and its redacted version are saved in **SAIN 001-01**.
 - a. The mandatory naming standardized conventions (MNSC) do not have to be used for any documents uploaded to **SAIN 001-01 – Direct Release Request**.
 - b. Adding documents to a closed case:
Look in Closed Case Inventory for case, then Case Menu drop down for Issues. From "Issues" window, click on "Summary" link that corresponds to the SAIN for which you want to add a workpaper. Toward the bottom of the "Issue Detail" screen, you will see "Upload Workpaper" with option to "Browse" and "Upload."

If **SAIN 001-01 – Direct Release Request** was not created (Item H.2.d.), the documents (Cover Letter, Direct Release Index and the originals and their respective redacted copies) should be stored in **SAIN 007**. The mandatory naming standardized conventions (MNSC) do not have to be used for documents uploaded to **SAIN 007** in response to a Direct Release Request.
9. Email the Direct Release Coordinator a copy of the Cover Letter sent to the requester.

I. Time Reporting

1. If the case is open in your inventory on IMS, charge the time to the case under **"SAIN 000 Issue Does Not Exist"** under **"001-01 – Direct Release Request"** to properly track Direct Release Request time.
2. If the case is closed in your inventory on IMS, charge the time to the below-the-line **Activity Code 616** to properly track the Direct Release Request time. The code

description will be changed from “Reserved” to “Direct Release Request” on 8/30/2021.

J. LB&I Resources – Direct Release and FOIA

1. **LB&I’s Point of Contact (POC) for Direct Release and FOIA** is Patricia (Patty) Hampton, LB&I FOIA and Direct Release Coordinator, Program Analyst from Audit Legislative & Liaison (ALL). Her manager is Donnell Lewis. Patty is the POC for Disclosure and LB&I.
2. **LB&I Practice Area’s POC.** There is a POC in each LB&I Practice Area who works with the ALL Analyst and FOIA/Direct Release Coordinator.
3. Use **Counsel assigned** to the case for assistance with redactions.
4. **IRC §6103**, Confidentiality and Disclosure of Returns and Return Information
5. **IRM 4.2.5.6**, Requests for File and Workpapers
6. **IRM 11.3.13**, Freedom of Information Act
7. **IRM 1.2.2.12.2**, Delegation Order 11-2 (Rev. 4), Authority to Permit Disclosure of Tax Information and to Permit Testimony or the Production of Documents

K. Final Note

Sometimes taxpayers verbally request a copy of the administrative file, citing FOIA, with or without citing IRC 6103(e). Such requests may be processed by LB&I under IRC 6103(e). This could be a significant resource saver for the IRS while serving the best interest of the taxpayer who can quickly and efficiently receive what is requested with a minimum of formality.

If the taxpayer submits a written FOIA request directly to exam, please coordinate with the LB&I FOIA and Direct Release Coordinator. Only Disclosure employees may respond to written FOIA requests. Exam should not respond to the written FOIA request until they receive instructions from the LB&I FOIA Coordinator.

LB&I employees should not insist a requester go through the FOIA process, if the information is available informally, consistent with Delegation Order (DO) 11-2 (Rev. 4), found in IRM 1.2.2.12.2.

Please direct any issues, comments or questions on Direct Release or FOIA Requests to the LB&I FOIA and Direct Release Coordinator, ALL Program Analyst, Patricia (Patty) Hampton.