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Lerner Covers Her Tracks

By Eliana Johnson

Damning evidence against Lois Lerner and other top IRS officials continues to mount. We learned Tuesday that Lerner used a personal e-mail account to conduct official business, an act that has the potential to frustrate both Congress's requests for documents and the public's freedom-of-information requests. That disclosure came on the heels of revelations that Lerner shared the tax information of at least one conservative group with an FEC investigator, perhaps in violation of federal law.

Her misdeeds are likely more extensive. In June 2011, Lerner ordered a change in the "Be on the Lookout" listing for tea-party groups because she — rightfully — deemed the language inappropriate. According to the Treasury Department inspector general's report, the following month, in July 2011, "the criteria were changed to focus on the potential 'political, lobbying, or [general] advocacy' activities of the organization." But several IRS officials have now told congressional investigators that this change was essentially a rebranding effort led by Lerner and her colleague, Holly Paz, the former director of the IRS's Rulings and Agreements office, to allow the targeting to continue without a paper trail. "Many screeners have said they understood that to be just a change in name," says a source close to the investigation. In January 2012, the sanitized listing was changed back to include the terms Lerner found objectionable, which "supports the fact that it was a change in name, not substance," the source adds.

That raises questions about the veracity of Paz's sworn testimony. The senior IRS official, who was placed on administrative leave in June, told investigators that the term "tea party" was "just sort of a shorthand reference" for all political activity, akin to "calling soda 'Coke.'" But according to the source, her subordinates have said just the opposite: that "political activity" was, in fact, a shorthand reference to "tea party."

As for Lerner, Congress will eventually need to compel her testimony. As investigators pore over her documents and correspondence, a spokeswoman for the House Ways and Means Committee says they are finding that she often conducted sensitive business over the phone rather than through e-mail. "Based on interviews with employees and from the small amount

of Lerner documents we have, our staff has found that Lois Lerner often took discussions on this issue offline,” committee press secretary Sarah Swinehart tells National Review Online. She won’t be called back to Capitol Hill just yet, though, chiefly because the IRS has yet to turn over the documents investigators need to review — among them, the tranche of Lerner’s e-mails — before questioning her. ”So far, we have only received 3 percent of documents and just a limited amount of those are Lois Lerner’s e-mails,” Swinehart tells me.

Meanwhile, additional testimony from an IRS screener suggests that, despite the claims of many House Democrats, progressive groups were not discriminated against. Representatives Elijah Cummings and Sander Levin, among others, have called attention to the fact that the term “progressive” appeared on several “BOLO” lists between 2010 and 2012. The term can be found there under a tab labeled “historical,” while the “tea party” listing appeared under the “emerging issues” tab. Investigators asked the screener, an IRS agent who was one of the first to identify tea-party cases, “If a term is on the historical tab, are those issues that you are looking for in your daily work? Or are those perhaps issues that are historical in the sense of, like, they are old and aren’t active anymore?” The unnamed screener responded, “I can’t say 100 percent for sure. But I am thinking that they are inactive.” A source familiar with the investigation explains that the list remained because “the IRS wanted to keep a tally of things that they had looked at,” adding also that ”TIGTA didn’t find any documentation to support that the terms in the historical tab were actively looked at.” The appearance of the term in the “historical” listing, though, indicates that the IRS scrutinized progressive groups at some point.

Fast-forward to the present day where, with the IRS having done away with the BOLO lists entirely, all tea-party applications continue to be passed along for what is now known as “secondary screening.” That is occurring regardless of whether the organization’s application demonstrates it is likely to be engaged in political activity, according to the IRS screener. ”You would treat a tea-party group as a political-advocacy case even if there was no evidence of political activity on the application. Is that right?” investigators asked. “Based on my current manager’s direction, uh-huh,” he said.