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Congress of the United States
House of Representatives
Washington, DC 20515-1603

November 3, 2015

COMMITTEE ON APPROPRIATIONS

SUBCOMMITTEES:
VICE CHAIR, AGRICULTURE, RURAL DEVELOPMENT,
FOOD AND DRUG ADMINISTRATION, AND RELATED
AGENCIES
FINANCIAL SERVICES AND GENERAL GOVERNMENT
STATE, FOREIGN OPERATIONS AND
RELATED PROGRAMS

The Honorable John Koskinen
Commissioner
Internal Revenue Service
1500 Pennsylvania Ave NW
Washington, D.C. 20220

Commissioner Koskinen:

I write to express my concern with reports that the Internal Revenue Service (IRS) has used Stingray or other cellular site simulating technology to gain access to content or location data about cell phones. According to your testimony before the Senate Finance committee last week, the technology is “only used in criminal investigations” and “can only be used with a court order. It can only be used based on probable cause of criminal activity.” I write to urge you to immediately cease using this technology until written policies are in place that require a warrant for its use and establish strict rules requiring immediate destruction of information that is acquired about non-targets. The Departments of Justice and of Homeland Security have adopted such written policies. Those policies – without the exceptions for exigent and exceptional circumstances – could serve as a model for an IRS policy on use of cell site simulators.

In recent years, the IRS has found itself repeatedly in the spotlight for crossing lines with regard to individual citizens’ rights, from cases of forced asset forfeiture or seizure in cases of no wrongdoing, to access of email content information absent a warrant. The IRS has previously said via internal documentation that Americans “do not have a reasonable expectation of privacy” in their email content. As you know, I am the House sponsor of H.R. 699, the Email Privacy Act, which enjoys the support of over 300 members of the U.S. House of Representatives, to address the issue of government agencies getting access to email content information without a warrant. It is our intention to enact a law addressing the way the IRS gains access to email content information, and if necessary further law which would require a warrant for use of Stingray or similar technology.

I request that you help Congress, and the public, better understand the scope of this problem by responding promptly to the following requests for information regarding use of this technology in the most recent 12-month period for which data are available:

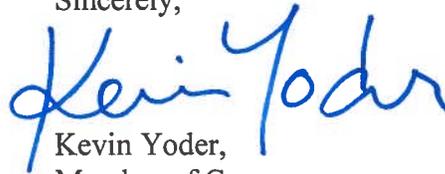
1. How many times was cell site simulator technology been used by the IRS, or by prosecutors in connection with IRS investigations?
2. In how many IRS investigations was such technology used?

3. How many persons were the specific targets of this surveillance?
4. How many cell phone identifying numbers were collected through this surveillance?
5. What minimization procedures were followed to reduce the collection of non-targets' information through use of this technology?
6. Did those procedures require the prompt destruction of information about non-targets that was acquired through use of this technology? If so, please provide an estimate of the number of days, on average, between acquisition of this non-target information, and destruction of such information.
7. In what types of investigations was this technology used?
8. Was this technology used in any civil cases, and if so, how many?

Lastly, if the IRS currently has a policy in place to require probable cause of criminal activity as a predicate to use of cell site simulator technology, why does your agency choose not to require warrants – obtained with assistance of prosecutors – to gain access to this information?

The legislative branch stands ready to provide a framework for your agency's use of this technology should you choose not to implement a warrant standard as has been adopted by the Department of Justice and the Department of Homeland Security. Please contact Joseph Eannello in my office at 202-225-2865 should you have any questions. I look forward to your reply.

Sincerely,



Kevin Yoder,
Member of Congress