



Written by [Thomas R. Eddlem](#) on June 25, 2014

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## House Hearings: IRS Broke Records Law on Lerner E-mails

The IRS broke federal law in not reporting Lois Lerner's hard drive failure and the loss of e-mails demanded by Congress, a federal archivist told the House Oversight Committee June 24.

"In accordance with the Federal Records Act, when an agency becomes aware of an incident of unauthorized destruction, they must report the incident to us," David Ferriero, chief archivist at the National Archives, [told](#) the Oversight Committee.



The issue originated over IRS targeting Tea Party groups' non-profit applications for delays and extra scrutiny from 2011 to 2013. The purpose of delaying those applications was to financially starve the incipient organizations in their cradles, as most corporations and foundations will only give to non-profits with an IRS 501(c)3 or 501(c)4 tax-exempt designation.

The command for this kind of extra scrutiny of Tea Party groups went up as least as far as Lois Lerner, head of the IRS Office of Exempt Organizations in Washington. Lerner [refused to testify to congressional investigators on March 4](#), citing her right against self-incrimination protected by the Fifth Amendment to the U.S. Constitution.

After Lerner pled the Fifth, House Oversight Committee Chairman Darrell Issa (R-Calif.) demanded the IRS fulfill [subpoenas](#) for Lerner's work e-mails issued months earlier, but the IRS has yet to provide any e-mails since the August 2013 subpoenas were issued. Congress learned only June 13 of the IRS claim that Lerner's hard drive had crashed in 2011 and that many of the e-mails that began the scrutiny were allegedly unrecoverable.

Republicans expressed outrage that John Koskinen — a professional troubleshooter who took over Freddie Mac during the height of the 2008-09 financial crisis — testified that he became aware of the failure of Lerner's IRS computer hard drive in April, but didn't inform the Congress of that fact for two more months. Koskinen also said that IRS back-ups of e-mails were erased after six months, and that Lerner's e-mails were not restored even though congressmen had already requested Tea Party-related documents within the six-month time frame of the crash.

Congressional hearings have taken on a polemical tone in recent days, with Republican congressmen screaming at IRS officials for foot-dragging and, they suspect, a cover-up. Some Republicans remained calm, however, such as MIT graduate and Kentucky freshman Republican Thomas Massie, who had an interesting [discussion](#) with IRS Director Kostinen about the odds of Lerner's computer crashing within



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10 days of a congressional request for documents:

**Massie:** You said that there's about a 3-5 percent chance the hard drive will fail. That's in a year. You testified to that last week, and also tonight.

**Commissioner Koskinen:** That's right. That's what I'm advised is the industry standard.

**Massie:** So that's about a one in thirty chance if it were three percent. But Chairman Camp sent a letter to the IRS demanding the IRS explain allegations of targeting of Tea Party and other groups and her hard drive failed within ten days. I'm just doing a little math here. The probability of that failing in ten days — instead of a year — is actually one-in-a-thousand.

**Koskinen:** That's not the way probability works. The way probability works is that it's the same probability every day. It's like when you flip a coin ten times in a row...

**Massie:** You can't tell me how probability works. I took the class at MIT. It's about one in a thousand that it would fail within ten days of her receiving that letter.

**Koskinen:** We must have taken a different probability class.

**Massie:** I think so. So, can you tell me the timing of the failure of the other hard drives that failed that were her associates? Were there any that failed in that same time period, or near that?

**Koskinen:** I don't know, but I —

**Massie:** Can you let us know?

**Koskinen:** I don't know what the list looks like.

**Massie:** Because if another one failed, one of her associates within that same ten days, that means it's a one in a million probability that two hard drives failed with somebody dealing with this case in that ten-day window if there's a three percent annual probability.

According to IRS investigators, at least eight hard drives failed among the more than 80 persons who are in the investigation nexus for the IRS scandal. Koskinen stated June 23 that the IRS is gathering Lerner's e-mails from their recipients by scanning likely employees in the Cincinnati office and a few in the Washington office. He didn't give a time frame for actually turning over the e-mails he was able to recover.

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