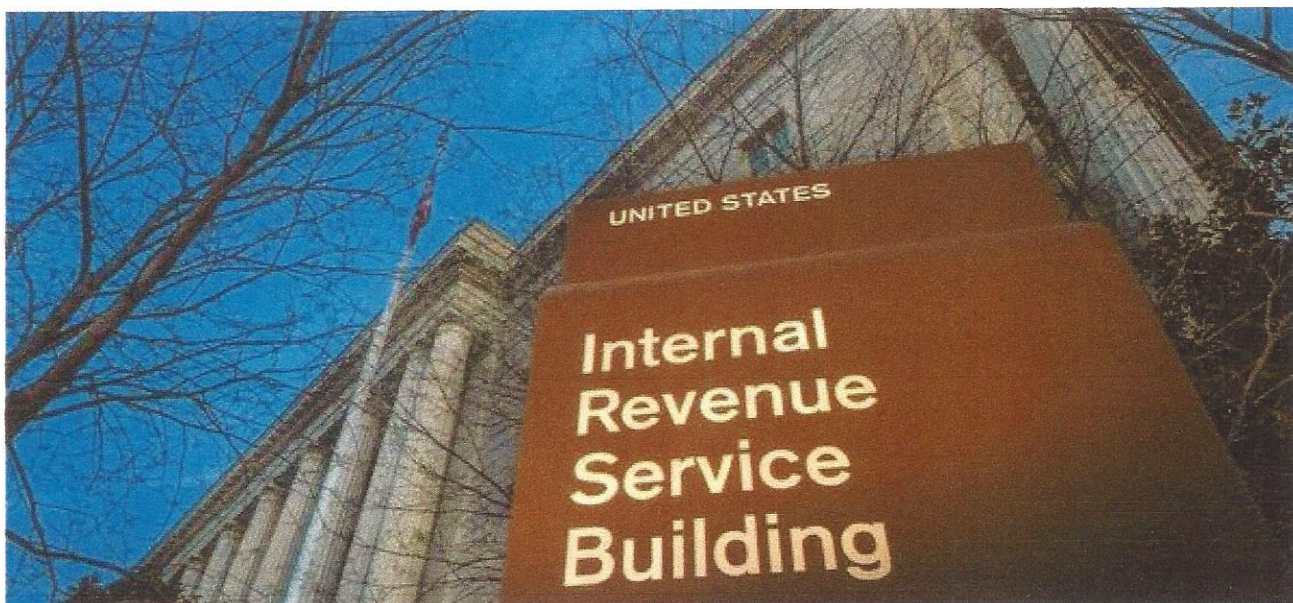


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Lois Lerner Emails: Nothing Digital Ever Dies

By [Carl M. Cannon](#) - June 19, 2014



In 2007, while co-writing a magazine piece with Silicon Valley author and entrepreneur Michael S. Malone on best Information Age practices for politicians, I coined a phrase Malone instantly dubbed “the Cannon Codicil.”

Postulating that electronic messages, like diamonds, last for forever, Cannon’s codicil simply holds that “Nothing digital ever dies.”

Although inspired by the water torture Democrats were then inflicting on Karl Rove over his missing Republican National Committee emails, mostly I was being metaphysical. But now, with the Internal Revenue Service claiming it has lost tens of thousands of emails from Lois Lerner and six of her IRS subordinates, the question in Washington is whether such a thing is technologically possible.

The interest in those emails is not academic. Lerner is the former government official who oversaw the division in the IRS that was apparently targeting conservative non-profits for stalling and harassment. “I did nothing wrong,” she testified before Congress, but that’s about all she’d say. Lerner deflected further inquiry by invoking the 5th Amendment privilege against incriminating herself in criminal wrongdoing.

Now, IRS officials have told congressional investigators -- a year after Lerner’s emails were requested --

that her computer “crashed” in 2011, wiping out electronic messages to individuals at outside groups and agencies, including White House. This was at the very time the IRS was formulating its rules that singled out groups with words like “Patriots” or “Tea Party” in their names. Suddenly, the question of whether digital communication can simply disappear is no longer a theoretical issue.

To say that the IRS “lost emails” has engendered skepticism is putting it mildly, especially in right-of-center circles.

“The Obama administration’s claim that the IRS has ‘lost’ two years of Lois Lerner’s emails is implausible to anyone who understands how email systems work,” writes conservative attorney John Hinderaker, a Claremont Institute fellow. “The Obama administration is lying, and lying in a remarkably transparent way.”

To hear the IRS tell it, it wasn’t just the hard drive on Lerner’s computer that crashed; it was the hard drive on six other computers. The agency also lacked a centralized archive, it says now, and employed an archaic practice of re-using the tapes backing up its system every six months -- thereby erasing the material already there. Who knew the IRS was so frugal? In a similar vein, IRS employees had absurdly low limits for how many emails they could store. And the agency apparently allowed IRS employees to decide for themselves which emails constituted an official record, which they are required by law to retain.

Is any of this possible? Nancy Flynn, executive director and founder of the Ohio-based ePolicy Institute, thinks it could be. When Republicans heard the latest dog-ate-two-years-of-my-homework explanation, they thought cover-up. Flynn, who trains and consults companies on how to handle digital communications, thought of all the organizations she’s encountered which were similarly cluelessness about electronic record storage.

“I know Republicans in Congress are suspicious,” she told me Wednesday. “But when I first heard this story my reaction was that this was another case of mismanaged emails.”

The IRS was particularly clueless, she said, in allowing employees to determine which emails to preserve, and in relying on backup tapes for record retention. Tapes, she said are designed to backstop a company or other organization in the event of a catastrophic event, such as a fire or a hurricane, and are not intended as permanent archives.

But mismanaging emails and thinking you’ve lost them forever are two different animals. For starters, most, if not all, of the missing emails from Lois Lerner and her six IRS comrades with their fried hard drives have presumably been preserved elsewhere: at offsite Outlook email servers; in separate files kept by other IRS employees; or by recipients of the emails who work at other organizations or agencies. This is almost certainly true if they were sent to White House officials. It should be true, anyway: the President Records Act requires their preservation.

Ferretting them out is probably beyond the ken of IRS computer geeks. More and more, this looks like a job for a special prosecutor. Could an independent counsel get to the bottom of it, and find the missing communications? I assume so. As Nancy Flynn says, echoing the Cannon Codicil, “There is no such thing as completely disappeared emails.”

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