



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

www.atf.gov

September 26, 2022

REFER TO: 2022-00173
FOIA Litigation 21-cv-2153

VIA Email: foia@americanoversight.org

Dear Mr. Evers:

This responds to your Freedom of Information Act (FOIA) request. While processing your FOIA/Privacy Act request dated June 4, 2020, for records concerning the following:

1. All records reflecting any presidential directive or order placing Attorney General Barr in charge of leading, directing, or coordinating the federal response to protests or purportedly unlawful activity following the May 25, 2020 police killing of George Floyd. Records reflecting all order, directives, and guidance issued by Attorney General Barr in the course of his role in leading the federal response to protests or purportedly unlawful activity following the May 25, 2020 police killing of George Floyd. In addition to formal orders or memoranda, email and text message records of high-ranking aides to the Attorney General communicating or memorializing directives and orders from the Attorney General are also responsive to this request.
2. Records sufficient to identify all federal police forces, national guard forces, and/or military forces deployed domestically in response to protests or purportedly unlawful activity following the May 25, 2020 police killing of George Floyd. Spreadsheets and information documents used to inform the Attorney General and his staff of the status and location of such deployments, as well as the number of personnel and assets deployed are responsive to this request.

The Office of Information Policy ("OIP") referred 13 pages of records to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) for processing and direct response to you. The documents were received by ATF on November 22, 2021.

We have reviewed the 13 pages that OIP sent us.

You have requested material that ATF is required to maintain pursuant to the Gun Control Act (GCA) and/or is information contained in ATF Firearms Trace System database. This information is exempt from disclosure pursuant to Exemption (b)(3) of the FOIA and Public Law 112-55, 125 Stat. 552.

Mr. Austin Evers

Exemption (b)(3) of the FOIA permits the withholding of information prohibited from disclosure by another statute only if one of two disjunctive requirements are met: the statute either (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld. Thus, a statute falls within the exemption's coverage if it satisfies any one of its disjunctive requirements.

Beginning in 2003, Congress placed restrictions on ATF's disclosure of certain GCA related information. In short, ATF can only provide certain GCA data to a law enforcement agency or a prosecutor solely in connection with a criminal investigation or prosecution. Beginning in Fiscal Year 2006, Congress included a provision within each iteration of the restriction, which effectively made the law permanent.

The most recent iteration of these various restrictions was included in ATF's 2012 Appropriation Bill, Public Law 112-55, 125 Stat. 552. Some of the information in the requested records falls within this restriction. Since the Fiscal Year 2006 through 2008 restrictions satisfy all the requirements of FOIA Exemption (b)(3), and the 2012 language is perpetuated from those restrictions, I am withholding the trace data pursuant to 5 U.S.C. § 552 (b)(3) and Public Law 112-55, 125 Stat. 552.

We are withholding deliberative materials in the records you requested under FOIA Exemption (b)(5). FOIA Exemption 5 permits the withholding of "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." FOIA Exemption 5 protects advice, opinions, recommendations, predecisional discussion, and evaluative remarks that are part of the government decision-making process. Release of such predecisional advisory communications would harm the quality of agency decision-making and the policy of encouraging frank, open discussion among agency personnel before making a decision. *See* 5 U.S.C. § 552 (b)(5).

The most commonly invoked privilege within Exemption 5 is the deliberative process privilege. The general purposes of this privilege are to prevent injury to the quality of agency decisions and to protect government agencies' decision-making processes. The deliberative process privilege allows agencies to freely explore alternative avenues of action and to engage in internal debates without fear of public scrutiny. *See Missouri ex rel. Shorr v. United States Army Corps of Engineers*, 147 F.3d 708, 710 (8th Cir. 1998). Exemption 5 protects not merely documents, but also the integrity of the deliberative process itself, where the exposure of that process could result in foreseeable harm. Please be advised that we considered the foreseeable harm standard when reviewing records and applying FOIA exemptions.

We are withholding third party information, including the names of ATF employees, under FOIA Exemption (b)(6). To disclose personal information about a living individual to a member of the public, we need the written consent from the persons whose information you requested. Without written consent, proof of death, or an overriding public interest, personal information is exempt from disclosure under the FOIA. The FOIA does not require agencies to disclose

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information that would constitute a clearly unwarranted invasion of the personal privacy of third parties (5 U.S.C. § 552(b)(6)).

We are withholding the specific law enforcement techniques and procedures used in our investigation pursuant to Exemption (b)(7)(E) of the FOIA. Exemption (b)(7)(E) exempts from mandatory disclosure records or information compiled for law enforcement purposes when production of such records or information “would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law” (5 U.S.C. § 552(b)(7)(E)). The information withheld reveals specific law enforcement procedures and techniques used in this investigation. Disclosure of such information could enable individuals outside of the agency to circumvent agency functions and gain access to sensitive investigative information.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. § 552(c). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

You may contact our FOIA Public Liaison, Zina Kornegay, at (202) 648-7390, for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked “Freedom of Information Act Appeal.”

Sincerely,

Mr. Austin Evers

A handwritten signature in dark ink, appearing to read 'A. Siple', is centered on the page.

Adam C. Siple
Chief
Information and Privacy Governance Division

Enclosure

Suero, Maya A. (ODAG)

From: Suero, Maya A. (ODAG)
Sent: Tuesday, July 28, 2020 1:57 PM
To: Rosen, Jeffrey A. (ODAG)
Cc: Donoghue, Richard (ODAG); Hovakimian, Patrick (ODAG)
Subject: FW: ATF Monthly Meeting--Written Report
Attachments: ATF Monthly Meeting July_28_2020 Written Report.pdf; Attachment A_ATF Monthly July_28_2020.pdf

Good afternoon,

The materials for the ATF monthly meeting are attached.

Best,

Maya Suero
Special Assistant
Office of the Deputy Attorney General
Phon (b) (6)

From: Higgins, John E. (ODAG (b) (6))
Sent: Tuesday, July 28, 2020 10:51 AM
To: Donoghue, Richard (ODAG (b) (6)) Hovakimian, Patrick (ODAG (b) (6))
Cc: Braverman, Adam L. (ODAG (b) (6)) Suero, Maya A. (ODAG (b) (6))
Subject: FW: ATF Monthly Meeting--Written Report

Richard & Patrick,

In lieu of ATF's July meeting with the DAG, which has been cancelled, attached is the report of items they would have covered.

John

From: Allen, Joseph (b)(6) Per ATF
Sent: Tuesday, July 28, 2020 9:46 AM
To: Higgins, John E. (ODAG (b) (6)) >
C (b)(6) Per ATF
Subject: ATF Monthly Meeting--Written Report

John, As requested, attached is a written summary of the Agenda topics that would have been covered in ATF's July Monthly. "Attachment A" is the referenced update to last month's summary graphs of investigations related to civil unrest. Please let us know if you have any questions.

Thank you, Joe

ATF DAG Monthly Report July 2020

1) Operation LeGend and Transition of Operation Relentless Pursuit

- In addition to existing field resources in each designated city, ATF has reassigned approximate (b)(7)(e) Per ATF personnel, including (b)(7)(e) Per ATF special agents and five K-9 teams, to exclusive support of Operations LeGend and Relentless Pursuit. More than (b)(7)(e) Per ATF of the special agents have been permanently reassigned to these cities.
- With the exception of Baltimore, all Operation Relentless Pursuit (ORP) cities will transition to the Operation LeGend designation in upcoming weeks.
- Current Operation LeGend locations are Kansas City, Chicago, and Albuquerque. Detroit and Cleveland will transition to LeGend status the week of July 27. ATF resources deployed in these cities include:
 - Kansas City (b)(7)(e) Per ATF additional ATF personnel, including (b)(7)(e) Per ATF special agents and a K-9 team, are deployed to support operations in Kansas City. For the transition to LeGend, ATF adds (b)(7)(e) Per ATF personnel to the original ORP deployment (b)(7)(e) Per ATF.
 - Chicago (b)(7)(e) Per ATF additional ATF personnel, including (b)(7)(e) Per ATF special agents, are deployed to support operations in Chicago. ATF has also deployed its Crime Gun Intelligence Mobile Command Center (MCC), staffed (b)(7)(e) Per ATF full-time specialists, to the city. The MCC is equipped to fully process ballistic evidence for immediate NIBIN entry and analysis, including the capacity to process for DNA and fingerprints.
 - Albuquerque (b)(7)(e) Per ATF additional special agents and a K-9 team are deployed to support operations in Albuquerque.
 - Detroit (b)(7)(e) Per ATF additional special agents and a K-9 team are deployed to support Detroit operations. As part of the transition to LeGend, ATF is working with the Detroit Police Department and United States Attorney Schneider to reinstate, expand, and integrate into the ATF

Crime Gun Intelligence Center the city's lapsed acoustic gunshot detection program.

- Cleveland (b)(7)(e) Per ATF additional ATF personnel, including (b)(7)(e) Per ATF additional special agents and a K-9 team, are deployed to support operations in Cleveland. ATF has also deployed a NIBIN Mobile Unit, a specially equipped van staffed (b)(7)(e) Per ATF specialists, to assist in the immediate entry of ballistic evidence into NIBIN.

2) COVID-19: ATF Operational Update

- Throughout the pandemic, ATF has adapted to ensure uninterrupted execution of mission-critical enforcement and regulatory operations -- including arrests, execution of search warrants, responding to burglaries and robberies at Federal Firearms Licensees (FFLs), response to civil unrest and other critical incidents (officer-involved shootings, multi-victim shootings, bombings/explosives incidents, and suspected arsons), firearm tracing, and processing of NFA applications.
- In adapting operations, ATF has followed both the Department's max telework and phased return to workplace guidance, appropriately adjusting the scale of phased-returns based on local conditions (consistent with EOUSA district-by-district clearances). ATF's experience with flexible telework has been highly positive, and has included increased productivity in some program areas (e.g., NFA processing.)
- As of July 27, 2020, a total of 76 ATF FTEs, TFOs, and contractors (collectively, "ATF Personnel") have confirmed Covid-19 diagnoses. Of these, 50 cases remain active and 26 have reported virus-free status.
 - 30 of ATF's confirmed cases have involved special agents and nine have involved TFOs, accounting for approximately 52% of all cases.
- In addition to confirmed diagnoses, ATF has tracked approximately 380 Covid-19 exposure reports among ATF Personnel and in ATF facilities since March 2020. To ensure full and open communication during the pandemic, Acting Director Lombardo has conducted regular "Tele-Town Halls" for all ATF Personnel throughout the pandemic. To date, the Acting Director has conducted 18 of these Tele-Town Halls via a national call-in system.

3) Special Agent Hiring: FY20 Target and Status

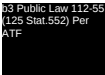
- Extenuating circumstances resulting from the pandemic, including the temporary closure of the Federal Law Enforcement Training Center (FLETC), have posed significant challenges to ATF's FY20 special agent hiring program. Despite these challenges, ATF has made substantial progress towards meeting the Attorney General's target of hiring 220 new agents in FY20.
- To date in FY 20, ATF has on-boarded 149 special agent candidates in FY20, and will on-board an additional 20 candidates on August 6. ATF continues to evaluate and process additional applicants to fill the remaining 51 slots necessary to meet the 220 agent hiring objective. ATF has developed contingency plans to on-board these candidates prior to FY year-end if slots are not available at FLETC.
 - To date in FY 20, 24 candidates have completed training and have been assigned as special agents in the field. An additional 20 candidates will complete training on July 30, and will report to their special agent field assignments. An additional class of 24 special agents is scheduled to complete training in late August, **for a total of 68 new agents deployed to the field in FY 20.**

4) FY20 Proposed Supplemental Special Agent Hiring

- The Attorney General has submitted an FY 20 Departmental budget reprogramming request to Congress that includes a \$7.3 million allocation to ATF for the designated purpose of hiring 100 new special agents (in addition to the 220 special agent positions funded in ATF's enacted FY 20 budget). Under the terms of the request, all reprogrammed funds, including those assigned to ATF for hiring, would be allocated to "no-year" accounts, allowing for expenditure in subsequent budget years.
- Congress has not yet approved the Attorney General's reprogramming request. Moreover, due to time constraints inherent in the background clearance process, if Congress does approve the reprogramming request prior to the conclusion of FY 20, ATF would be unable to execute on-boarding of 100 additional special agent candidates in the approximately

60 days remaining in the FY. If Congress were to approve some or all of the reprogramming as “no-year” allocations, ATF would utilize the funds for special agent hiring in FY 21.

5) ATF Enforcement Operations Relating to Civil Unrest and Rioting

- Since the outbreak of civil unrest and rioting in late May 2020, ATF has been assisting federal, state, and local law enforcement partners with the investigation of criminal acts involving firearms, arson, and explosives in multiple communities across the country. These offenses have included a spike in burglaries at FFLs and numerous arsons, many of which involved use of Molotov Cocktail-type destructive devices. As the civil unrest unfolded, ATF engaged in extensive outreach to FFLs across the country to review and encourage adoption of best practices for securing firearm inventory. These outreach efforts yielded immediate benefits as many of the reported burglaries resulted in limited or no loss of firearm inventory.
- As of July 27, ATF investigations relating to civil unrest and rioting have included:
 - 91 FFL burglaries involving at le  stolen firearms
 - 896 Arsons
- These investigations have resulted in 108 federal and state arrests by ATF, including 38 arrests for federal arson offenses related to building and vehicle fires in 19 separate judicial districts.
- Summaries regarding the most significant of these investigations have been included in ATF’s weekly reports to ODAG, and Attachment A contains graphs tracking these events.

6) Increase in NICS Denial and Delayed Denial Referrals to ATF

- The Covid-19 pandemic and recent civil unrest have fueled a substantial increase in firearm sales and a corresponding increase in the number background checks conducted by FBI NICS. The increase in NICS checks, in turn, has resulted in a significant increase in the number of NICS denial referrals from the FBI to ATF. For the period March to

June 2020, the number of standard NICS denial referrals (*i.e.*, no firearm was transferred, a “lie and try”) ATF received from FBI increased by approximately 150% above the same period in 2019, and the percentage increase in June was 237%. Similarly, delayed denial NICS referrals (*i.e.*, an FFL transferred a firearm after 3 business days to an individual NICS subsequently determined was prohibited) increased by approximately 100% for the March to June period from 2019 to 2020, and surged to 241% in June.

- ATF is working closely with FBI NICS to monitor trends and adjust resource allocations. ATF prioritizes investigative response to delayed denial referrals to ensure that prohibited individuals do not remain in possession of transferred firearms. Despite the surge in delayed denials, ATF has kept pace in processing these referrals for prompt field investigation and firearm retrievals. Keeping pace with processing of standard denial referrals for additional field investigation, however, is an increasing challenge. In light of other operational demands, ATF cannot divert field resources to assist with processing, and we have maximized effective use of overtime for currently assigned headquarters personnel. To minimize the development of backlogs for processing of standard denial referrals in the short-term, ATF is temporarily reallocating headquarters resources.

7) Removal of Frame or Receiver Definition: NPRM

- (b)(5) Per ATF

(b)(5) Per ATF

ATF is in the process of developing a modernized definition that will address current and anticipated future firearm designs, and expects that a draft will be ready for internal DOJ review in approximately 90-100 days.

- OLP has received comments from Criminal Division and FBI; ATF is responding to those comments.

8) New ATF Chief-of-Staff

- Effective August (b)(6) Per ATF become Chief of Staff to ATF Acting Director Lombard (b)(6) Per ATF returned to ATF and the Department of Justice at the end of June, having spent 17 months leading the ATF Compliance team at Walmart. Prior to working in the private sector (b)(6) Per ATF spent four years at ATF, last serving as Senior Counsel for Field Operation (b)(6) Per ATF was an assistant U.S. attorney for a decade, working in the Eastern District of California and the Northern District of Georgia. During that time, she served two separate tours as the Justice Attaché at the United States Embassy, Baghdad, Iraq. She authored the Arson and Bombing chapter of the Violent Crime Prosecutor's Manual (EOUSA 2019) and teaches at FLETC, the National Center for Explosives Training and Research, and the DOJ National Advocacy Cent (b)(6) Per ATF began her legal career as a litigation associate at Sidley LLP in New York. She earned her JD from Northwestern University School of Law and holds a BA and MA from the University of Virginia.
- Joe Allen will continue working with the ATF Director's Office as Special Counsel to Acting Director Lombardo, and will continue handling ongoing matters with the Department during the transition to Co (b)(6) Per ATF

ATF DAG MONTHLY JULY 2020

Attachment A

FFL Burglary, Arson, and Arrest Tracking DATA

May 26 to July 27, 2020



Civil Unrest Data

ATF National Data of Arsons, FFL Burglary/Thefts, and Arrests, During
this Current Period of Civil Unrest

FMS 7/27/20

