



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 14, 2011

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This responds to your letter, dated June 8, 2011, to Acting Director Kenneth Melson of the Department's Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) demanding that the Department "produce all documents responsive to [your] March 31, 2011 subpoena by June 10, 2011, at 5:00 p.m." That subpoena requires the review of an extremely large number of documents relating both to Operation Fast and Furious, an ongoing investigation into gun trafficking in which 20 defendants are charged and awaiting trial, and to the active investigation into the murder of Customs and Border Patrol Agent Brian Terry.

The Department has recognized the Committee's legitimate oversight interest in the genesis and strategy pertaining to Fast and Furious. Yet we also have recognized that the Committee's remarkable approach – holding public hearings and releasing documents related to an ongoing criminal investigation and pending criminal cases – could negatively impact our ability to successfully prosecute gun traffickers and violent criminals, and that your subpoena implicates our responsibilities, long recognized by Congress, not to disclose the names of cooperating witnesses, the identities of confidential informants, uncharged targets, the details of investigative techniques and other sensitive law enforcement information and to comply with legal requirements to maintain the secrecy of grand jury materials, sealed court information and other such records.

We have worked assiduously to meet the Committee's needs – there has been no "refusal to comply". Rather, we have surveyed ATF employees, and collected over a million pages of records potentially within the scope of your subpoena. We have had to hire a document processing company and IT vendors at a substantial cost to process the voluminous materials so they could be put in a format to be electronically reviewed. We have diverted ATF and DOJ attorneys and staff from their regular duties for thousands of hours to review documents – not just for responsiveness, but also to identify documents and portions of documents that must not

be disclosed because they contain the type of sensitive law enforcement information described above.

In addition to this substantial commitment of resources, since the issuance of your subpoena, we have had a number of productive discussions with the Committee about our ongoing efforts to respond to the subpoena and have kept the Committee apprised of the logistical challenges we face. We have worked with the Committee to prioritize those documents of greatest interest – and your staff identified 19 individuals. We immediately focused our attention on implementing a process to search their records, particularly emails related to those individuals. We also have also briefed the Committee on various aspects of Fast and Furious, and we have sought ways to try to accommodate the Committee's need for information while at the same time working to ensure the confidentiality of sensitive law enforcement information. Towards that end, we have delivered documents to you and made additional sensitive documents, such as those relating to open criminal matters, available for review by Committee staff, consistent with the custom and practice of congressional committees under the leadership of both parties. And we have appreciated staff's willingness to make these reviews.

As set forth below, despite the volume of materials involved and the logistical difficulties presented by the need to protect live investigations and pending trials, our goal remains to give the Committee the information it needs to conduct its oversight responsibilities, consistent with our responsibilities, and it is not correct to say the Department is doing otherwise.

Department Efforts to Date

The Department is taking your request for information very seriously and has dedicated substantial resources to meet the Committee's needs. In the months since ATF began searching for the broad range of documents responsive to your subpoena, a team of Department attorneys and ATF professionals has been working on a full-time basis at ATF to preserve and identify responsive documents. We have undertaken this extraordinary process in order to respond to the Committee's oversight interest in the strategies relating to firearms trafficking investigations even though we are in the midst of major law enforcement efforts relating to the same matter, because we share your interest in resolving the allegations that have been raised. Because these strategies overlap with pending law enforcement efforts, however, we must be careful in our document review to ensure that our responses to the Committee's requests do not harm our pending prosecutions by prematurely disclosing information, by revealing investigative activities in a manner that would violate our legal and ethical duties, or by compromising the effectiveness of our investigations and the safety of the individuals involved. This means that all of the documents, including emails, that we identify as responsive to your subpoena, as well as the additional materials you have requested in other correspondence, must be carefully reviewed, evaluated and, in some instances, redacted.

These tasks have required extensive time and resources because the requested materials are voluminous. In addition to gathering, organizing, and processing data from the field in

response to your requests—at substantial additional cost for information technology expenses—our team has conducted a separate, targeted search for responsive documents in the emails of Agents William Newell, George Gillett, and David Voth, in accordance with guidance from Committee staff regarding your oversight priorities. In coordination with your staff, we also have implemented a process to search the emails of nineteen individuals at ATF (including Agents Newell, Gillett, and Voth) in whom staff has indicated a primary interest, and we have agreed with your staff to proceed with specified search terms in conducting the search of their email accounts.

In order to perform that search as quickly as possible, ATF has engaged an outside contractor at an additional expense. The contractor has recently completed the loading of the designated nineteen individuals' emails and attachments into its system and has advised us that the number of records loaded at this point exceeds 724,000. All of the potentially responsive emails must be reviewed to determine whether they are actually responsive in whole or in part, and then evaluated for disclosure to the Committee pursuant to our obligations as described above. We believe that these measures demonstrate our good faith efforts to respond to the Committee's subpoena as quickly as possible.

As you know, we have already made available ATF Agent Newell for an interview by Committee staff that took place on June 8th and we are prepared to make additional representatives available pursuant to the agreements we have reached regarding these interviews. In consultation with your staff we have focused our document search in a manner consistent with the Committee's priorities. In accordance with that guidance, we have delivered to your office 448 pages of documents to date, with limited redactions to protect the details of pending investigations, many of which are not appropriate for public disclosure.

To date, we also have made available for Committee staff review at the Department nearly 900 pages of material, also with limited redactions to protect our on-going law enforcement efforts. While our cover letters explain the basis for our redactions, we are always available to discuss them with Committee staff if that would be helpful. Committee staff should always feel free to raise any questions about redactions with us during their review of documents at the Department. We also expect to produce or make available additional documents later this week. We will keep your staff informed of our progress on other searches, including the email search described above and other searches.

The Six Numbered Requests Set Forth in Your Letter of June 8, 2011

In your June 8, 2010 letter you included six additional requests for documents. We have provided or are already working to provide you with most of the documents your June 8, 2011 letter itemizes, as follows. First, the reports that ATF submitted to the Organized Crime Drug Enforcement Task Force (OCDETF) in 2010 relating to Operation Fast and Furious have already been made available to your staff with limited redactions, and an ATF 2011 interim report to OCDETF is included in the materials to which we offered access yesterday. Second, the briefing books prepared for Acting Director Melson's trips to Arizona in 2010 have already been

provided to you electronically or otherwise made available to your staff, again with limited redactions to avoid compromise to our law enforcement efforts. Third, with respect to documents and communications between FBI personnel in Phoenix or Tucson and the FBI Laboratory related to firearms recovered during the investigation of Customs and Border Patrol Agent Terry's death, ATF will add this request to its ongoing search for records, but it would be helpful if you could identify ATF employees whom you believe are most likely to possess these records, if you have that information.

Your fourth and fifth requests, which relate to meetings, documents, and communications among ATF agents and Assistant United States Attorneys, also seek records from new individuals in addition to several who are already among the nineteen ATF employees whose email records are within our existing intensive search efforts. Since these two requests are likely to encompass communications that are central to our on-going investigation and pending prosecution, we would appreciate the opportunity to confer with your staff about how we can respond without jeopardizing the success of our law enforcement efforts. Finally, the March 5, 2010, presentation that you have requested is among the documents that we have offered to make available at the Department for your staff's review, as set forth in our letter of June 10, 2011.

Providing Access to Sensitive Documents Is a Standard Accommodation

Over the past two decades, we have on a number of occasions offered access to sensitive documents to congressional committee staff in a variety of oversight matters in order to provide committees with information of interest to them while preserving the confidentiality of the documents themselves. This has been a valuable tool in the accommodation process because it permits the Department to satisfy oversight needs for information while protecting the Department's confidentiality interests regarding further disclosure of the material. Committee staff have reviewed documents at the Department in oversight matters during Republican and Democratic Administrations, including the Committee on Government Reform and Oversight investigation pertaining to alleged FBI corruption in Boston (2002) as well as Judiciary Committee oversight investigations relating to the removal of United States Attorneys (2007), the New Hampshire Phone Jamming case (2008), and the replacement of a particular United States Attorney (2009). As in these and other oversight inquiries that involved committee subpoenas, we are also prepared to make particular documents to which we have provided access available for the Committee's use during interviews and hearings. We are prepared to discuss further accommodations regarding specific documents on a case by case basis if that is helpful to you.

As with previous oversight matters, we have not provided access to documents that contain detailed information about our investigative activities where their disclosure would harm our pending investigations and prosecutions. This includes information that would identify investigative subjects, sensitive techniques, anticipated actions, and other details that would assist individuals in evading our law enforcement efforts. Our judgments begin with the premise that we will disclose as much as possible that is responsive to the Committee's interests,

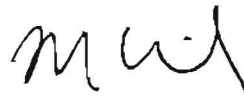
consistent with our responsibilities to bring to justice those who are responsible for the death of Agent Terry and those who violate federal firearms laws.

Conclusion

As indicated in our letter of June 10, 2011, we understand your interest in our completion of the document search as soon as possible, and we share that goal. In light of the pending investigations, however, we ask for your understanding that we are making an extraordinary effort in the extraordinary context of pending criminal investigations. We will continue our efforts and ask that you continue to work with us to find accommodations that meet both the Committee's oversight needs and the Department's needs to avoid harm to these pending investigations.

We hope this information is helpful and look forward to working with the Committee as this matter continues.

Sincerely,

A handwritten signature in black ink, appearing to read 'm w', is positioned above the printed name of the signatory.

Ronald Weich
Assistant Attorney General

cc: The Honorable Elijah Cummings
Ranking Member