

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

_____)	
JUDICIAL WATCH, INC.,)	
)	
Plaintiff,)	
)	Case No. 17-600 (CKK)
v.)	
)	
U.S. DEPARTMENT OF JUSTICE)	
)	
Defendant.)	
_____)	

**SUPPLEMENTAL DECLARATION OF PETER J. CHISHOLM,
ACTING CHIEF, DISCLOSURE DIVISION
BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES**

I, Peter J. Chisholm, do hereby declare and say:

1. I am the Acting Chief, Disclosure Division, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ). In this capacity, I receive all requests made of ATF under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the Privacy Act of 1974 (PA), 5 U.S.C. § 552a. In this capacity, I also review all requests referred to ATF from other agencies that have located ATF-originated documents in their records while processing their FOIA and PA requests. I am responsible for processing all FOIA and PA requests, initiating searches relevant to such requests, supervising the determination of what records should be disclosed, processing all documents referred to ATF and to other agencies, and recording all administrative appeals filed with ATF.

2. I declare that the statements made herein are based on knowledge acquired by me through the performance of my official duties. I am familiar with the procedures followed by this office in responding to the FOIA request made by Mr. William F. Marshall, on behalf of

Plaintiff Judicial Watch, Inc. (“Judicial Watch” or “Plaintiff”), which is the subject of this lawsuit.

Background

3. On March 30, 2015, the Disclosure Division received by mail a FOIA request dated March 9, 2015, from Mr. William F. Marshall, on behalf of Judicial Watch, for any and all records of communications, including but not limited to, emails, to or from employees or officials of ATF regarding, concerning, or related to the decision to revise the ATF 2014 Regulations Guide to no longer exempt 5.56mm, SS109 and M855 (i.e., “green tip” AR-15) ammunition from the definition of “armor-piercing” ammunition. The timeframe of the request was for the period March 9, 2014 to March 9, 2015.

4. On July 14, 2017, ATF released to Plaintiff 69 pages in part and 15 pages in full. Information was withheld from the documents released in part pursuant to 5 U.S.C. § 552(b)(5), (b)(6) and (b)(7)(C).

5. Of those 87 pages released, ten pages could be categorized as emails directly relating to the discovery of the publishing error in the 2014 Regulations Guide (discussed in my February 13, 2018 declaration at ¶ 6). The remaining 77 pages could be categorized as emails containing discussions and drafts of ATF’s statement on the publishing error and clarification that the publishing error which resulted in the omission of the green-tip ammunition did not mean that ATF had rescinded its previous classification. All emails released ranged in date from March 6, 2015 to March 8, 2015.

The Search, Review and Processing of Documents

6. As outlined above, Plaintiff’s FOIA request asked “for any and all records of

communications, including but not limited to, emails, to or from employees or officials of ATF regarding, concerning, or related to the decision to revise the ATF 2014 Regulations Guide to no longer exempt 5.56mm, SS109 and M855 (i.e., “green tip” AR-15) ammunition from the definition of “armor-piercing” ammunition from the period March 9, 2014 through March 9, 2015.

7. In the course of conducting searches for this material, the Disclosure Division sent search requests to the Directorates within ATF most likely to have responsive information - Office of Enforcement and Program Services (EPS), the Office of Chief Counsel, and the Office of Public and Governmental Affairs (PGA). Each Directorate used the same or similar search terms to conduct its search - armor piercing ammunition, 5.56, SS109, green tip, and regulations guide. Furthermore, each Directorate searched for documents using the timeframe parameters set by Plaintiff (March 9, 2014 to March 9, 2015).

8. Due to the broad nature of the searches, Bureau personnel uncovered a large volume of duplicative documents and non-responsive records. A part of ATF’s mission is to develop and deliver programmatic policy guidance and technical support related to firearms and explosives to all components of ATF. It also drafts the regulations that implement Federal firearms, explosives, alcohol diversion, and tobacco diversion laws within ATF’s area of responsibility. Because ATF’s mission primarily involves the regulation and criminal enforcement of firearms (among other things, but most relevant in this litigation), it was not unusual that the search terms used by the Directorates uncovered a large volume of documents, both duplicative and non-responsive. Thus, while the search terms used revealed a large number of potentially responsive documents, it was not until Disclosure Division personnel actually read the documents that it could truly be determined if the document was actually responsive to Plaintiff’s request.

Accordingly, during the course of the review process that material was determined to be non-responsive to Plaintiff's FOIA request and, therefore, was not released to Plaintiff. When performing its searches, ATF cast a wide net to ensure that Plaintiff received everything responsive to their request. Specifically, "any and all records of communications, including but not limited to, emails, to or from employees or officials of ATF regarding, concerning, or related to the decision to revise the ATF 2014 Regulations Guide to no longer exempt 5.56mm, SS109 and M855 (i.e., "green tip" AR-15) ammunition from the definition of "armor-piercing" ammunition."

9. The approximately 1,900 pages ultimately determined to be non-responsive, were carefully reviewed line-by-line for responsiveness by the Disclosure Division. After that extensive review was completed, these pages were set aside without additional processing because they were non-responsive. The non-responsive documents fell into such categories as, drafts and final versions of ATF talking points related to the Armor Piercing Ammunition Notice of Proposed Rulemaking (NPRM); emails and attachments discussing the classification of 5.56mm SS109 and M855 ammunition for the NPRM; and drafts and final versions of Questions for the Record subsequent to ATF Director B. Todd Jones' testimony before Congress, portions of which mention armor piercing ammunition. These documents were ultimately deemed non-responsive since, although they contained some of the broad search terms used, they were not related to any "decision to revise the ATF 2014 Regulations Guide to longer exempt 5.56mm, SS109 and M855 (i.e., 'green tip' AR-15) ammunition from the definition of 'armor-piercing' ammunition" since, as previously noted, no such decision was ever made.

10. The searches described above were conducted in all of the locations in which it is reasonably likely that responsive records would reside and using the search terms and methods

reasonably calculated to locate those documents. All of the documents that were responsive and fell within Plaintiff's specified timeframe (March 9, 2014 to March 9, 2015) were released to the Plaintiff.

11. It is my understanding from a plain reading of Plaintiff's FOIA request and based on discussions during the coordination and review of the search that because there was a publication error in the 2014 Regulations Guide resulting in an inadvertent omission, the records were limited to communications concerning that publishing error and the drafting of a public statement about said error, all of which occurred in or around March 2015. That explains the limited timeframe of the released documents. I have been informed that there are no other documents which address the decision to republish the ATF 2014 Regulations Guide which included an omission when originally posted. While Plaintiff may believe that there are more documents, I aver that the searches undertaken by ATF and coordination with the various Directorates involved with the underlying issue do not support their conclusion.

12. The FOIA request from Plaintiff was limited to the 2014 Regulations Guide, and made no mention of the 2015 Notice of Proposed Rulemaking on Armor Piercing Ammunition. The timing of the withdrawal of the Notice of Proposed Rulemaking and the publication of the 2014 Regulations Guide were not dependent on one other, but were merely coincidental.

Conclusion

20. ATF conducted a reasonable search for documents responsive to Plaintiff's specifically articulated and defined FOIA request. ATF properly gathered, reviewed for responsiveness, redacted, and released all information for the greatest degree of access.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 30th day of April, 2018.



Peter J. Chisholm
Acting Chief, Disclosure Division