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Transmitted via Email:

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ATF

Associate Chief Counsel (Field Operations and Information)
U.S. Department of Justice
Bureau of Alcohol, Tobacco, Firearms and Explosives

Re: Assistant Special Agent in Charge, George T. Gillett

Dear Mr. ATF

We are writing in response to the instructions recently received from your office regarding the information that our client, ASAC George Gillett, may permissibly disclose to Committee Staffers. While we appreciate the Agency's stated encouragement of ASAC Gillett's full and candid disclosure of matters within his personal knowledge to the Committee, we take issue with the "obligations of secrecy" that the Agency claims are applicable to any such disclosures. In support of its limitations on permissible disclosures, the Agency cites to the federal regulation codified at 28 C.F.R. 16.26. However, the Agency's proffered restrictions on such disclosures contradicts the plain language of the cited regulation, as the procedures set forth therein do not apply to disclosures made within the context of Congressional investigations.¹ Accordingly, the guidance proffered by the Agency is largely irrelevant to our client's communications with the Committee. If you are aware of any statute, rule or regulation that does, indeed, inhibit or restrict ATF employees' right to furnish Congress with information, we ask that you direct us to the same.

¹ See Amended Regulation Governing Production and Disclosure in Federal and State Proceedings 45 Fed. Reg. 83208 (December 4, 1980) (amending 28 C.F.R. 16.26, Subpart B). ("SUMMARY: This order amends Subpart B of Part 16 of Title 28, Code of Federal Regulations, to prescribe procedures with respect to the production or disclosure of material or information in response to subpoenas or demands of courts or other authorities, *except Congress*, in state and federal proceedings. The purpose of this amendment is to clarify the procedures *to be followed by Department of Justice employees* in responding to demands for Department information in state and Federal proceedings.") (emphasis added);

See also, 5 U.S.C. § 7211, which states "The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied."

Additionally, the timing of the Agency's propounded guidance is somewhat perplexing to us. Our confusion stems from the fact that we have, on multiple occasions, sought the Agency's guidance and input with respect to these matters and that these requests have been consistently ignored.

As you are aware, on February 8, 2011, we sent a letter to Acting Director Melson, addressing recent communications from Senator Grassley's office concerning Operation Fast and Furious and requesting the Agency's input and guidance with respect to these communications. On February 8, 2011, Acting Director Melson responded to our correspondence, via email, as follows:

Thank you for your correspondence. I have forwarded the letter to Chief Counsel's office for review and I have asked them to respond to your letter. Thanks.

After more than a week without any further acknowledgment or response from ATF Chief Counsel's office (or any member of Agency management), we again sought the Agency's assistance on behalf of our client. In a letter dated March 8, 2011, we communicated our intent to contact Senator Grassley's office. Further, we communicated that, "[w]e would greatly appreciate [the Agency's] assistance and guidance in attempting to bring these concerns to Senator Grassley's attention."

Again, our request for guidance and input was met with silence by ATF. Moreover, even after receiving notice on April 8, 2011, from Senator Grassley's office, the Agency failed to provide ASAC Gillett with any guidance regarding the restrictions imposed by ATF on any such disclosures. In light of the above and the recent public release of information provided by whistleblowers, the timing of today's letter from Chief Counsel's Office begs the question of whether these instructions were issued to the whistleblowers in an unlawful attempt to restrict or punish their communications with the Committee.

We have enclosed copies of the communications cited above for your convenience. If you have any questions or comments, please do not hesitate to contact us.

Very truly yours,

AVERY DOOLEY POST & AVERY, LLP



Peter H. Noone

PHN/caf
Enclosures

Cc. The Honorable Charles E. Grassley
Ranking Member
Senate Committee on the Judiciary

The Honorable Darrell Issa
Chairman
U.S. House Committee on Oversight and Government Reform