



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 6, 2011

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

The Honorable Charles E. Grassley
Ranking Minority Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman and Senator Grassley:

This responds to your letter to the Attorney General dated July 5, 2011. Contrary to the suggestion in your letter, the Department of Justice has in no way sought to limit the Committee on Oversight and Government Reform's (the "Committee") appropriate access to information concerning Operation Fast and Furious. Rather, like you, the Department is deeply interested in understanding the facts surrounding Operation Fast and Furious. That is why the Attorney General several months ago asked the Department's Inspector General to look into concerns raised about this Operation and why the Department has and will continue to cooperate with that ongoing independent inquiry. That is also why the Department has assigned dozens of attorneys and reviewers to work on the Committee's extremely broad requests for information about the Operation.

We are puzzled by your criticism of the Department for its efforts to facilitate the Committee's access to documents and witnesses. Indeed, those concerns seem flatly inconsistent with statements that Chairman Issa has made on this subject in the recent past. For example, in a Committee hearing on June 15, 2011, Chairman Issa recognized that the Department had facilitated a "breakthrough" on the production of information and said "we're thankful for the breakthrough." Yet, just a few weeks later and notwithstanding the Department's continued production of documents, that "breakthrough" has been re-characterized as an effort to prevent the Committee from receiving the information it requested.

Similarly, while your letter suggests that the Department has made it difficult for you to gain access to witnesses, that simply is not the case. The Committee requested that the Department make witnesses available for interviews on a voluntary basis and without need for subpoenas. The Department agreed to do so and this has been a significant benefit to the Committee, whose rules make interviews conducted pursuant to subpoena much more cumbersome. If the Department were attempting to make interviews more difficult, it would not have agreed to make witnesses voluntarily available. Indeed, as noted in your letter, Acting Director Melson was scheduled for just such a voluntary interview on July 13 when he instead appeared for two sessions over the Fourth of July weekend. Even beyond the Acting Director, a number of other voluntary interviews have either been conducted or are scheduled.

Your letter further questions why the Department took a lead role in managing the process through which information from ATF's files is provided to the Committee. The answer is that the Department wanted to ensure that the information being provided to the Committee was accurate, complete and timely. After Chairman Issa expressed frustration with the pace of document production during the early phase of his review, the Department added its resources to ATF's in order to speed the production of responsive materials and provide a mechanism for orderly access by the Committee to witnesses of the Committee's choosing. Regrettably, your letter unfairly criticizes both the Department's efforts to address the Committee's concerns and the integrity of the professionals at the Department who have worked long hours to make responsive information available to you. Such criticism is unjustified and does little to advance our mutual interest in learning the true facts surrounding this matter.

Your letter also suggests that the coordination process adopted by the Department is somehow an effort to "distort[] the truth" or "obstruct[]" the Committee's review. Nothing could be further from the truth, as Chairman Issa again recognized during the Committee's June 15th hearing. There, Chairman Issa said that he "share[s] [the Department's] concerns" about the provision of sensitive law enforcement information to the Committee because "once something comes over here, with the exception of the Select Intelligence Committee, it becomes much more problematic as far as review or release [by the Committee]." The Department continues to believe – as Chairman Issa did on June 15 – that the provision of certain sensitive law enforcement information to the Committee is problematic because, once in the Committee's possession, it is likely to become public. And, once public, such information could easily jeopardize ongoing law enforcement operations.

To date, hundreds of thousands of pages of documents have been reviewed for responsiveness and over 2000 pages of documents have either been produced to the Committee or made available for review and productions of more material are occurring on a near-daily basis. While we do not question the Committee's right to conduct appropriate oversight, we reject entirely any suggestion that our extraordinary efforts have been designed to limit – rather than facilitate – the Committee's access to information.

The Department has a legitimate interest in ensuring that its ongoing investigations and prosecutions are not compromised. Unfortunately, your letter completely ignores the Department's equities on that issue. We believe both sides can continue to work cooperatively to address the Department's and the Committee's concerns.

The Interview of Acting Director Melson

Your letter indicates that Acting Director Melson participated in a transcribed interview with Committee staff on July 4. Your letter fails to note, however, that Acting Director Melson also submitted to a three-hour interview by Committee staff on July 3 that was not transcribed. The Department of Justice learned of these significant facts for the first time last evening, when Acting Director Melson provided notice that these events had already occurred. Your letter recites that the interview was "extremely helpful to [y]our investigation" and that Acting Director Melson admitted "mistakes that his agency made and described various ways he says that he tried to remedy the problems." In addition, your letter explains that "it was not until after the public controversy [surrounding Operation Fast and Furious] that he personally reviewed hundreds of documents relating to the case..."

Relatedly, you express "disappoint[ment]" that, in your view, Acting Director Melson did not understand that he could have a private lawyer accompany him to an interview with the Committee. We believe that Acting Director Melson was aware of his right to private representation. The supposition of your letter is that Mr. Melson, who was a long-time Assistant United States Attorney, including service as the First Assistant in the Eastern District of Virginia, and in the Executive Office for U.S. Attorneys, did not understand that he could have a private lawyer accompany him to an interview. Lower-level employees of ATF have asked for representation by private counsel in connection with your inquiry and it seems unreasonable to suppose that Mr. Melson did not understand what appears quite clear to his subordinates.

Information Concerning Other Law Enforcement Agencies

Your letter raises concerns about the alleged role of other agencies in matters that you say touch on Operation Fast and Furious. Chairman Issa's staff previously raised this issue with representatives of the Department and it is my understanding that discussions about whether and how to provide any such sensitive law enforcement information have been ongoing. Again, such information – to the extent it exists -- is something that Chairman Issa has recognized should not simply be turned over to the Committee. Accordingly, this is not a matter of the Department attempting to keep any such material from the Committee for an improper purpose but a question of whether such material appropriately should be provided and, if so, how to best to protect ongoing investigations.

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We trust that this letter has addressed your concerns. Please do not hesitate to contact this office if we may be of further assistance on this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read "R Weich".

Ronald Weich
Assistant Attorney General

cc:

The Honorable Elijah E. Cummings
Ranking Member
Committee on Oversight and Government Reform
U.S. House of Representatives

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
U.S. Senate