

ATF SEARCH AND PRESERVATION EFFORTS

ATF is, and has been engaged in an extensive effort to locate, preserve, and produce as is appropriate, any and all responsive records identified in the Committee's subpoena dated March 31, 2011. ATF has combined the search for responsive records with the substantially similar and significant request for production of documents from the Department of Justice, Office of the Inspector General (OIG) in connection with their review of Operation Fast and Furious and certain firearms trafficking investigations. This undertaking has required ATF to make inquiry of each of their over 8,100 employees, task force officers and contractors for potentially responsive records. Given the sheer magnitude of this undertaking, ATF is unable to collect, categorize, review, and produce responsive records in the format requested by the Committee within the time frame established by the Committee's subpoena. ATF is working diligently to review the records submitted by their employees at this time, and will continue to produce those responsive records that may be disclosed to the Committee as they become available. ATF anticipates that a full review of the documents submitted for possible delivery to the Committee will take at least an additional four to five weeks.

With regard to your request that a preservation order be issued this has been accomplished. In connection with the OIG review ATF's Office of Professional Responsibility and Security Operations (OPRSO) issued, on March 28, 2011, a Preservation Directive for ATF Records Related to Operation Fast and Furious (Attachment 1). On April 5, 2011, ATF's Office of Chief Counsel issued an Electronically Stored Information Preservation Directive for ATF Operation Fast And Furious to technical points of contact in various ATF offices. (Attachment 2) On April 13, 2011, ATF's OPRSO expanded upon this preservation order and issued a Preservation Directive for ATF Records Related to Project Gunrunner (Attachment 3) inclusive of electronically stored information in response to your request of April 8, 2011.

You have asked ATF to describe the steps they have taken to obtain and preserve the records of interest to the Committee. ATF has taken a global approach to the production of responsive documents. On March 28, 2011, ATF's OPRSO issued instructions for the production of documents responsive to the OIG's March 25, 2011 document request. On March 31, 2011 the House Committee on Oversight and Government Reform (HCOGR) issued a subpoena for documents related to Operation Fast and Furious and the FBI investigation into the death of Border Patrol Agent Brian Terry.

ATF does not have an independent investigative file regarding the death of Border Patrol Agent Brian Terry. Any records related to the FBI investigation into that matter are related to and held within the Operation Fast and Furious case file and the Firearms Tracing System.

While the IG document request and the Committee subpoena are generally directed at the same investigation, they are distinctly different in their scope. To minimize the impact of these two document requests, facilitate production of responsive documents, and ensure the confidentiality of responses, ATF combined them into one request and created a system to secure responsive documents directly from each employee electronically.

To ensure that all responsive documents were submitted employees were instructed that:

“Regardless of any prior production of responsive documents to any entity inside or outside of ATF, everyone is required to produce any responsive documents, e-mails, etc. at this time. All responsive documents anywhere in the organization must be produced. Further, all documents must be fully produced. There is no authority for ATF to withhold records, or redact portions of records because we believe they are sensitive or confidential or privileged. The IG has statutory authority to obtain any and all records related to this review.” (Emphasis in the original)

The instructions also required that each field division Special Agent in Charge and each Assistant Director cause a search for responsive records be conducted by all employees under their supervision:

“Please carefully review both the attached OIG request for documents and the attached HCOGR request and forward to each office within your area of responsibility. These documents should be forwarded to each employee in every office under your supervision. While it is likely that most of the requested records will be housed at the Phoenix Field Division or Bureau headquarters, it is nonetheless critical that each SAC and HQ Official ensure a thorough search is conducted at each field and headquarters division and any responsive record is forwarded as instructed. Please err on the side of caution and be over inclusive in producing documents or information.”

Each field division Special Agent in Charge and each Assistant Director were also required to provide a certification that the required search was conducted:

“Also attached is a revised verification certification that covers document production for the OIG and the HCOGR which needs to be signed and dated by each SAC and HQ Official. If your division does not have responsive materials, please note “no responsive records found” on the certification and provide a copy of the signed document as instructed below.”

The following clarifying instructions regarding the scope of the search were issued:

Do not produce any of the following documents generally described as national policy documents (Headquarters has and will produce these documents):

The 2009 ONDCP National Southwest Border Counternarcotics Strategy

The Draft 2011 ONDCP National Southwest Border Counternarcotics Strategy

The Department of Justice Strategy for Combating the Mexican Cartels

The Department of Justice Firearms Manual

Any national ATF Orders, Briefs, Handbooks, or Guides

The ATF National Firearms Trafficking Enforcement Implementation Plan dated June 2009 and its transmittal memo

The ATF Cartel Strategy dated September 2010 and its transmittal memo

However, any additional guidance on any of the above topics issued at the directorate, division, field office, or branch level must be produced.

Do not produce any of the following documents generally described as NFORCE documents from the Fast and Furious case file (Headquarters has and will produce these documents):

Management Logs

Reports of Investigation

Significant Incident Reports

Affidavits

Anything currently contained in the Phoenix Field Division shared drive s:\Phoenix VII\785115-10-0004

However, any other responsive documents, e-mail, or communications related to Operation Fast and Furious maintained at the directorate, division, field office, or branch level must be produced.

ATF's National Field Office Case Information System (NFOCIS) consists of two separate reporting systems. The criminal case management system NFORCE contains all reports of investigation, significant incident reports, and administrative management records pertinent to Operation Fast and Furious. This system has redundant fail-over capability, has separate system back-ups and has had all reports extracted to CD-ROM at the direction of the OIG. The industry operations case management system NSPECT contains all reports of inspection, significant incident reports, and administrative management records pertinent to Federal Firearms Licensees that may have been encountered in Operation Fast and Furious. This system has redundant fail-over capability, and has separate system back-ups. ATF's Phoenix Field Division has a shared "common drive" that is used to house additional criminal case related documents. This shared work space also has completely redundant storage and back up, has had all documents extracted to a secure drive at ATF Headquarters, and has been duplicated on CD ROM for the OIG.

In addition, each ATF employee was instructed to search for and produce electronic copies of responsive documents to a secure shared computer drive titled "Fast and Furious Investigation." Within that drive, each employee or Task Force Officer (TFO) has a uniquely created folder specific to each employee/TFO that was automatically created when they logged in to their computer. Access to the employee folders was restricted to the individual employee. No one in the employee's supervisory chain had any ability to view, modify, add, or delete any item deposited in the folder. Employees are unable to view each other's folders. Once a document has been deposited into the folder it cannot be removed. A cadre of 14 users at ATF headquarters has the ability to access the 8,178 logical and user folders for purposes of identifying responsive documents to be produced to the Committee and the OIG.

In addition to the requirement for all employees to produce responsive e-mails, ATF has directed that all e-mail (without filtering for time period or content) be collected and maintained for all personnel assigned to the Phoenix Field Division, all personnel that served on details to the Phoenix Field Division as a part of the Gunrunner Impact Team, and select personnel in ATF Headquarters who may have had knowledge of or participated in the development of Project Gunrunner and/or Operation Fast and Furious. In total this represents the capture of all e-mail communications from 261 system users who could conceivably have responsive records,

including e-mail stored in personal file folders and e-mail restored from system archives dating back to July 1, 2009 who may have had any involvement with Project Gunrunner and Operation Fast and Furious. In addition, ATF has collected, at the direction of the OIG, all e-mail generated by 17 specified users assigned to Phoenix Group VII and ATF Headquarters. As of April 13, 2011, 209 of the 278 targeted system users e-mails have been captured.

Given the size and complexity of this undertaking, these collection efforts are ongoing. ATF anticipates that automated collection activities and the restoration of archived e-mail will be completed on or about April 18, 2011. Thereafter, it is estimated that it may take as long as two weeks to ingest all e-mail files, Bates number and de-duplicate the entries into Concordance to permit it to be searched. Preliminary estimates of the amount of time required to search for, identify, and produce responsive e-mails is an additional two weeks. Fully responsive production of the e-mail requested by the Committee is expected to be accomplished on or about May 16, 2011.

All of the aforementioned records are being collected and stored on a limited access, secure, redundant storage system that has been configured to a "read only" status to ensure the future availability of these records. In addition, substantial portions of this material (excluding e-mail) have already been produced on CD-ROM in read only format to the OIG. The full record of the matters in question has been preserved to the best of our knowledge and belief.

You have also requested that ATF endeavor to identify and notify former employees, contractors, sub-contractors or consultants who may have access to such electronic records that they are also to be preserved. In that regard, ATF has identified 327 employees who have separated from the bureau since July 1, 2009. From that list, ATF has identified 158 former employees who may have had reason to create or access records that are responsive to your request. ATF will cause our electronic storage archives to be reviewed for these 158 former employees and will secure any and all data contained therein. In addition, ATF will forward via U.S. Mail a request to the 158 former employees requesting that they preserve and submit copies of any responsive documents for inclusion in this records collection. ATF does not permit, and has no reason to believe, that any contractors, sub-contractors or consultants, have or could have responsive documents in their possession.

ATF has a compelling interest in ensuring that its investigative files are protected from unauthorized disclosure. ATF's disclosure restrictions fully comport with the longstanding position of the Department of Justice as it pertains to the release of materials contained in open criminal case files as articulated in then Assistant Attorney General Robert Raben's January 27, 2000 letter to Chairman John Linder of the Subcommittee on Rules and Organization of the House. (Attachment 4) Thus while we have endeavored to identify, capture, and preserve all responsive documents identified in the Committee's subpoena, and while there are no restrictions on the questions the Congress can ask, there are longstanding restrictions codified in law, regulation, Departmental, and ATF policy that address the disclosure of non-public information pertaining to open criminal investigations to the general public and to Congress. To the extent that we are able to disclose materials that are responsive to the subpoena we intend to do so. For the reasons outlined above, we are unable to produce all responsive documents by the subpoena response date. We look forward to working with the Committee to arrive at a mutually agreeable schedule for production of the records we are able to disclose.

We hope that this information is helpful. Please do not hesitate to contact this office if we may be of assistance in this or any other matter.

Sincerely,

Ronald Weich
Assistant Attorney General

cc: The Honorable Elijah E. Cummings
Ranking Member

The Honorable Patrick J. Leahy
Chairman, United States Senate, Committee on the Judiciary

The Honorable Charles E. Grassley
Ranking Member, United States Senate, Committee on the Judiciary

Attachments