

From: timothy.earley@atf.gov
To: [Bill Marshall](#)
Subject: [EXTERNAL] Final Response to ATF FOIA Request 2024-01073
Date: Wednesday, April 24, 2024 5:06:13 PM

04/24/2024

REFER TO: 2024-01073

Mr. William Marshall
425 3rd Street SW, Suite 800
Washington, DC 20024-3232

Dear Mr. Marshall:

This responds to your Freedom of Information Act (FOIA) request dated 4/16/2024, and received by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) on the same date, in which you requested records concerning Bryan Malinowski. Your request was assigned ATF tracking number 2024-01073. Please refer to this number in any future correspondence.

In response to your request, we processed a total of 55 pages of responsive material. Individual redactions identify the exemption pursuant to which the redacted material has been withheld. Please be advised that we considered the foreseeable harm standard when reviewing records and applying FOIA exemptions.

You requested material ATF is required to maintain pursuant to the Gun Control Act (GCA) and/or is information contained in ATF Firearms Trace System database. This information is exempt from disclosure pursuant to Exemption 3 of the FOIA and Public Law 112-55, 125 Stat. 552.

Exemption 3 of the FOIA permits the withholding of information prohibited from disclosure by another statute only if one of two disjunctive requirements are met: the statute either (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld. Thus, a statute falls within the exemption's coverage if it satisfies any one of its disjunctive requirements.

Beginning in 2003, Congress placed restrictions on ATF's disclosure of certain GCA related information. In short, ATF can only provide certain GCA data to a law enforcement agency or a prosecutor solely in connection with a criminal investigation or prosecution. Beginning in Fiscal Year 2006, Congress included a provision within each iteration of the restriction, which effectively made the law permanent.

The most recent iteration of these various restrictions was included in ATF's 2012 Appropriation Bill, Public Law 112-55, 125 Stat. 552. Some of the information in the requested records falls within this restriction. Because the Fiscal Year 2006 through 2008 restrictions satisfy all the requirements of FOIA Exemption 3, and the 2012 language is perpetuated from those restrictions, I am withholding

this information pursuant to 5 U.S.C. section 552 (b)(3) and Public Law 112-55, 125 Stat. 552.

We are withholding third party information, including the names of ATF employees, under FOIA Exemption 6. To disclose personal information about a living individual to a member of the public, we need the written consent from the person whose information you requested. Without written consent, proof of death, or an overriding public interest, personal information is exempt from disclosure under the FOIA. The FOIA does not require agencies to disclose information that would constitute a clearly unwarranted invasion of the personal privacy of third parties. See 5 U.S.C. § 552(b)(6).

We are withholding third party information, including the names of ATF employees, pursuant to Exemption 7(C) of the FOIA. Exemption 7(C) permits the withholding of information compiled for law enforcement purposes that “could reasonably be expected to constitute an unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(7)(C). The public interest in disclosure is limited to the FOIA’s core purpose of shedding light on an agency’s performance of its statutory duties. The public interest under Exemption 7(C) must be both significant and compelling in order to overcome the legitimate personal privacy interests of a third party. In this matter, the disclosure would not serve the core purpose of the FOIA but would serve as an unwarranted invasion of personal privacy. See 5 U.S.C. § 552(b)(7)(C).

We are withholding specific law enforcement codes, techniques, and procedures used in our investigation pursuant to Exemption 7(E) of the FOIA. Exemption 7(E) exempts from mandatory disclosure records or information compiled for law enforcement purposes when production of such records or information “would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.” 5 U.S.C. § 552(b)(7)(E). The information withheld reveals various law enforcement file numbers and codes which are primarily used to store and retrieve law enforcement information. The information withheld also reveals specific law enforcement procedures and techniques used in this investigation. Disclosure of this information could enable individuals outside of the agency to circumvent agency functions and gain access to sensitive investigative information.

At this time, the investigation relating to Bryan Malinowski is still open. Therefore, the remainder of your request is denied pursuant to 5 U.S.C. § 552(b)(7)(A) because it concerns an ongoing investigation. Exemption (b)(7)(A) authorizes us to withhold investigatory records or information compiled for law enforcement purposes, the release of which could reasonably be expected to interfere with enforcement proceedings.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

You may contact our FOIA Public Liaisons, Lynette Carter and Jasmine Bryant, at 202-648-7390 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the

Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website: <https://doj-foia.entellitrak.com/etk-doj-foia-prod/login.request.do>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Please use the following link to navigate to your documents. This link will be available for 365 days.

To retrieve the records associated with this request use this link [Released Documents for Request 2024-01073](https://www.securerelease.us/request-details/45E006BE-4E61-4AA9-823A-56BBEE184B69/2) or enter <https://www.securerelease.us/request-details/45E006BE-4E61-4AA9-823A-56BBEE184B69/2> in your browser's address bar.

Please login or create a new user account using the email address associated with your records request: bmarshall@judicialwatch.org

Sincerely,

Elizabeth A. Wood
Acting Chief
Information and Privacy Governance Division