

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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<http://oversight.house.gov>

August 9, 2019

Ms. Regina Lombardo
Acting Deputy Director
Bureau of Alcohol, Tobacco, Firearms and Explosives
1401 H Street, N.W.
Washington, D.C. 20005

Dear Ms. Lombardo:

The Committee on Oversight and Reform is investigating gun violence in the United States. This weekend our country suffered two unspeakable tragedies that took the lives of 31 people in Dayton, Ohio, and El Paso, Texas.¹ These shootings are the latest in a national gun violence crisis that has grown over the past two decades. Since 1999, violence using guns has killed more than 200,000 Americans, while an additional 350,000 Americans have died from gun-related suicides.² In 2017, nearly 40,000 Americans died from guns—the highest number in at least 50 years—including nearly 15,000 homicides.³ Of those homicides, more than 900 were children.⁴ Americans are now ten times more likely to be killed by guns than people in other developed nations.⁵

Gun violence has caused communities across the country to suffer from the tragic loss of lives as well as the erosion of security in our public spaces, places of worship, offices, and our children's schools. This cannot be allowed to continue unchecked.

¹ *Gunman Kills 9 in Dayton Entertainment District*, New York Times (Aug. 4, 2019) (online at www.nytimes.com/2019/08/04/us/dayton-ohio-shooting.html); *El Paso Shooting Death Toll Rises to 22*, CNBC (Aug. 5, 2019) (online at www.cnbc.com/2019/08/05/el-paso-shooting-death-toll-rises.html).

² Center for Disease Control and Prevention WONDER, *Underlying Cause of Death, 1999-2017 Results* (online at <https://wonder.cdc.gov/ucd-icd10.html>).

³ *Nearly 40,000 People Died From Guns in U.S. Last Year, Highest in 50 Years*, New York Times (Dec. 18, 2018) (noting that about 37% of the 39,773 gun deaths in 2017 were from homicides, while 60% were from suicides) (online at www.nytimes.com/2018/12/18/us/gun-deaths.html).

⁴ Center for Disease Control and Prevention WONDER, *Underlying Cause of Death, 2017 Results* (online at <https://wonder.cdc.gov/ucd-icd10.html>).

⁵ See, *Deaths from Gun Violence: How the U.S. Compares with the Rest of the World*, National Public Radio (Nov. 9, 2018) (online at www.npr.org/sections/goatsandsoda/2018/11/09/666209430/deaths-from-gun-violence-how-the-u-s-compares-with-the-rest-of-the-world); *How U.S. Gun Deaths Compare to Other Countries*, CBS News (Feb. 3, 2016) (online at www.cbsnews.com/news/how-u-s-gun-deaths-compare-to-other-countries/).

Many of the guns used in homicides and other violent crimes are sold by a small number of gun dealers. In 2000, a study by the Bureau of Alcohol, Tobacco, and Firearms—now the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)—found that just 1% of gun dealers were responsible for nearly 60% of guns recovered at crime scenes—and slightly more than 5% of gun dealers were responsible for selling nearly 90% of those guns.⁶ Many guns involved in crimes are sold by federal firearms licensees (FFLs) to straw purchasers or unlicensed sellers who then transfer those guns to people who commit violent crimes.

The Committee is gravely concerned that current law enforcement efforts are not adequately addressing this crisis. In 2018, there were 135,314 FFLs in the United States, but ATF conducted firearm compliance inspections for only 10,323 or 7.6%. Even this limited set of inspections identified thousands of potentially serious violations, including failure to properly document a purchaser's identification, failure to report multiple handgun sales, and failure to contact the National Instant Criminal Background Check System and wait the mandatory time prior to sale. However, less than 1% of these inspections led to meaningful enforcement actions. In 2018, only 83 inspections led to recommendations that licenses be surrendered, revoked, or denied.⁷

The Committee is seeking to better understand enforcement efforts with respect to FFLs that sell large numbers of guns that are used in crimes, including homicides. This investigation will inform Congress's ability to make changes in federal law that save lives.

Please produce documents by August 22, 2019, for the period from January 1, 2014, through the present:

1. For each state and U.S. territory, documents sufficient to show:
 - a. the top five FFLs in that state or territory responsible for the sale of firearms recovered in crimes during this period;
 - b. the top five FFLs, regardless of their location, responsible for the sale of firearms recovered in crimes within that state or territory during this period;
 - c. for each FFL identified in 1(a) and 1(b), documents sufficient to show:
 - i. the name and location of the FFL;
 - ii. the number of guns sold by each FFL that were involved in crimes with a time-to-crime of five years or less;

⁶ Bureau of Alcohol, Tobacco and Firearms, *Commerce in Firearms in the United States* (Feb. 2000) (online at www.joebrower.com/RKBA/RKBA_FILES/GOV_DOCS/BATF_report_020400.pdf).

⁷ Bureau of Alcohol, Tobacco and Firearms, *Fact Sheet – Facts and Figures for fiscal Year 2018* (May 2019) (online at www.atf.gov/resource-center/fact-sheet/fact-sheet-facts-and-figures-fiscal-year-2018).

- iii. the number of guns sold by each FFL that were involved in crimes with a time-to-crime of five years or less that were sold in a multiple sale;
 - iv. a breakdown of the guns described in Request 1(c)(ii), above, by the zip code where the guns were recovered;
 - v. the number of homicides, assaults, and assault and batteries committed with the guns described in Request 1(c)(ii);
 - vi. the average time-to-crime of firearms recovered in crimes for each FFL identified in 1(a) and 1(b); and
- d. all inspection reports during this period for each FFL identified in 1(a) and 1(b);
2. All inspection reports by ATF for FFLs during this period where an industry operations investigator recommended an administrative action or remedial action, including but not limited to, a warning letter, a warning conference, revocation, or nonrenewal, including documents sufficient to show:
- a. the name and location of FFL involved;
 - b. the recommendations resulting from the inspection;
 - c. the violations identified; and
 - d. any enforcement actions or other steps taken following the inspection.

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X.

Please note that disclosure of the requested information to Congress is not restricted by law.⁸ Moreover, ATF has previously released similar information.⁹

⁸ Restrictions in federal appropriations law regarding the disclosure of Firearms Trace System database information do not apply to disclosures to Congress. A disclosure to Congress does not constitute a public disclosure, and documents may not be withheld from Congress based on laws that restrict public disclosure. See, e.g., *Exxon Corp. v. Federal Trade Com.*, 589 F.2d 582 (D.C. Cir. 1978); *Federal Trade Com. v. Owens-Corning Fiberglas Corp.*, 626 F.2d 966, 971; Congressional Research Service, *Congressional Oversight Manual* (Dec. 19, 2014) (“Accordingly, it appears unlikely that a reviewing court would interpret a statute as restricting Congress’s access to information unless the statute is express and unambiguous.”) (online at <https://fas.org/sgp/crs/misc/RL30240.pdf>). Congress enacted restrictions on the publication of firearm trace data in 2003, in a provision known as the Tiahrt Amendment. H. R. 2673, 108th Cong. (2004), and narrowed those restrictions in the Consolidated Appropriations Act, 2008 (P.L. 110-16) and again in the Consolidated Appropriations Act, 2010 (P.L. 111-117). The provision does not address requests from Congress, and contemporaneous evidence makes clear that those restrictions were intended to prevent public disclosures, not

An attachment to this letter provides additional instructions for responding to this request. If you have any questions, please contact Committee staff at (202) 225-5051.

Thank you for your attention to this matter.

Sincerely,


Elijah E. Cummings
Chairman

Enclosure

cc: The Honorable Jim Jordan, Ranking Member

disclosures to Congress. For example, in 2004, Rep. Tiahrt said the purpose of the amendment was to prevent access of data by “criminals” and to protect informants and undercover officers. He stated, “when this data is released, the database can be searched by criminals. A criminal who uses straw purchasers can search this database and say, ‘Oh, they got this guy, I’ll go find another straw purchaser.’” *Appropriations: House Panel Moves C-J-S Bill, Setting Stage for Floor Debate On Gun Ownership Records*, Congressional Quarterly Weekly (June 26, 2004). In addition, disclosure of aggregate information is not restricted by law. Consolidated Appropriations Act 2010, Pub. L. No. 111–117 (2009) (“this proviso shall not be construed to prevent ... the publication of ... statistical aggregate data regarding firearms traffickers and trafficking channels, or firearms misuse, felons, and trafficking investigations.”).

⁹ For example, ATF has previously released reports and other documents from inspections of gun dealers. See Minute Entry, *Brady Center to Prevent Gun Violence v. Department of Justice*, 1:17-cv-02130-RDM (D.D.C. Dec. 21, 2017); see also, *When Guns Are Sold Illegally, A.T.F. Is Lenient on Punishment*, New York Times (June 3, 2018) (online at www.nytimes.com/2018/06/03/us/atf-gun-store-violations.html); Bureau of Alcohol, Tobacco and Firearms, Documents Related to Inspection of Gun World (2016) (online at <https://static01.nyt.com/files/2018/us/ATF-report-gun-world.pdf?authuser=1>).

Responding to Committee Document Requests

1. In complying with this request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.
2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Committees.
3. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, the request shall be read also to include that alternative identification.
4. The Committees' preference is to receive documents in electronic form (i.e., CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions.
5. Documents produced in electronic format should be organized, identified, and indexed electronically.
6. Electronic document productions should be prepared according to the following standards:
 - a. The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - b. Document numbers in the load file should match document Bates numbers and TIF file names.
 - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - d. All electronic documents produced to the Committees should include the following fields of metadata specific to each document, and no modifications should be made to the original metadata:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,

INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,
BEGATTACH.

7. Documents produced to the Committees should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.
8. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the request was served.
9. When you produce documents, you should identify the paragraph(s) or request(s) in the Committees' letter to which the documents respond.
10. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.
11. The pendency of or potential for litigation shall not be a basis to withhold any information.
12. In accordance with 5 U.S.C. § 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
13. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.
14. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
15. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) every privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the privilege(s) asserted.
16. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients), and explain the circumstances under which the document ceased to be in your possession, custody, or control.
17. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

18. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.
19. All documents shall be Bates-stamped sequentially and produced sequentially.
20. Two sets of each production shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee on Oversight and Reform, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2105 of the Rayburn House Office Building. When documents are produced to the Committee on Financial Services, production sets shall be delivered to the Majority Staff in Room 2129 of the Rayburn House Office Building and the Minority Staff in Room 4340 of the O'Neill House Office Building. When documents are produced to the Permanent Select Committee on Intelligence, production sets shall be delivered to Majority and Minority Staff in Room HVC-304 of the Capital Visitor Center.
21. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a

part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
4. The term “including” shall be construed broadly to mean “including, but not limited to.”
5. The term “Company” means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.
6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; (b) the individual’s business or personal address and phone number; and (c) any and all known aliases.
7. The term “related to” or “referring or relating to,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
8. The term “employee” means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
9. The term “individual” means all natural persons and all persons or entities acting on their behalf.