

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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<http://oversight.house.gov>

June 27, 2018

Mr. Thomas E. Brandon
Deputy Director
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue, NE
Washington, DC 20226

Dear Mr. Brandon:

The Committee has been conducting oversight into how the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) manages its confidential informants and income-generating operations. Based on the Department of Justice Office of the Inspector General's reports,¹ public reports,² and litigation in United States District Court for the Eastern District of North Carolina relating to questions of racketeering,³ the Committee has been reviewing the process of how ATF oversees its informants and income-generating operations.

As part of its oversight, the Committee requested documents and information to help shed light on ATF's practices and policies.⁴ ATF has produced many of these documents. Over the past few months, however, the majority of these documents were produced only after a court order in *New York Times v. ATF*.⁵ These documents should have been produced to the Committee last year. Further, many of these documents were redacted, sometimes heavily redacted, requiring the Committee to view them *in camera*.

¹ See INSPECTOR GEN., DEP'T. OF JUSTICE, No. 1-2009-005, THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES' EFFORTS TO PREVENT THE DIVERSION OF TOBACCO 36 (2009) (recommending (i) assessment of the scope of tobacco diversion in each field division, (ii) consideration of re-instituting a program coordinator for tobacco diversion in each field office, and (iii) establishment at Bureau headquarters of a national tobacco diversion point of contact for the field offices), <https://oig.justice.gov/reports/ATF/e0905.pdf>; see also INSPECTOR GEN., DEP'T. OF JUSTICE, AUDIT REP. 13-36, AUDIT OF THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES' USE OF INCOME GENERATING, UNDERCOVER OPERATIONS i (2013), <https://oig.justice.gov/reports/2013/a1336.pdf>.

² See Matt Apuzzo, *ATF Filled Secret Bank Account With Millions From Shadowy Cigarette Sales*, N.Y. TIMES (Feb. 22, 2017), <http://nyti.ms/2lFralu>; see also Mat Apuzzo, *'I Smell Cash': How the A.T.F. Spent Millions Unchecked*, N.Y. TIMES (Sept. 8, 2017), <https://www.nytimes.com/2017/09/08/us/atf-tobacco-cigarettes.html>.

³ See *U.S. Tobacco Cooperative, Inc. v. Big South Wholesale of Virginia, LLC*, Civ. No. 5:13-cv-00527-F (E.D. N.C. Feb. 8, 2017).

⁴ Letter from Rep. Jason Chaffetz, Chairman, H. Comm. on Oversight and Gov't Reform to Thomas Brandon, Acting Dir., Bur. of Alcohol, Tobacco, Firearms, and Explosives (Feb. 22, 2017).

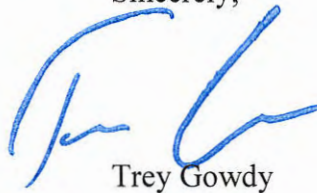
⁵ *New York Times Co. v. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, No. 1:17-cv-02144, *dismissed* (S.D.N.Y. 2018).

The Committee requests ATF expedite production of the unredacted documents responsive to its requests. To reconcile numerous different factual accounts, the Committee informally requested ATF to make certain witnesses available for transcribed interviews. ATF refused. I am reiterating the Committee's request that ATF schedule the following individuals for transcribed interviews no later than July 9, 2018:

1. Jeff Cohen;
2. William Duke;
3. Ryan Kaye;
4. Thomas Lesnak; and
5. James Whitmore.

Please contact the Committee immediately to arrange for electronic production of the documents and to schedule the transcribed interviews. If interviews are not scheduled by the prescribed deadline, I will consider the use of compulsory process. An attachment to this letter provides additional instructions about responding to this request. If you have any questions regarding this request, please contact Jessica Donlon of the Majority staff at (202) 225-5074.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Trey Gowdy', is written over the word 'Sincerely,'.

Trey Gowdy

Enclosure

cc: The Honorable Elijah E. Cummings

Responding to Committee Document Requests

1. In complying with this request, you are required to 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. You should also produce 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. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. 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 Committee should include the following fields of metadata specific to each document:

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.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.

7. 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.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. 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.
12. 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) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. 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, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.
16. 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.
17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.

19. Upon completion of the document production, you should 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 which 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, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other 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, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, 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 which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.

5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term “referring or relating,” 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.
7. The term “employee” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.

**COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES
115TH CONGRESS**

NOTICE OF APPEARANCE OF COUNSEL

Counsel submitting: _____

Bar number: _____ **State/District of admission:** _____

Attorney for: _____

Address: _____

Telephone: (_____) _____ - _____

Pursuant to Rule 16 of the Committee Rules, notice is hereby given of the entry of the undersigned as counsel for _____ in (select one):

All matters before the Committee

The following matters (describe the scope of representation):

All further notice and copies of papers and other material relevant to this action should be directed to and served upon:

Attorney's name: _____

Attorney's email address: _____

Firm name (where applicable): _____

Complete Mailing Address: _____

I agree to notify the Committee within 1 business day of any change in representation.

Signature of Attorney

Date