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Restrictions Imposed on the Release of Crime Gun Trace Data by the “Tiahrt Amendment” are a Substantive Change in the Freedom of Information Act (FOIA)

For the past 10 fiscal years (FY 2004 through FY 2013), legislation making appropriations for the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has contained language (the “Tiahrt Amendment”) severely restricting the release of information related to guns traced to crime scenes contained in the agency’s Firearms Tracing System database.

For many years, crime gun tracing data was publicly available under the provisions of the Freedom of Information Act (FOIA) and was routinely used by law enforcement agencies, city officials, and researchers to pinpoint the sources of illegally trafficked firearms and to identify corrupt gun dealers and the types of guns most often traced to crime. The “Tiahrt Amendment” prohibits ATF from releasing any data contained in the crime gun database, except on a limited basis to individual law enforcement agencies. There is also a prohibition on use of the data in civil litigation. The “Tiahrt Amendment” represents a completely unwarranted restriction on public access to information.

Proponents of the “Tiahrt” restrictions claim that the release of tracing data could interfere with ongoing law enforcement investigations. However, prior to implementation of the “Tiahrt Amendment,” exemptions to the FOIA already enabled ATF to withhold any information that could interfere with law enforcement investigations. The FOIA explicitly protects from disclosure any information that:

could reasonably be expected to interfere with enforcement proceedings; could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source; 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; or could reasonably be expected to endanger the life or physical safety of any individual.¹

When, prior to the “Tiahrt Amendment,” the agency did release information to the public from the Firearms Tracing System, only a “Trace Data FOIA Extract” was released that included “only FOIA disclosable data elements.”

Even then, in 2002, a federal court of appeals held that ATF was overly broad in interpreting the FOIA’s exemption for law enforcement proceedings and had improperly

¹ 5 USC §552(b)(7).

withheld from the City of Chicago some information the city had requested contained in the Firearms Tracing System database. In ordering ATF to release the information, the court rejected ATF's contention that the withheld information fell within the FOIA's law enforcement exemption. The court stated:

ATF's hypothetical scenarios do not convince us that disclosing the requested records puts the integrity of any possible enforcement proceedings at risk....ATF has provided us with only far-fetched hypothetical scenarios...[A]rguments that the premature release of this data might interfere with investigations, threaten the safety of law enforcement officers, result in the intimidation of witnesses, or inform a criminal that law enforcement is on his trail are based solely on speculation.²

After the "Tiaht Amendment" was attached to ATF's appropriations legislation, the same court was forced to reconsider its ruling ordering release of the firearm trace data. The court ruled that the "Tiaht Amendment" protected the information from disclosure, but also stated that **"the 2005 Act amounts to a change in substantive FOIA law in that it exempts from disclosure data previously available to the public under FOIA."**³ [emphasis added]

The "Tiaht Amendment" restrictions on the release of crime gun trace data serve only to withhold information that was historically available to the public and policymakers under the Freedom of Information Act. Release of the data serves the public interest in that it provides a mechanism to evaluate ATF's effectiveness, helps control gun trafficking, and aids cities' ability to enforce their gun laws. Only the gun lobby and criminals benefit from its non-disclosure.

² *City of Chicago v. United States Department of Treasury, Bureau of Alcohol, Tobacco and Firearms*, 287 F.3d 628; 2002 U.S. App. LEXIS 7537 (7th Cir. 2002).

³ *City of Chicago v. United States Department of the Treasury, Bureau of Alcohol, Tobacco, Firearms and Explosives*, 423 F.3d 777, 2005 U.S. App. LEXIS 19576 (7th Cir. 2005).