

Congress of the United States
Washington, DC 20515

July 11, 2011

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Attorney General Holder:

We have recently learned that the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) has afforded potential witnesses for the Committees' investigation into Operation Fast and Furious access to a shared drive on its computer system replete with pertinent investigative documents, including official ATF e-mails. Although, our staff has been advised the Department has since terminated access to this document cache, we write to seek additional information relating to this egregious decision. We also ask that you promptly self-report this matter to the Office of Inspector General (OIG).

As we understand it, the shared drive contains the documents that have been produced to the Committees through the course of our investigation, those made available for *in camera* review and possibly documents that the Department of Justice (DOJ) has not yet provided to the Committee. These witnesses had not previously seen many of these documents.

Allowing witnesses access to such documents could taint their testimony by allowing them to tailor their responses to what they think the Committees already know. Additionally, witnesses who gain access to documents they have not previously seen could alter their recollection of events. This practice harms not only our investigation, but also the independent investigation that you instructed the Inspector General to conduct.

One witness who had access to these documents informed us of this questionable practice:

Q. What other documents have you gone through other than your emails?

A. A couple of the things that have been produced. They put a link on our computer, some kind of drive that I can click on and read things that have been produced. So I do that every once in a while, but not normally.

Q. And so what is the purpose of that, to your knowledge?

A. Just to refresh my recollection about what is out there, you know.

Q. So you have a link on your computer so that you know what we have been provided by Justice?

A. Yes. There is a link in our computer for Gunrunner, Fast and Furious produced to Congress, and there is updates every once in a while of those documents that are being produced.¹

Yet in a May 5, 2011 meeting with Committee staff, an Associate Deputy Attorney General expressed the Department's concern that the Committee might allow witnesses exposure to documents they had not previously seen. He further stated:

To the extent that you nevertheless plan to interview our trial witnesses prior to trial, we would appreciate you taking the following steps to help reduce the risk of harm to the case that could arise from such interviews. First . . . we ask that you not show the witnesses new documents, as exposing the witnesses to facts that are not already within their personal knowledge may contaminate their recall of events. Second, for the same reasons, we ask that you not orally convey facts to the witness of which the witness was previously unaware.²

In essence, it appears that DOJ did to witnesses in our investigation precisely what it asked us not to do to witnesses in its investigation.

Please provide answers to the following questions no later than Monday, July 18, 2011 at noon:

1. Identify which ATF and DOJ employees had access to this shared drive.
2. Provide a log of documents and the date each document was posted to the shared drive.
3. Provide a log of any other documents relating to this investigation, not on the shared drive, to which these employees had access.
4. Provide the dates for which these employees had access to the shared drive.
5. Identify those employees who still have access to this information.

In order to mitigate any harm that may have been caused to the OIG investigation, please also send your responses to the OIG.

¹ Transcript of William McMahon, Deputy Assistant Director for Field Operations, at 96 (June 28, 2011).

² E-mail from Associate Deputy Attorney General [Name Redacted] to Chief Counsel for Investigations, H. Comm. on Oversight and Gov't Reform Steve Castor (May 17, 2011).

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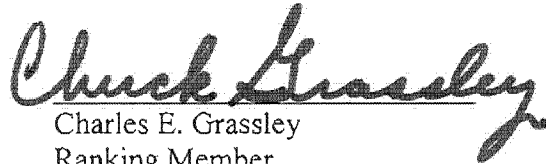
Page 3

If you have any questions about these requests, please contact Brian Downey in Ranking Member Grassley's office at (202) 224-5225 or Henry Kerner or Jean Humbrecht in Chairman Issa's office at (202) 225-5074. Thank you for your attention to this important matter.

Sincerely,



Darrell Issa
Chairman
Committee on Oversight and Government Reform
United States House of Representatives



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

cc: The Honorable Elijah E. Cummings, Ranking Minority Member
Committee on Oversight and Government Reform
United States House of Representatives

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

Ms. Cynthia A. Schnedar, Acting Inspector General
U.S. Department of Justice, Office of Inspector General