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Via email to PIAOpengov@oag.state.md.us

Public Information Act Compliance Board
c/o Office of the Attorney General
200 St. Paul Place
Baltimore, Maryland 21202

Re: PIACB Complaint No. 23-29

Dear Public Information Act Compliance Board:

Please accept this letter as the response from the Frederick County Sheriff's Office regarding a complaint filed with the Board by Eric Beasley.

Background

On April 5, 2023, Mr. Beasley submitted a Public Information Act request to the Frederick County Sheriff's Office. He requested:

Any and all documents with FCSO letterhead which contain the word "machine gun" which were created between August 2015 and May 2022.

In a May 5 letter, the Sheriff's Office granted in part and denied in part the request. One record was disclosed, and twelve records were not disclosed, on certain state and federal law grounds.

On May 16, Mr. Beasley requested mediation with the Public Access Ombudsman. The Sheriff declined mediation on the grounds of its original denial, and on May 25, the Ombudsman issued a final determination. Seven days later, on June 1, Mr. Beasley filed a complaint with the Board.

Response

The Sheriff's Office properly denied Mr. Beasley's request for "[a]ny and all documents with FCSO letterhead which contain the word 'machine gun.'" As detailed in the Sheriff's Office response, and explained further below, the requested records are exempt from disclosure under state and federal law.

Since 1934,¹ the United States Congress has regulated the manufacture, possession, and transfer of machine guns. *See* National Firearms Act of 1934, Pub. L. No. 73-474, 48 Stat. 1236. The disclosure of certain information about machine guns is therefore subject to both the Maryland Public Information Act, Md. Code Ann., Gen. Prov. §§ 4-101 to 4-601 and the Freedom of Information Act, 5 U.S.C. § 552.

The twelve records that were withheld fall into three categories, discussed below.

1. Sale of Regulated Firearms

One record is a letter that documents the sale of handguns by the Sheriff's Office. "[A] custodian shall deny inspection of all records of a person authorized to . . . sell, purchase, rent, or transfer a regulated firearm under Title 5, Subtitle 1 of the Public Safety Article . . ." Gen. Prov. § 4-325(a)(1). Handguns are regulated firearms. Pub. Safety § 5-101(r)(1). The Sheriff's Office therefore properly denied inspection of this record.

2. Tax Returns or Return Information

Two records are applications for the tax-exempt transfer and registration of firearms, or ATF Form 5.² These forms are exempt from disclosure under the Freedom of Information Act as tax returns or return information under 26 U.S.C. § 6103. *See Baranski v. United States*, No. 4:11-CV-123 CAS, 2015 WL 3505517, at *8 n.7, *11 (E.D. Mo. June 3, 2015) (noting that Documents 37 and 38 on a list of non-disclosed documents are "ATF Form 5" and concluding that Documents 37 and 38 "are prohibited from disclosure as returns or return information under 26 U.S.C. § 6103"). And although "[t]he confidentiality of tax return information is not absolute, *id.* at *8, Mr. Beasley does not qualify for any exception to non-disclosure: he is not the taxpayer, a State

¹ One year earlier, Maryland enacted the Uniform Machine Gun Act, which requires that machine guns be registered and imposes additional criminal penalties if machine guns are used in the commission of other crimes. *See* Md. Code Ann., Crim. Law §§ 4-401 to 407; *Chow v. State*, 393 Md. 431, 455-56 (2006) (summarizing history of Uniform Machine Gun Act).

² For a sample form, see <https://www.atf.gov/firearms/docs/form/form-5-application-tax-exempt-transfer-and-registration-firearm-atf-form-53205/download>.

tax official, a State or local law enforcement officer, or a person having a material interest. *See* 26 U.S.C. § 6103(c)-(e). The Sheriff's Office therefore properly denied inspection of these records because disclosure would be contrary to federal law. *See* Gen. Prov. § 4-301(a)(2)(ii).

3. Federal Firearms Licenses

Finally, nine records are letters from the Sheriff's Office to federal firearms licensees requesting demonstrations of various firearms. Federal law requires licensees to maintain these letters. *See* 18 U.S.C. § 923(g) (requiring importers, manufacturers, and dealers to "maintain such records of importation, production, shipment, receipt, sale, or other disposition of firearms at his place of business . . ."). Any information "kept by licensees pursuant to [18 U.S.C.] 923(g) . . . shall be immune from legal process, [and] shall not be subject to subpoena or other discovery . . ." ³ Consolidated and Further Continuing Appropriations Act of 2012, Pub. L. No. 112-55, 125 Stat. 552, 609-10 (2011). *See also Everytown for Gun Safety Support Fund v. Bureau of Alcohol, Tobacco, Firearms and Explosives*, 984 F.3d 30, 40 (2d Cir. 2020) (concluding that "no appropriated funds may be used to disclose [firearms trace database information] and other specified information collected by the ATF and that 'all such data shall be immune from legal process'"); *Caruso v. U.S. Bureau of Alcohol, Tobacco & Firearms*, 495 F. App'x 776, 778 (9th Cir. 2012) (finding that the Consolidated Appropriations Act of 2010 "explicitly bars the ATF from disclosing any information required to be kept by licensees under" 18 U.S.C. § 923(g)); *City of Chicago v. U.S. Dep't of Treasury, Bureau of Alcohol, Tobacco and Firearms*, 423 F.3d 777, 781-82 (7th Cir. 2005) (same conclusion as to Consolidated Appropriations Act of 2005).

The Sheriff's Office therefore properly denied inspection of these records because disclosure would be contrary to federal law. *See* Gen. Prov. § 4-301(a)(2)(ii).

Thank you for the opportunity to submit this letter and for your attention to this matter. If you require further information, please do not hesitate to contact me.

Sincerely,



Kirstin Lustila

Assistant Attorney General

cc: Eric Beasley (via email)

³ Licensees may disclose this information to "a Federal, State, local, or tribal law enforcement agency," but no such entity "shall knowingly and publicly disclose such data." Pub. L. No. 112-55, 125 Stat. 552, 610 (2011).