STATE OF MARYLAND
PUBLIC INFORMATION ACT COMPLIANCE BOARD

PIACB 23-29
August 14, 2023
Frederick County Sheriff's Office, Custodian
Eric, Complainant

The complainant, Eric Beasley, sent a Public Information Act ("PIA") request to the Frederick County Sheriff's Office ("FCSO") seeking certain records containing the words "machine gun." In response to the PIA request, the FCSO produced one record and denied inspection of twelve other records on various grounds. The complainant disputed the FCSO's response and attempted to resolve that dispute through the Public Access Ombudsman. After receiving a final determination from the Ombudsman that the dispute was not resolved, the complainant filed this complaint challenging the FCSO's denial of access to the records he requested. The FCSO responds that both State and federal law require the FCSO to deny inspection of the disputed records. We conclude that, as to nine of the records withheld, the FCSO has failed to demonstrate that the PIA requires their withholding. We therefore direct the FCSO to disclose those records, as explained below.

Background

In April 2023, the complainant sent a PIA request to the FCSO asking for "[a]ny and all documents with FCSO letterhead which contain the word 'machine gun' which were created between August 2015 and May 2022." After the FCSO asked the complainant to narrow the timeframe of his request, the complainant explained that he was "looking for copies of any 'law letter'"[1] that the Frederick County Sheriff "created to justify any [Federal Firearms Licensee] buying a machine gun." The complainant also noted that the records "should have been turned over to the [Bureau of Alcohol, Tobacco, Firearms and Explosives, or "ATF"] a year ago" and thus should be readily available. When the FCSO then asked for further clarification, the complainant stated that he wanted "all the law letters

[1] *See* 27 C.F.R. § 479.105(d) (governing transfer and registration of machine guns to dealers and requiring "letters from governmental entities expressing a need for a particular model or interest in seeing a demonstration of a particular weapon"); *see also* Dep't of the Treasury, Bureau of Alcohol, Tobacco & Firearms, *NFA "Law Letter" Requirement* (Nov. 10, 1999, rev. Feb. 23, 2006), https://www.atf.gov/firearms/docs/nfa-law-letter-requirement/download ("NFA 'Law Letter' Requirement") (explaining that "[t]he transfer of a 'post-1986' machinegun requires certain documentation, usually referred to as a 'law letter'").

used to justify the purchase of machine guns," regardless of whether they were turned over or not.

In its response, sent on May 5, 2023, the FCSO granted the PIA request in part and denied it in part. The FCSO enclosed a copy of one responsive record, and denied inspection of twelve other responsive records. To justify the denial, the FCSO cited two exemptions in the PIA: (1) § 4-325(a)(1),[2] which precludes disclosure of certain firearm and handgun records; and (2) § 4-301(a)(2)(ii), which requires a custodian to deny inspection if inspection would be "contrary to" federal law. The FCSO pointed to 26 U.S.C.A. § 6103 (governing confidentiality and disclosure of tax return information) and 18 U.S.C.A. § 923(g) (governing firearms licensing) as the operative federal law prohibiting disclosure.

Taking issue with the FCSO's response to his PIA request, the complainant sought the assistance of the Ombudsman and, after the Ombudsman was unable to resolve the dispute, filed this complaint with this Board. In his complaint, the complainant alleges that the FCSO wrongfully denied inspection of records responsive to his PIA request. Pointing to the recent indictment of the Sheriff,[3] the complainant notes that the "full scope of these law letters has not been disclosed by the U.S. Attorney," and that the records "should be made public" because "it is in the public's interest to understand" why the Sheriff is under indictment.

It its response to the complaint, the FCSO defends its application of §§ 4-325 and 4-301(a)(2)(ii). The FCSO provides some further detail about the nature of the twelve records in dispute and legal argument in support of withholding them. The FCSO explains that one record is a "letter that documents the sale of handguns by [the FCSO]," and contends that this record is exempt under § 4-325(a)(1). Next, the FCSO explains that two of the records are "applications for the tax-exempt transfer and registration of firearms" subject to 26 U.S.C.A. § 6103's confidentiality provisions and thus exempt under § 4-301(a)(2)(ii) of the PIA, which prevents disclosure if "contrary to" federal law. As to the remaining nine records, the FCSO explains that they are "letters from [the FCSO] to federal firearms licensees requesting demonstrations of various firearms." Those records, the FCSO maintains, are also subject to non-disclosure provisions found in federal law—namely 18 U.S.C.A. § 923(g) and the language of an appropriation rider known as the Tiahrt Amendment[4]—and are thus exempt under § 4-301(a)(2)(ii).

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[2] Statutory citations are the General Provisions Article of Maryland's Annotated Code, unless otherwise stated.

[3] *See* Dan Morse & Katie Mettler, *Sheriff Charged in Rental Scheme*, Wash. Post, Apr. 6, 2023, at B01.

[4] *See* Congressional Research Service, *Firearms-Related Appropriation Riders*, at 2-3 (Nov. 22, 2019), https://sgp.fas.org/crs/misc/IF11371.pdf (last visited July 25, 2023).

In reply, the complainant first explains that he does not seek the records related to handguns or the tax-related applications that the FCSO describes in its response to the complaint. Rather, he is focused on the nine letters that request demonstrations of firearms—i.e., the "law letters" or "demonstration letters"—and advances several arguments as to why some or all of them should be disclosed. First, he argues that information in a filing in Sheriff Jenkins's federal case indicates that one of the letters was "deficient," and that the letter is therefore not protected. The complainant also contends that, because the cases cited by the FCSO in its response to the complaint are from the Second, Seventh, and Ninth federal circuits, none of them are binding in Maryland. Even more, the complainant argues, none of those cases involve requests for law or demonstration letters created by local law enforcement; rather, they address the disclosure of information from firearms trace databases or other ATF records.

The complainant also points out that, in response to his PIA request, the FCSO disclosed one letter, written by a lieutenant to Sheriff Jenkins, that documents the sale of machine guns to an entity in Rockville, Maryland. The letter indicates that the National Firearms Act ("NFA") Branch of ATF approved the sale, and that the weapons were "transferred for destruction," with the "useable parts" retained by the Rockville entity. The letter describes the make of each firearm or firearm part, the number sold, and the sale price. If this letter was not subject to the confidentiality provisions in federal law cited by the FCSO regarding the other nine letters, then those nine letters—which the complainant contends contain similar information—must also not be subject to those provisions. Lastly, the complainant notes that Sheriff Jenkins attached five of the "law letters" to a motion recently filed in his federal criminal case. Such action is, the complainant argues, more evidence that the nine letters responsive to his PIA request are not subject to the federal protections that the FCSO claims.

Analysis

We are authorized to resolve complaints that allege certain violations of the PIA, including that a custodian wrongfully denied inspection of public records.[5] *See* § 4-1A-04(a)(1)(i). If, after review of the submissions and any additional information we might request, *see* § 4-1A-06(b)(2), we conclude that a violation of the PIA has occurred, we must issue a written decision and order an appropriate remedy, as provided by the statute, § 4-1A-04(a)(2) and (3). Where we determine that a custodian has "denied inspection of a public record in violation of [the PIA]," we must "order the custodian to . . . produce the public record for inspection." § 4-1A-04(a)(3)(i).

[5] Before filing a complaint, a complainant must attempt to resolve a dispute through the Public Access Ombudsman and receive a final determination that the dispute was not resolved. § 4-1A-05(a).

Ordinarily, the PIA must be construed in favor of disclosure of public records. *See* § 4-103(b) (instructing that "unless an unwarranted invasion of the privacy of a person in interest would result," the PIA "shall be construed in favor of allowing inspection of a public record"); *see also Amster v. Baker*, 453 Md. 68, 76 (2017) (explaining that "the provisions of the [MPIA] reflect the legislative intent that the citizens of the State of Maryland be accorded wide-ranging access to public information concerning the operation of their government," and citing cases). Despite this presumption of openness, however, the PIA also contains exceptions to disclosure, some of which are mandatory in nature. *See Caffrey v. Dep't Liquor Control for Montgomery County*, 370 Md. 272, 296-97 (2002) (discussing the difference between mandatory and discretionary exemptions in the PIA). The exemptions cited by the FCSO fall into this category; if the exemption applies to the public record in question, the custodian must deny inspection. As the Supreme Court of Maryland (then called the Court of Appeals) has recently explained regarding access to judicial records:

> The difficulty with mandatory exceptions in records disclosure laws is that a custodian, mindful of the duty to adhere to them, may be inclined to read them literally and to use them as a checklist so as not to risk an improper and potentially injurious disclosure. That approach—beginning the process by looking for reasons to deny inspection—is understandable but does not square with the presumption that judicial records are to be available to the public.

Admin. Office of the Courts v. Abell Found., 480 Md. 63, 94 (2022). When reviewing a custodian's application of a mandatory exemption, we must make a "responsible determination" as to "whether the agency's rationale for denying the [PIA] request is sufficient." *Lamson v. Montgomery County*, 460 Md. 349, 366-67 (2018). Here, then, we must determine whether the disputed records are indeed the type of records subject to the specific exemptions that the FCSO cites. With these general principles in mind, we turn to the records at issue in this complaint.

Because the complainant has indicated that he does not seek the handgun- or tax-related records described in the FCSO's response to the complaint, we will focus our analysis on § 4-301(a)(2)(ii), the exemption that the FCSO argues applies to shield the nine responsive "law letters" from disclosure.[6] As noted above, § 4-301(a)(2)(ii) is a mandatory

[6] As to § 4-325, which the FCSO claims protects a responsive record that "documents the sale of handguns by the Sheriff's Office," we note that that section directs a custodian to deny inspection of certain firearm and handgun records, namely "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" or "carry, wear, or transport a handgun under Title 5, Subtitle 3 of the Public Safety Article." Subsection (b) requires a custodian to allow inspection of such records by "the individual named in the record" or that individual's attorney of record. § 4-325(b). In addition, § 4-325(a) cannot be construed to prohibit the Departments of State Police or Public Safety and Correctional

exemption that requires a custodian to deny inspection of a public record if "the inspection would be contrary to . . . a federal statute or a regulation that is issued under the statute and has the force of law." *See, e.g.*, 92 Md. Op. Att'y Gen. 137, 146 (2007) (explaining that records collected by a county board of education may be subject to the Family Educational Rights and Privacy Act, and thus not disclosable under what is now § 4-301(a)(2)(ii)). Here, the FCSO claims that 18 U.S.C.A § 923(g), which requires licensed firearms dealers (among others) to "maintain such records of importation, production, shipment, receipt, sale, or other disposition of firearms . . . in such form . . . as the Attorney General may by regulations prescribe," and the non-disclosure mandates of the Tiahrt Amendment operate via § 4-301(a)(2)(ii) to preclude disclosure of the nine "law letters." *See* Consolidated and Further Continuing Appropriations Act, 2012, Pub. L. No. 112-55, 125 Stat. 552, 609-10 (2011) (appropriations provisions related to ATF precluding disclosure of "the contents of the Firearms Trace System database . . . or any information required to be kept by licensees pursuant to section 923(g) of title 18, United States Code"). Put more simply, the FCSO's argument is that the "law letters" constitute "information required to be kept by [firearms] licensees" that is subject to the non-disclosure provisions of the Tiahrt Amendment.

Resolution of this complaint requires a brief explanation of certain aspects of federal firearms regulation. There are two primary federal enactments that regulate firearms, both of which are enforced by the ATF: the National Firearms Act of 1934 and the Gun Control Act of 1968. *See United States v. Kelerchian*, 937 F.3d 895, 900 (7th Cir. 2019). Under the 1968 Act, any person "engage[d] in the business of importing, manufacturing, or dealing in firearms" must have a license to do so. 18 U.S.C.A. § 923(a). To maintain a federal firearms license, licensees must, among other things, keep certain records of each firearm's "importation, production, shipment, receipt, sale, or other disposition." *Id.* § 923(g)(1)(A); *see also Ctr. for Investigative Reporting v. United States Dep't of Just.*, 14 F.4th 916, 923 (9th Cir. 2021) (explaining that the 1968 Act "sought to reduce the incidence of 'crime and violence' by, among other things, creating a statutory licensing and recordkeeping scheme for firearms manufacturers, importers, retailers, and dealers," (internal citation omitted)). These records must be maintained at the licensee's place of business and "for such period, and in such form, as the Attorney General may by

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Services from "accessing firearm or handgun records in the performance of that department's official duty." § 4-325(c). The Legislature added the mandatory exemption for firearm and handgun records to the PIA in 2013, as part of the Firearm Safety Act of 2013. *See* 2013 Md. Laws, ch. 427. In reviewing the legislation, the Office of the Attorney General explained that the provision "reflects a compromise between the legitimate privacy interests of those who hold firearm-related licenses and the State's need to understand its crime problem and the efficacy of attempts to address it." Letter of Attorney General Douglas F. Gansler to Governor Martin O'Malley (Apr. 30, 2013), at 24 n.29 (bill review letter for Senate Bill 281, the Firearm Safety Act of 2013). As far as we know, no Maryland appellate court has interpreted or otherwise examined the application of § 4-325.

regulations prescribe."[7] 18 U.S.C.A. § 923(g)(1)(A). It is a crime for a licensee to knowingly "make any false entry in, to fail to make appropriate entry in, or to fail to properly maintain, any record which [they are] required to keep pursuant to section 923 of this chapter or regulations promulgated thereunder." *Id.* § 922(m); *see also* 27 C.F.R. § 478.128(c).

Federal regulations specify the form and content of the information that must be kept by firearms licensees. *See* 27 C.F.R. § 478.125(e); *see also id.* § 478.121 (providing general record keeping obligations). Licensees generally must "enter into a record each receipt and disposition of firearms," and that record must "be maintained in bound form" and in a particular format provided by the regulation. *Id.* § 478.125(e). The record must:

> [S]how the date of receipt, the name and address or the name and license number of the person from whom received, the name of the manufacturer and importer (if any), the model, serial number (including any associated license number either as a prefix, or if remanufactured or imported, separated by a semicolon), type, and the caliber or gauge of the firearm.

Id. When a licensee sells or otherwise disposes of a firearm, the record must:

> [S]how the date of the sale or other disposition of each firearm, the name and address of the person to whom the firearm is transferred, or the name and license number of the person to whom transferred if such person is a licensee, or the firearms transaction record, Form 4473, transaction number if the licensed dealer transferring the firearm sequentially numbers the Forms 4473 and files them numerically.

Id.; *see also id.* § 478.124 (governing ATF Form 4473, i.e., the "firearms transaction record"); U.S. Dep't of Just., ATF, Federal Firearms Regulations Reference Guide 200-201 (2014), https://www.atf.gov/firearms/docs/guide/federal-firearms-regulations-reference-guide-2014-edition-atf-p-53004/download ("ATF Regulations Reference Guide") (last visited July 23, 2023) (providing information about record keeping requirements for firearms licensees, including the ATF Form 4473, and providing a description of the required "bound book"—i.e., the "firearms acquisition and disposition (A&D) record").[8]

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[7] For a broad overview of the record keeping obligations imposed by § 923(g) and their use in the ATF's enforcement of federal firearms laws, see Colin Miller, *Lawyers, Guns, and Money: Why the Tiahrt Amendment's Ban on the Admissibility of ATF Trace Data in State Court Actions Violates the Commerce Clause and the Tenth Amendment*, 2010 Utah L. Rev. 665, 668-69 (2010).

[8] See also U.S. Dep't of Just., Office of the Inspector Gen., *Inspections of Firearms Dealers by the Bureau of Alcohol, Tobacco, Firearms and Explosives* (July 2004),

The United States Code—specifically 18 U.S.C.A. § 922(o)(1)—makes it "unlawful for any person to transfer or possess a machinegun." Section 922(o)(1) does not, however, apply to "a transfer to or by, or possession by or under the authority of, the United State or any department or agency thereof or a State, or a department, agency, or political subdivision thereof."[9] *Id.* § 922(o)(2)(A); *see also Kelerchian*, 937 F.3d at 899 ("Federal law imposes tight restrictions on private possession of machineguns . . . but allows law enforcement agencies to purchase and use . . . machineguns."). In addition, "machineguns may be imported 'solely for use as a sample by a registered importer or registered dealer.'" *Kelerchian*, 937 F.3d at 900 (quoting 26 U.S.C.A. § 5844).

Federal regulations outline the circumstances under which machine guns may be transferred and registered to dealers as "sales samples." *See* 27 C.F.R. § 479.105(d). For the ATF to approve such a transfer, an application must, among other things:

> [E]stablish[] by specific information the expected governmental customers who would require a demonstration of the weapon, information as to the availability of the machine gun to fill subsequent orders, and letters from governmental entities expressing a need for a particular model or interest in seeing a demonstration of a particular weapon.

Id.; *see also* NFA "Law Letter" Requirement, *supra*, note 1 (advising that an application to transfer a machine gun to a FFL "must be submitted with a 'law letter' evidencing a government agency's interest in a particular machinegun," and that the letter must, among other things, be "written on agency letterhead and signed by the agency head or by someone with delegated authority to sign for the agency head"); *see, e.g.*, *Kelerchian*, 937 F.3d at 901 (describing the paperwork, including "law letters," involved in the ATF's approval of the machine gun transfers at issue in the case). "Sales samples" dealers are subject to the same record keeping requirements outlined in part 478 of the same regulations chapter, and

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https://oig.justice.gov/reports/ATF/e0405/background.htm (last visited July 25, 2023), which explains that:

> Federal law requires that FFLs maintain completed Forms 4473, as well as a log of all firearms that they have acquired and sold, known as an Acquisition and Disposition Book (A&D Book). The A&D Book must contain information including a description of the firearm, the name and address of the person from whom the firearm was acquired and, once sold, the name and address of the purchaser and the date the gun was sold. FFLs also are required to report sales of multiple handguns to the same purchaser. Combined, these record-keeping requirements are intended to deter the illegal transfer of firearms to prohibited persons.

[9] This prohibition on machine gun possession also does not extend to "any lawful transfer or lawful possession of a machinegun that was lawfully possessed" before 1986, when the provision took effect. 18 U.S.C.A. § 922(o)(2)(B).

must also "maintain, in chronological order . . . a separate record consisting of the documents required by this part showing the registration of any firearm to [the manufacturer, importer, or dealer]." 27 C.F.R. § 479.131; *see also* ATF, Federal Firearms Licensee Quick Reference and Best Practice Guide, https://www.atf.gov/firearms/federal-firearms-licensee-quick-reference-and-best-practices-guide ("ATF Reference & Practice Guide") (last visited July 24, 2023) (addressing the obligation to "retain proof of registration" of an "NFA"[10] firearm, and explaining that "[p]roof of registration would be on a[n] [ATF] Form 1 registering a firearm to its maker, Form 2 registering a firearm to an importer or manufacturer, or a Form 3, 4, or 5 showing registration of a firearm to a transferee").

As evident from the record keeping regulations discussed above, firearms licensees are required to keep a lot of information and data about the firearms that they acquire and, in the case of, e.g., dealers, sell. When firearms are used during the commission of crime, the ATF often requests the information and data kept by firearms licensees in an effort to track and trace those firearms. Ultimately, ATF enters the information and data into a firearms trace database maintained by one of its subdivisions, the National Tracing Center ("NTC").[11] *See* ATF, National Tracing Center, https://www.atf.gov/firearms/national-tracing-center (last visited July 21, 2023); *see also Ctr. for Investigative Reporting*, 14 F.4th at 923-24 (discussing ATF gun tracing and data). During the late 1980s and 1990s, cities and municipalities began to file civil lawsuits against gun manufacturers and distributors, and many sought records from the ATF's firearms trace database to help establish and support their cases. *See New York v. Beretta USA Corp.*, 429 F.Supp.2d 517, 519 (E.D. N.Y. 2006) (noting the assumption that "the City's [handgun nuisance] case would rely primarily on certain data generated by the [ATF], as in similar cases brought by other plaintiffs"); *see, e.g.*, *Chicago v. United States Dep't of Treasury*, 287 F.3d 628, 631-32 (7th Cir. 2002), *vacated*, 537 U.S. 1229 (2003) (describing a civil suit against gun manufacturers, distributors, and dealers in which the City of Chicago sought, via FOIA, information from the ATF trace database).

Before 2003, when Congress passed an appropriations resolution containing the first iteration of the Tiahrt Amendment, courts ordered disclosure of the ATF gun trace database information in some cases. *Ctr. for Investigative Reporting*, 14 F.4th at 924; *see, e.g., Chicago*, 287 F.3d at 637-38 (affirming trial court's conclusion that FOIA required release of gun trace database information). However, since then, and since the enactment of the most recent version of the Tiahrt Amendment in 2012, gun trace data generally has been unavailable to anyone except certain law enforcement agencies. *See Everytown for Gun*

[10] An "NFA" firearm is a firearm that is regulated under the National Firearms Act, and includes machine guns. *See* 26 U.S.C.A. § 5845(a) and (b) (defining "firearm" and "machinegun"); 27 C.F.R. § 479.11 (same).

[11] *See also* Angela Jacqueline Tang, *Taking Aim at Tiahrt*, 50 Wm. & Mary L. Rev. 1787, 1795-98 (2009) (providing an overview of the ATF firearms trace system).

Safety Support Fund v. ATF, 984 F.3d 30, 35-36 (2d Cir. 2020)[12] (tracing the history of the Tiahrt Amendment between 2003 and 2012, and explaining that "Congress enacted the Tiahrt Riders and strengthened the antidisclosure language in response to judicial decisions that subjected [gun trace] data to FOIA disclosure"). The current version of the Tiahrt Amendment provides, as relevant to this complaint, that:

> [N]o funds appropriated under this or any other Act may be used to disclose part or all of the contents of the Firearms Trace System database maintained by the [NTC] of the [ATF] or any information required to be kept by licensees pursuant to section 923(g) of title 18, United States Code, or required to be reported pursuant to paragraphs (3) and (7) of such section, except to: (1) a Federal, State, local, or tribal law enforcement agency
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> [A]nd no person or entity described in (1) . . . shall knowingly and publicly disclose such data; and all such data shall be immune from legal process, [and] shall not be subject to subpoena or other discovery[.]

Pub. L. No. 112-55, 125 Stat. 552, 609-10 (2011). Examining these provisions in the context of firearms trace data—i.e., "the contents of the Firearms Trace System database"—courts have almost uniformly interpreted these provisions to preclude disclosure of that information pursuant to FOIA. *See, e.g.*, *Chicago v. ATF*, 423 F.3d. 777, 781 (7th Cir. 2005) (finding that the 2005 Tiahrt Amendment precluded disclosure of gun trace information, and explaining that "Congress could not have been more specific about what types of records should be withheld: '[T]he contents of the Firearms Trace System database . . . and . . . any information required to be kept by licensees pursuant to section 923(g) of title 18, United States Code"); *see also Brady Ctr. to Prevent Gun Violence v. United States Dep't Just.*, 410 F.Supp.3d 225, 241 (D.D.C. 2019) (concluding that the non-disclosure provision of the Tiahrt Amendment "reaches derivative records" and "extends to documents that merely contain—and thus 'disclose'—information that licensees are required to keep pursuant to 18 U.S.C. § 923(g)" and thus also concluding that redaction of such information would be proper).

Against this rather extensive backdrop, we turn whether the FCSO properly withheld the nine "law letters" under 18 U.S.C.A. § 923(g) and the Tiahrt Amendment as

[12] While we take the complainant's point that this case and other federal cases may not be binding authority in Maryland, we are not precluded from considering them. *Cf. Bozman v. Bozman*, 376 Md. 461, 490 (2003) ("We agree that the decisions of our sister jurisdictions are not binding on this Court and ought not dictate the course of jurisprudence in the State of Maryland. This does not mean that their decisions may not be considered, however. While not binding, they may be persuasive authority.").

applied via § 4-301(a)(2)(ii) of the PIA. First, we note that nobody disputes that the letters concern federal firearms licensees. Thus, the federal firearms laws discussed above are implicated. For the Tiahrt Amendment to operate as a bar to disclosure, though, the "law letters" must constitute "information required to be kept" by those licensees—who apparently deal in machine guns—under § 923(g). If the "law letters" are such information, then the FCSO cannot disclose them. *See* Pub. L. No. 112-55, 125 Stat. 552, 610 (2011) (providing that a local law enforcement agency may not "knowingly and publicly disclose" the information and data covered by the amendment).

As is clear from the discussion above, the bulk of the cases addressing disputes about how to interpret § 923(g) and the non-disclosure provisions in the Tiahrt Amendment involve access to information maintained by the ATF in its firearms trace database. *See, e.g.*, *New York*, 429 F.Supp.2d at 520; *Chicago*, 423 F.3d at 778. This makes sense given that, when first proposed, the Tiahrt Amendment was particularly focused on firearms trace information and its use in lawsuits against the gun industry. *See Chicago*, 423 F.3d at 782 (explaining that, after the court concluded that the 2003 and 2004 versions of the Tiahrt Amendment "did not specifically exempt the databases from disclosure," Congress "responded" to that conclusion in the 2005 version by "taking away any possible judicial remedy for discovery of the information"); *see also* Tang, *supra*, note 11, at 1807-1816 (discussing the evolution of the Tiahrt Amendment and suggesting that "Congress has continually strengthened the rider in response to the judiciary's handling of gun litigation cases").

But the language of the Tiahrt Amendment is broader than just firearm trace database information. The non-disclosure provisions reach "part or all of the contents of the Firearms Trace System database . . . *or any information required to be kept by licensees pursuant to section 923(g) of title 18, United States Code*," even when that information is in the hands of, e.g., local law enforcement. Pub. L. No. 112-55, 125 Stat. 552, 609-10 (2011) (emphasis added). While the disputed "law letters" are not "the contents of the Firearms Trace System database," they might fall under "any information" that federal firearms licensees are required to keep.

Section 923(g)(1)(A) refers generally to "records of importation, production, shipment, receipt, sale or other disposition," which must be kept in the form prescribed by regulations. Those regulations, in turn, require licensees to enter certain information about the "importation, production, shipment, receipt, sale or other disposition" of each firearm into a bound book in a specific format illustrated in the regulation. 27 C.F.R. § 478.125(e). While the "law letters" might broadly constitute records related to certain machine guns' "importation" or "receipt," they do not seem to fall within the regulation's more specific description of the record that licensees must keep under 18 U.S.C.A. § 923(g) and 27 C.F.R. § 478.125(e)—the "law letters" are not contained within the "bound form" record, and do not constitute the ATF Form 4473. In other words, those letters are not themselves part of the "acquisition and disposition" record described by 27 C.F.R. § 478.125(e). While they

might conceivably contain *information* that is also later entered into that record, the "law letters" do not constitute the acquisition and disposition record itself. This is even more clear in light of the guidance provided in the ATF Regulations Reference Guide, *supra*, which supplies more detail about the "bound book" and ATF Forms that firearms licensees are required to keep. Thus, we conclude that the nine "law letters" withheld by the FCSO do not constitute "information required to be kept by licensees" under 27 C.F.R. § 478.125.[13]

However, 27 C.F.R. §§ 478.121 and 478.125 are not the only regulations applicable here. Because the "law letters" relate to the acquisition of machine guns, 27 C.F.R. § 479.131 also applies. That regulation, which concerns "machine guns, destructive devices, and certain other firearms under the provisions of the [NFA]," 27 C.F.R. § 479.1, requires licensees subject to it to "maintain, in chronological order . . . a separate record consisting of the documents required by this part showing the registration of any firearm to [the manufacturer, importer, or dealer]." 27 C.F.R. § 479.131.

Although the "law letters" are required by C.F.R. § 479.105 as part of an "application[] to transfer and register a machine gun," it is not clear to us that an *application* to transfer and register a machine gun is one of the documents required to show the ultimate *registration* of that machine gun. After reviewing five of those nine letters,[14] it does not seem that they contain any information that would "show[] the registration of the firearm[s]" described in those letters. Rather, the letters describe specific firearms and provide information about the Sheriff's Office's interest in them vis-à-vis certain federal firearms licensees. We also note that the ATF Reference & Practice Guide, *supra*, advises that "[p]roof of registration" of an NFA firearm such as a machine gun "would be on a[n] [ATF] Form 1 registering a firearm to its maker, Form 2 registering a firearm to an importer or manufacturer, or a Form 3, 4, or 5 showing registration of a firearm to a transferee."

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[13] A close reading of *Kelerchian* is consistent with our conclusion. There, the defendant was convicted of, among other crimes, conspiring to violate 18 U.S.C.A. § 924 (a)(1)(A), which "makes it a crime to knowingly make 'any false statement or representation with respect to the information required by this chapter to be kept in the records of a person licensed under this chapter.'" *Kelerchian*, 937 F.3d at 904 (quoting 18 U.S.C.A. § 924 (a)(1)(A)). Though false "law letters" were created as part of the conspiracy, *id.* at 901-902, the actual violation of § 924(a)(1)(A) was that those letters led the firearms importer to "create false records for the machinegun purchases—falsely identifying the Lake County Sheriff's Department as the buyer" in ATF Forms 6 and 6A, forms which regulations required the importer to keep, *id.* at 904. This suggests that it was not the letters themselves that constituted the "information required by this chapter to be kept in the records of a person licensed under this chapter," 18 U.S.C.A. § 924(a)(1)(A), but rather the ATF Forms that contained information taken from those letters.

[14] As noted by the complainant in his reply, Sheriff Jenkins attached five of the nine "law letters" as an exhibit to a motion filed in his federal criminal case. We were able to access that motion and its exhibits via PACER.

Here too, then, it seems that, while the ATF Forms might contain information drawn from the "law letters," the letters themselves are not part of the "record consisting of the documents required by this part showing the registration of any firearm to [the manufacturer, importer, and dealer]" that 27 C.F.R. § 479.131 requires licensees to keep.

Based on everything that is before us, we conclude that the FCSO has failed to show that § 4-301(a)(2)(ii) precludes disclosure of the nine "law letters" responsive to the complainant's PIA request. After review of five of those letters and the federal statutes and regulations that govern the records of firearms licensees, we find that the nine "law letters" themselves do not constitute "information required to be kept by licensees pursuant to section 923(g) of title 18, United States Code." Thus, the non-disclosure provisions of the Tiahrt Amendment do not operate to bar their release. In reaching this conclusion, we are mindful that the PIA instructs that its provisions be "construed in favor of allowing inspection of a public record," unless an "unwarranted invasion of the privacy of a person in interest would result." § 4-103(b); *see also Office of the Governor v. Washington Post Co.*, 360 Md. 520, 545 (2000) ("[C]ourts must interpret the [PIA's] exemptions narrowly."). Given that the Sheriff himself has filed five of those letters in a public court record, it is difficult to see how construing § 4-301(a)(2)(ii) narrowly in favor of disclosure would cause an "unwarranted" invasion of personal privacy here.

Conclusion

The FCSO violated the PIA by withholding the nine "law letters" responsive to the complainant's PIA request. Those records in and of themselves do not constitute information that a federal firearms licensee is required to keep under 18 U.S.C.A. § 923(g) and the regulations issued under that provision, and the non-disclosure provisions of the Tiahrt Amendment therefore do not apply. Thus, because inspection of the "law letters" would not be "contrary to" that federal law, § 4-301(a)(2)(ii) does not require the FCSO to deny inspection. Accordingly, we direct the FCSO to disclose the nine "law letters" responsive to the complainant's PIA request to the complainant.

Because the complainant has indicated that he does not seek the remaining three records that the FCSO withheld, we do not address whether the PIA precludes their disclosure

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