

EXHIBIT B



Apuzzo, Matt <matt.apuzzo@nytimes.com>

New York Times FOIA request

Apuzzo, Matt <matt.apuzzo@nytimes.com>
To: foiamail@atf.gov

Fri, Sep 2, 2016 at 2:08 PM

Dear Sir or Madam,

Under provisions of the Freedom of Information Act and under the Electronic Freedom of Information Act, 5 U.S.C 552, I am seeking documents related to the tobacco diversion investigation at issue in case number 5:13-cv-00527 of the Eastern District Court of North Carolina. This case involved ATF agents in Virginia and elsewhere and was related to Big South Distribution, Big Sky International and other entities. The documents I am seeking are:

- 1) The investigative plan.
- 2) The ATF's Undercover Review Committee's approval of that plan, along with appropriate US Attorney's written concurrence.
- 3) All records of deposits made by ATF agents or and others into the Churning Undercover Bank Account or what may have been known as a "management fund."
- 4) All approvals for expenditures made from the Churning Undercover Bank Account, or what may have been known as a "management fund."
- 5) All Monitored Case Briefing Reports
- 6) The monthly audit reports on all churning financial and property inventory records.
- 7) All annual and/or case closing audits
- 8) Any document showing the identity of all non-ATF employees who had approval to deposit or withdraw from the Churning Undercover Bank Account, or what may have been known as a "management fund"

ATF rules require this information to be recorded and maintained and much, if not all, of it is in electronic format.

Please consider this an expedited request. I meet the definition of "compelling need" as defined by your agency. This information is sought to inform the public concerning allegations of Federal Government activity – in this case how the federal government investigates crimes.

Whether an "urgency to inform" exists, according to the courts, depends on several factors: (1) whether the information relates to a currently unfolding story, (2) whether delaying release of the information harms the public interest, and (3) whether the request concerns federal governmental activity. *Al-Fayed v. CIA*, 245 F.3d 300 (D.C. Cir. 2001). In addition, "the credibility of a requestor" also is a "relevant consideration." *Id.* These factors underscore that an "urgency to inform" undeniably exists for the information sought by my request, that is not currently available to the public.

The ATF changed its policies regarding tobacco enforcement investigations in 2011 in the midst of a DOJ Inspector General audit, which found evidence of lax oversight and mismanagement. This request meets the standard of "urgency to inform" because information from the ongoing lawsuit - though heavily redacted - has raised questions about whether those rules are being followed. Only with access to these documents can the public discern whether they are being followed.

As such, this request obviously concerns federal government activity. Finally, as one of the nation's largest newspapers, the New York Times is a credible requestor. This information is being sought for dissemination to the public in The Times.

If there are any fees for searching for or copying, the records I have requested, please supply the records without informing me if the fees do not exceed \$250. As you know, the Act permits you to reduce or waive the fees when

the release of the information is considered as “primarily benefiting the public.” I believe that this request fits that category and I therefore ask that you waive any fees.

If all or any part of this request is denied, please cite the specific exemption(s) that you think justifies your refusal to release the information and inform me of your agency’s administrative appeal procedures available to me under the law.

I would appreciate your handling this request as quickly as possible, and I look forward to hearing from you.

Sincerely,

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