

DRAFT ----- Memorandum of Understanding (MOU) ----- DRAFT

Between
The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)
And
Cleveland Police Department (CDP)
And
The Cuyahoga County Prosecutor's Office (CCPO)

This Memorandum of Understanding (MOU) is entered into by and between the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the Cleveland Division of Police (CDP) and the Cuyahoga County Prosecutor's Office (CCPO) and sets forth their relationships concerning the Crime Gun Intelligence Center (hereinafter referred to as CGIC).

Background

The CGIC is an interagency collaborative body that focuses on the collection, management and analysis of crime gun data. This initiative provides a proactive, intelligence-based identification tool to help interdict violent criminal offenders within the Cleveland metropolitan area in support of: Operation Relentless Pursuit (ORP), Project Guardian, Project Safe Neighborhoods, the Public Safety Partnership (PSP), the Stand Together Against Neighborhood Crime Everyday (STANCE Initiative), and the Northern Ohio Violent Crime Consortium (NOVCC). Initiatives of which each signatory to this MOU actively engages.

The CGIC is designed to both produce crime-gun intelligence and operationalize that intelligence in a consolidated and coordinated manner. The goal of the CGIC is to produce timely, precise, and objective intelligence data (via the National Integrated Ballistic Information Network (NIBIN), National Tracing Center (NTC) and other related crime gun intelligence sources) in order to focus the efforts of federal and state/local law enforcement, forensics and prosecutorial resources on the most violent offenders in the city of Cleveland and surrounding areas. Operationally, the CGIC can serve as a multijurisdictional task-force through which local, state and federal law enforcement partners can identify and prosecute active shooters within our communities.

The Cleveland metro area has been identified as the site of this initiative because the vast majority of violent crime occurs in this state and/or region and the shared borders promote and support collaborative investigation(s) of these violent crimes. This partnership will result in better communication and effective investigative/prosecutorial strategic plans, with the aim of removing crime guns and violent offenders from the community.

Authorities

Offenses investigated and enforced pursuant to this MOU are those falling within ATF's primary jurisdiction; 28 USC sec 599A; 28 CFR sec. 0.130. Specifically, the Gun Control Act of 1968, 18 USC §§ 921 et.seq and the National Firearms Act, 26 USC §§ 5861 et. seq.

Purpose

The CGIC provides an interagency collaborative-body designed to utilize all available investigative and enforcement resources, in conjunction with state/local and federal prosecutors, to identify, arrest, prosecute and convict violent offenders and other crime gun offenders. To do so, the CGIC will perform the activities and duties as described below:

1. Analyze crime gun intelligence
2. Produce actionable referrals/intelligence in furtherance of investigation(s)
3. Identify potential crime gun sources
4. Identify potential high risk Federal Firearms Licensees (FFL's)
5. Gather, analyze and report on intelligence related to firearms trafficking
6. Investigate: conduct undercover investigations (when appropriate) and utilize other investigative techniques in order to promote effective prosecution(s) before the courts of the United States or the courts in the State of Ohio.
7. Promote and support CDP's and the CCPO's abilities to implement CGIC business practices that include interagency collaboration focused on immediate collection, management and analysis of crime gun evidence and policy development that governs crime scene response and delivery of crime scene response
8. Collaboratively identify evidence-based programs and practices to focus policy and program development of this partnership

The success of the CGIC will be dependent, in part, upon the participating agencies' willingness to share crime gun intelligence and other statistics related to violent crime in their area of responsibility. Thus, to the greatest extent possible, participating agencies will be encouraged to openly share such intelligence with the CGIC. In return, agencies participating in the CGIC can expect to receive a similar level of openness and information sharing from the CGIC.

Coordination Committee

Each participating agency; ATF, CDP, and the CCPO will designate two members to the CGIC Coordination Committee. The ATF Special Agent in Charge (SAC) or their designee will serve as the Committee Chair, and will be responsible for convening meetings of the committee and communicating with committee members. The Coordination Committee will set and direct the strategic priorities of the CGIC and ensure the CGIC is able to meet those priorities through proper resourcing and/or operational support. Through a majority vote, the Coordination Committee may agree to apply for grant funding or may agree to add additional members to the CGIC and the Coordination Committee. Upon call of the Committee Chair, Coordination Committee will meet at least quarterly.

Measurement of Success

Success of the CGIC will be assessed by evaluating the following criteria; utilization of NIBIN/NTC data, arrest and clearance rates for violent crime(s), crime gun interdiction(s), and reduction in violent crime rates as measured by the annual Uniform Crime Report, effective deployment of law enforcement resources and increased prosecution(s).

Physical Location

Personnel assigned to the CGIC by their respective agency will be located at one or all of the following locations depending upon duties as assigned: ATF (5005 Rockside Rd, Independence, Ohio); CDP Headquarters (1300 Ontario St, Cleveland, Ohio); CCPO (1200 Ontario St, Cleveland, Ohio); and/or another site as approved by participating agencies.

Supervision and Control

The day-to-day control of personnel assigned to the CGIC will be the mutual responsibility of the participants. Supervision and administrative control of personnel will remain with each respective agency.

Personnel shall remain subject to their respective agencies' policies, and they shall report to their respective agencies regarding matters unrelated to this MOU. With regard to matters related to the CGIC, when participants are acting in their capacity as deputized federal Task Force Officers (TFOs), they will be subject to Federal law and Department of Justice (DOJ) and ATF orders, regulations and policy, including those related to standards of conduct, sexual harassment, equal opportunity issues and Federal disclosure laws.

Failure to comply with this paragraph could result in a participant's dismissal from the CGIC.

Personnel, Resources and Supervision

Agency Resource Commitments:

ATF: To accomplish the objectives of the CGIC, ATF is creating an additional law enforcement group in the Cleveland, Ohio area that will be staffed with one Group Supervisor and at least eight Special Agents. ATF is currently in the process of hiring Intelligence Research Specialist (IRS) positions and NIBIN Contractors in the Cleveland, Ohio area. At least one IRS position will be dedicated to NIBIN-related priorities and the NIBIN contractor positions will directly support NIBIN operations associated with this CGIC grant. ATF will also, subject to the availability of funds, provide necessary funds and equipment to support the activities of the ATF Special Agents and officers assigned to the CGIC full time and deputized as full time ATF Task Force Officers (TFOs). This support may include: office space, office supplies, travel funds, funds for the purchase of evidence and information, investigative equipment, training, and other support items. Each participating agency agrees to make available to their assigned task members any equipment ordinarily assigned for use by that agency. In the event ATF supplies equipment (which may include vehicles or radios), personnel from agencies participating in the CGIC must abide by any applicable ATF property orders or policy, and may be required to enter into a separate agreement for their use.

CDP: To accomplish the objectives of the CGIC, CDP agrees to assign CDP detective staff and/or district police officers on an adhoc basis with a high degree of flexibility in staffing and assignments based on grant funding availability. CDP currently has one full time TFO assigned

to ATF for NIBIN-related investigation. All TFOs shall qualify with their respective firearms by complying with ATF's Firearms and Weapons Policy.

CCPO: Eleina – please fill this part in.

Security Clearances

All full time CGIC Task Force members (TFOs) will undergo a security clearance and background investigation, and ATF shall bear the costs associated with those investigations. TFOs must not be the subject of any ongoing investigation by their department or any other law enforcement agency, and past behavior or punishment, disciplinary, punitive or otherwise, may disqualify one from eligibility to join the CGIC. ATF has final authority as to the suitability of TFOs for inclusion on the CGIC.

Deputations

ATF, as the sponsoring Federal law enforcement agency, may request at its sole discretion that the participating agency's TFOs be deputized by the U.S. Marshals Service to extend their jurisdiction, to include applying for and executing Federal search and arrest warrants, and requesting and executing Federal grand jury subpoenas for records and evidence involving violations of Federal laws. Such requests will be made on an individual basis as determined by ATF.

The participating agencies agree that any Federal authority that may be conferred by a deputation is limited to activities supervised by ATF and will terminate when this MOU is terminated or when the deputized TFOs leave the CGIC, or at the discretion of ATF.

Assignments, Reports and Information Sharing

Supervisors from the signatory agencies to this MOU will work collaboratively on issues related to oversight for investigative and personnel matters. The designated CDP supervisor will have primary oversight for investigative and personnel matters related to investigations led by CDP assets and will work in conjunction with ATF supervision on identifying leads with significant potential federal investigative interest and where ATF will be the lead federal investigative agency. Each agency representative will be responsible for opening, monitoring, directing and closing CGIC investigations based on local or federal investigative priorities in accordance each agency's policies and procedures. For ATF SAs and ATF TFOs assigned to the CGIC, they will be expected to follow applicable ATF policies and United States Attorney General's Guidelines.

For all investigations led by ATF SAs and TFOs acting in their federal capacity, all investigative reports will be prepared utilizing ATF's investigative case management system, (N-Force) utilizing ATF case report numbers. The participating agency will share investigative reports, findings, intelligence, etc., in furtherance of the mission of this agreement, to the fullest extent allowed by law. For the purposes of uniformity, there will be no duplication of reports, but rather a single report prepared by a designated individual which can be duplicated as necessary. Every effort should be made to document investigative activity on ATF Reports of Investigation

(ROI), unless otherwise agreed to by ATF and the participating agency. *This section does not preclude the necessity of individual TFOs to complete forms required by their employing agency.*

Information will be freely shared among the CGIC personnel with the understanding that all investigative information will be kept strictly confidential and will only be used in furtherance of criminal investigations. No information gathered during the course of the CGIC, to include informal communications between participating members and ATF personnel, may be disseminated to any third party, non-CGIC member by any CGIC member without the express permission of a designed CDP executive, a designated CCPO supervisor, and the ATF Special Agent in Charge or his/her designee. This is particularly applicable to any release of investigative information and the information being released is covered by ATF disclosure policies.

Any public requests for access to the records or any disclosures of information obtained by task force members during Task Force investigations will be handled in accordance with applicable statutes, regulations, and policies pursuant to the Freedom of Information Act and the Privacy Act and other applicable federal and/or state statutes and regulations.

Investigative Methods

Parties agree to utilize their respective agencies' policies standards pertaining to evidence handling and electronic surveillance activities to the greatest extent possible. However, in situations where state or local laws are more restrictive than comparable Federal law, investigative methods employed by the state and local law enforcement agencies shall conform to those requirements, pending a decision as to prosecution venue.

The use of other investigative methods (search warrants, interceptions of oral communication(s), use of sensitive investigative techniques, or certain undercover operations etc.) and reporting procedures in connection therewith will be consistent with the policy and procedures of ATF and DOJ. All CGIC operations will be conducted and reviewed in accordance with applicable DOJ policies, procedures, and guidelines. When CDP TFOs are conducting investigations pursuant to their federal deputization, they will continue to adhere to ATF policies and procedures and should any conflict in policy arise it will be brought to the attention of CDP and ATF management for resolution.

The use of other investigative methods (search warrants, interceptions of oral communication(s), use of sensitive investigative techniques, or certain undercover operations etc.) and reporting procedures in connection therewith will be consistent with the policy and procedures of each respective agency when those investigation are conducted under the authority of that agency. All ATF investigations and operations associated with this agreement will be conducted and reviewed in accordance with applicable DOJ policies, procedures, and guidelines.

The NIBIN machine currently housed at the Cuyahoga County Medical Examiner (CCME) and receives ballistic evidence from a wide range of agencies that operate within Cuyahoga County, Ohio. As such, each of the parties to this MOU will not knowingly pursue investigations that would cause conflict/disruption to any ongoing investigation(s) of an agency not party to the

MOU. It is incumbent upon each participating agency to notify its personnel regarding the CGIC's areas of concern and jurisdiction. All law enforcement actions will be coordinated and cooperatively agreed upon and carried out by all parties to this MOU.

Informants

Where applicable, ATF guidelines and policy regarding the operation of informants and cooperating witnesses will apply to all informants and cooperating witnesses directed by TFOs.

Informants developed by TFOs may be registered as informants of their respective agencies for administrative purposes and handling. The policies and procedures of the participating agency with regard to handling informants will apply to all informants that the participating agency registers. In addition, it will be incumbent upon the registering participating agency to maintain a file with respect to the performance of all informants or witnesses it registers. All information obtained from an informant and relevant to matters within the jurisdiction of this MOU will be shared with all parties to this MOU. The registering agency will pay all reasonable and necessary informant expenses for each informant that a participating agency registers.

Deconfliction

Each participating agency agrees that the deconfliction process requires the sharing of certain operational information with the CGIC, which, if disclosed to unauthorized persons, could jeopardize ongoing investigations and/or endanger law enforcement personnel and the public. As a result of this concern, each participating agency agrees to adopt security measures set forth herein;

- A. Each participating agency will assign primary and secondary points of contact
- B. Each participating agency agrees to keep this list updated and accurate.

Evidence

Evidence will be maintained by the lead agency having jurisdiction in the court system intended for prosecution(s). Evidence generated from investigation(s) initiated by a participant intended for Federal prosecution will be placed in the ATF designated vault; using the applicable procedures in the ATF order(s).

All firearms taken into custody pursuant to a CGIC investigation must be submitted in a timely manner for; NIBIN and trace evidence analyses (Prints/DNA). All firearms information/descriptions obtained must be submitted to the ATF National Tracing Center. Once all analyses are completed, all firearms seized under Federal law shall be placed into the ATF designated vault for storage.

Jurisdiction/Prosecutions

Case(s) will be reviewed by a group designated by the Coordinating Committee. This group shall include representation from the participating agencies in this MOU, as well as the USAO. The primary function of this group will be to consistently assess the most advantageous venue for investigation and prosecution of NIBIN-related leads. This determination will be based upon which venue for prosecution will best serve the public interest and achieve the greatest overall impact. Any question that arises pertaining to prosecution will be resolved through discussion by the Coordination Committee.

Use of Force

All fulltime TFOs will comply with ATF and the Department of Justice's (DOJ's) use of force policies, unless a TFOs agency's Use of Force policy is more restrictive, in which case the TFO may use their respective agency's use of force policy. TFOs must be briefed on ATF's and DOJ's use of force policy by an ATF official, and will be provided with a copy of such policy.

Media

Media relations regarding federal investigations will be handled by the USAO public affairs officer (PAO), ATF's public information officer (PIO), and CPD's Public Information Officer (PIO), and the CCPO's PIO. Information for press releases will be reviewed and mutually agreed upon by all participating agencies, and all agencies will be present at any press conferences associated with activities conducted under this MOU. Assigned personnel will be informed not to give statements to the media concerning any ongoing investigation(s) or prosecution(s) under this MOU without the concurrence of the other participants and when appropriate, the relevant prosecutor's office.

All personnel from the participating agencies shall strictly adhere to the requirements of Title 26, USC, §§ 6103. Disclosure of tax return information and tax information acquired during the course of investigation(s) involving National Firearms Act (NFA) firearms as defined in 26 USC, Chapter §§ Chapter 53, shall not be made except as provided by law.

Audit Information

Operations under this MOU are subject to audit by ATF, the Department of Justice's Office of the Inspector General, the Government Accountability Office, and other Government-designated auditors. Participating agencies agree to permit such audits and to maintain all records relating to Department of Justice Asset Forfeiture Fund payments for expenses either incurred during the course of this Task Force or for a period of not less than three (3) years and, if an audit is being conducted, until such time that the audit is officially completed, whichever is greater.

Forfeitures/Seizures

All assets seized for administrative forfeiture will be seized and forfeited in compliance with the

rules and regulations set forth by the U.S. Department of Justice Asset Forfeiture guidelines. When the size or composition of the item(s) seized make it impossible for ATF to store it, any of the participating agencies having the storage facilities to handle the seized property agree to store the property at no charge and to maintain the property in the same condition as when it was first taken into custody. The agency storing said seized property agrees not to dispose of the property until authorized to do so by ATF.

The MOU provides that proceeds from forfeitures will be shared, with sharing percentages based upon the U.S. Department of Justice Asset Forfeiture policies on equitable sharing of assets, such as determining the level of involvement by each participating agency. Task Force assets seized through administrative forfeiture will be distributed in equitable amounts based upon the number of full-time persons committed by each participating agency. Should it become impossible to separate the assets into equal shares, it will be the responsibility of all the participating agencies to come to an equitable decision. If this process fails and an impasse results, ATF will become the final arbitrator of the distributive shares for the participating agencies

Dispute Resolution

In cases of overlapping jurisdiction, as noted above, the participant agencies agree to work in concert to achieve the CGIC's goals and objectives in furtherance of the public interest. The parties to this MOU agree to attempt to resolve any disputes regarding jurisdiction, prosecution venue, case assignment(s) and workload at the lowest supervision level possible.

Liability

ATF acknowledges that the United States is generally liable for the wrongful or negligent acts or omissions of its officers and employees, while on duty and acting within the scope of their federal employment, to the extent permitted by the Federal Tort Claims Act.

Claims against the United States for injury, death, or loss of property, arising or resulting from the negligent or wrongful act or omission of any Federal employee while acting within the scope of their office or employment are governed by the Federal Tort Claims Act, 28 USC sections §§ 1346(b), 2671-2680 (unless the claim arises from a violation of the Constitution of the United States, or a violation of a statute of the United States under which other recovery is authorized).

Except as otherwise provided, the parties agree to be solely responsible for the negligent or wrongful acts or omissions of their respective employees and will not seek financial contributions from the other parties for such acts or omissions. Legal representation by the United States is determined by the United States Department of Justice on a case by case basis. ATF cannot guarantee the United States will provide legal representation to any State or local law enforcement officer.

Liability for any negligent or willful acts of any agent or officer undertaken outside the terms of this MOU will be sole responsibility of the respective agent or officers and agency involved.

Duration

This MOU shall remain in effect until it is terminated in writing (to include electronic mail and facsimile). All participating agencies agree that no agency shall withdraw from the CGIC without providing 90 days written notice to other participating agencies and the executive board chairperson.

Modifications

This agreement may be modified at any time by written consent of the parties. Modifications shall have no force and effect unless such modifications are reduced to writing and signed by an authorized representative of each participating agency.

Bureau of Alcohol, Tobacco, Firearms
and Explosives

Jonathan T. McPherson
Special Agent in Charge

Date: _____

Cleveland Police Department

Calvin Williams
Police Chief

Date: _____

Cuyahoga County Prosecutor's Office

Michael O'Malley

Date: _____

This document is currently in draft form for submission as part of the CGIC Grant and as such is a statement of principles of the potential signatories.