

Dear Senator Collins,

My name is Phil Chabot and I own a small gun shop and sporting goods store in Sanford, Maine called PAC N ARMS. I have been a home-based business owner for over twenty-two years and recently decided to expand my business. I am in the process of moving from a small shop built into my garage to leased space in one of the empty mill buildings in the center of town. I am happy to be working with the building owner, himself a small businessman, to grow my business in a way that is beneficial to the town of Sanford.

I have worked with the general public and various law enforcement agencies for over twenty-two years. In addition to servicing many local municipal police departments, I'm also proud to claim DEA, FBI, Homeland Security, ATF agents and US Marshals as customers. I pride myself on the reputation of my business when it comes to helping law enforcement with firearms transfers and equipment acquisitions.

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) is allowed to perform an Industry Operations Inspection (IOI - an audit that all firearms dealers [FFLs] may be subject to, during which the ATF verifies our inventory and is supposed to verify all paperwork and record-keeping is being done correctly and is properly maintained) on all FFLs in a five-year cycle. However, the Department of Justice found that over 58% of FFL's are not inspected within five years and the ATF claims there are approximately 69,000 FFLs and in 2012 there were more than 13,100 inspections (19% of all FFLs). Therefore, although the ATF has the legal right to inspect an FFL annually, the reality is that most dealers do not face annual inspections, or even one every five years. Typically, the only way an FFL faces annual inspections is if they are being targeted.

The ATF has just finished an IOI at PAC N ARMS. I've been audited many times before, with no problems, and the previous IOI's were completed within a week. However, my most recent audit, conducted by ATF employee Wayne Bettencourt, went on over two months, and it appeared to be little more than a thinly-veiled attempt to create a registry of my clientele. This is specifically prohibited by Federal law. 18 USC § 926 categorically prohibits anyone in the Justice Department (including the ATF) from seizing any records or documents other than those constituting material evidence of a violation of law. The law states "No such rule or regulation prescribed after the date of the enactment of the Firearms Owners' Protection Act may require that records required to be maintained under this chapter or any portion of the contents of such records, be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or any political subdivision thereof, nor that any system of registration of firearms, firearms owners, or firearms transactions or dispositions be established. Nothing in this section expands or restricts the Secretary's authority to inquire into the disposition of any firearm in the course of a criminal investigation."

The first day of the audit, August 12, 2013, went as expected, with Bettencourt finding no mistakes in our inventory, although we found some mistakes in ATF's records, which we helped Bettencourt correct. During the second and third day, August 13 and 14, 2013, Bettencourt went through my bound books with over 1,700 Form 4473's (the form used when transferring or selling guns to individuals or police departments) and our Acquisition and Disposition (A&D) (the "index" of the bound books the Form 4473's are in). Form 4473's include such information as full name, birthdate, place of birth, address and social security number, as well as other personal identification information, and the A&D pages list every gun's make, model and serial number along with the details of the person who purchased the gun and the person that the firearm was acquired from. Again, no mistakes on the part of my business were found. In short, our records were in perfect order, no small feat considering that each 4473 has more than fifty possible areas that can be cited for mistakes, each of which must be perfect.

Before the audit began, Bettencourt produced a handheld scanner, approximately the size and shape of a large marker. When Bettencourt began going through the bound books, he attempted to scan all of the pages and documents therein. I explained to Bettencourt that it was my belief that the law prohibited him from copying or scanning the bound books without my permission. I made it clear that I didn't want him to scan the records of my customers (including multiple Federal agents and local law enforcement officers). Bettencourt responded by claiming that scanning the records was completely legal for him to do. I told Bettencourt that if he would provide a written and signed statement that it was legal for him to do so without my permission, I wouldn't stop him. Otherwise he could inspect the books visually, as the law allows. Bettencourt vehemently refused to provide me with anything signed by him or other ATF authorities, and made the ridiculous claim that the records were the property of the ATF and he could do with them what he liked, and that if I kept refusing him, he would be back with an administrative warrant so that he could just take the records that I am bound by federal law to father and maintain. I again refused to allow Bettencourt to illegally copy my records, at which point he told me that I should be careful not to make the investigation about me, and that "my license depended on how well I worked with him". This was clearly a threat intended to let me know that if I did not allow him to perform the illegal activity of copying my bound books, he would retaliate and that my Federal Firearms License was at risk.

After I still refused to allow Bettencourt to illegally copy my files, Bettencourt stated that in addition to the audit, he had investigations to conduct and copies of those records would be needed, and that he expected that I would not interfere. I told him that if they were legal investigations for criminal cases, I would not interfere. However, upon realizing that Bettencourt seemed to be scanning chiefly the A&D pages and especially concentrating on every woman and on every person who had purchased more than one firearm in a week, I instructed him to stop using his scanner. I told him it appeared that he was simply scanning the A&D pages (which again, contain firearm-specific information like make, model and serial number as well as who purchased each firearm – information that would allow Bettencourt and the ATF to create an illegal firearm owner registration database) and picking which forms to scan as he went through the bound books instead of performing actual criminal investigations from a list of actual cases. Bettencourt was unable to provide me with a list of criminal cases, so I again asked him to stop scanning pages from my bound books. I told him that he could take notes on the few people he

had on his list as long as they did not include serial numbers or social security numbers. Bettencourt became angry and belligerent, angrily repeating his previous statements about taking the records through administrative warrants and threatening my licenses. Noteworthy is that to the best of my knowledge, Bettencourt is not and does not have investigative authority of the type to even allow for any type of criminal investigation, as his job encompasses records keeping compliance, not criminal investigation.

Other than our disagreements over scanning records, the audit went well. Bettencourt expressed his satisfaction with our record keeping and said that everything was in order, and there shouldn't be any hold-ups with the new license I had applied for. Bettencourt said he would be back on Friday, August 16, 2013 to follow up.

When Bettencourt returned on August 16, 2013, he asked me to step outside of my shop. He started the conversation by threatening that I should get a good lawyer because he was going to see to it that there was an administrative warrant taken out on my business ASAP, and that he would be taking my records. He stated that he couldn't understand why I was making the situation with the audit about me and that it didn't need to be about me. I expressed concern about the need for a warrant, but told him that it was the only way I would allow him to copy my records (that I am mandated by law to maintain on my premises).

Bettencourt returned on August 29, 2013. I assumed that he would either give the audit review (end of the audit) or have an administrative warrant for my bound books, but he claimed that he needed to review all of my records again. I obliged, but we had the same disagreement when he pulled out his hand-held scanner and again attempted to illegally copy my bound books. After examining over 1,300 of the 1,700 records again, and again finding no mistakes, he ended the visit with the statement that my new license should be processed soon.

More than a month later, on October 9, Bettencourt returned and stated that he needed to review my records a third time. Again, the scanner came out to illegally scan my files and again I refused. I told him that not only was it illegal, but that I felt I was personally liable and ran the risk of being sued by my customers if their personal information, including social security numbers, got out. I told Bettencourt that I would allow the scanning only with a warrant or a signed statement attesting to the legality of the scanning. Bettencourt finally told me that the audit was finished and once again angrily responded that he would not be signing anything and yelled at me that he would be working toward revoking my current FFL's and making sure the application for the FFL for my new location was denied.

My original thought was it was just Bettencourt trying to bully me into allowing him to (illegally) scan and copy my records. I called his supervisor in Boston, Agent Linda Champagne (617-557-1200), who made it clear to me that if the ATF didn't get to copy/scan my records, they would

pursue the revocation of my current licenses and would deny my application for a new license for the shop we were working on, despite there being no basis in law or fact for any such actions. I asked for documentation on the legality or permissibility of scanning the bound books and records therein, but Agent Champagne told me that they were under no obligation to justify themselves or prove that it was, in fact, legal.

I have since spoken with multiple Federal agents from other agencies, and every one of them expressed concern about the cavalier attitude and especially the agenda that the ATF seemed to be pursuing in this matter. None of them would put a complaint in writing, however, all of them citing fear of reprisal by the ATF. I have also spoken to many firearms dealers around New England and was told by the other FFLs that they let the ATF do as they please, because they feel that if they question the ATF about their illegal methods, they are at risk of retribution by the Bureau.

I am asking for help from you in an attempt to find someone who is not worried about ATF reprisals, and because my attempt to use the chain of command at the ATF was met with threats and hostility. I find myself standing alone and will gladly continue to do so if that is what it takes to bring attention to an agency that seems to foster and exude an attitude of bullying and a belief that they are above the law. As I have seen you stand with conviction against many political bullies without faltering, I would greatly appreciate your support. I am asking you to make an official inquiry to the ATF and find out how many FFL's bound books have been copied, how many pages, how many gun owners' information has been collected by the ATF, and what databases that information has been entered into and how the information is being used.

If it helps, Alaska Representative Don Young met with ATF Deputy Director Thomas Brandon about this very topic in May 2012 and had this to say about the ATF's request for copies of documents that were not part of a criminal investigation: "During today's meeting Deputy Director Brandon assured me that this is not an accepted practice at the ATF and that they are looking to remedy the situation to ensure it, or anything like it, never happens again in the future." ("Young meets with ATF about agents asking Alaska gun shops for books" *Alaska Dispatch*, (May 18, 2012), <http://www.alaskadispatch.com/article/young-meets-atf-about-agents-asking-alaska-gun-shops-books>).

Thank you for your time. I appreciate any assistance you are able to provide in this matter.

Sincerely,

Philip A. Chabot

PAC N ARMS