

**FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
IN THE COURT OF COMMON PLEAS OF PHILADELPHIA**



CITY OF PHILADELPHIA, a municipal
corporation,

Plaintiff,

v.

WRT MANAGEMENT, INC., f/k/a
TANNER'S SPORT CENTER INC.,
FRANK'S GUN SHOP & SHOOTING
RANGE LLC, MAD MINUTE
ENTERPRISES, LLC d/b/a DELIA'S GUN
SHOP, and DELIA'S GUN SHOP, INC.,

Defendants.

CIVIL DIVISION

Case No. 230702394

**SUPPLEMENTAL MEMORANDUM OF LAW
IN SUPPORT OF THE CITY'S MOTION TO COMPEL
DEFENDANT DELIA'S DISCOVERY PRODUCTION AND RESPONSES**

The City has sued Delia's Gun Shop for illegally and negligently selling firearms to "straw purchasers," meaning individuals who purchase guns for the purpose of trafficking them to others. After the Court of Common Pleas overruled Defendants' preliminary objections, the City served discovery on Delia's seeking records associated with these illegal sales. It has been over seven months since the City served these requests, and Delia's has yet to produce a *single* document.

The parties' discovery dispute concerns the effect of Section 6111(i) of the Pennsylvania Uniform Firearms Act ("UFA"), which states that "[a]ll information ... furnished by a potential purchaser or transferee under this section or any applicant for a license to carry a firearm as provided by section 6109 shall be confidential and not subject to public disclosure." 18 PA. CONS. STAT. § 6111(i). Specifically, the parties disagree on the meaning of two aspects of Section 6111(i): (1) what qualifies as "information . . . furnished by a potential purchaser or transferee under this

section,” and (2) whether exchange between parties during civil discovery—particularly if subject to a protective order—counts as a “public disclosure.” *See id.*

Delia’s contends that Section 6111(i) prohibits its production of any documents pertaining to transactions with its customers. Delia’s is wrong. *First*, information “furnished ... *under this section*” means information provided by prospective buyers to comply with Section 6111 of the UFA—specifically, to complete Pennsylvania’s firearms transaction form (the SP4-113 Application/Record of Sale Form). But information provided by the buyer and recorded by the store to comply with *federal* laws is not provided “under this section” of the UFA and, therefore, is not subject to its nondisclosure mandate.

Second, Section 6111(i) prohibits only *public* disclosure of the pertinent information; it does not prohibit disclosure to a party pursuant to discovery requests in civil litigation. Reading Section 6111(i) to allow disclosure in civil discovery gives sensible meaning and effect to the rest of the UFA. This is because the same section of the UFA explicitly authorizes injured parties to sue gun stores that illegally sell firearms to criminals in violation of any provision of the UFA. *See* 18 PA. CONS. STAT. § 6111(g)(6). As Delia’s would have it, the UFA would allow a cause of action precisely for the claims brought by the City here, while simultaneously barring *any* discovery concerning the illegal transactions at the heart of those claims. That is simply illogical—particularly given the well-established rule that the production of records in civil discovery is not public disclosure. *See* City’s Opening Br. at 7, 9. Delia’s takes great pains on this point to overread *Doe v. Franklin County*, 139 A.3d 296 (Pa. Commw. Ct. 2016), but this case does not address the scenario at issue here and provides no support for Delia’s tortured reading of Section 6111(i).

Third, there is no provision of federal law that deputizes Pennsylvania to control the disposition of federal firearms records such as the ATF Form 4473. Delia’s once again misreads

statutory language in attempting to graft the federal Gun Control Act, 18 U.S.C. § 927, onto Section 6111(i) of the UFA, and arguing that it further prohibits the disclosure of federal firearms forms in discovery. The Gun Control Act does no such thing.

This Court should reject Delia's reading of the UFA and order Delia's to meaningfully engage in discovery.

1. Delia's Reading of Section 6111(i) Cannot Be Squared with the Statutory Text or the General Assembly's Intent

Section 6111(i) does not bar the production of *federal* transaction records, because these are not records "furnished ... under" the UFA and, therefore, are not within that statute's scope. Delia's contention to the contrary effectively asks this Court to rewrite the text of the UFA.

As it relates to gun store records, Section 6111(i) reaches "[a]ll information...furnished by a potential purchaser or transferee *under this section*...." 18 PA. CONS. STAT. §6111(i) (emphasis added). "[T]his section" unambiguously means Section 6111 of the UFA. *See Commonwealth v. Cousins*, 654 Pa. 55, 64 (2019) ("under this section" in 35 PA. STAT. ANN. § 780-113 was "not ambiguous" and "clearly" referred to Section 780-113 itself). Thus, for a record to fall within Section 6111(i)'s ambit, the information in it must have been provided by the purchaser in order to comply with Section 6111. Pennsylvania's one-page transaction form (the SP4-113 Application/Record of Sale) is within this scope: it is required for all gun sales by a licensed dealer under 18 PA. CONS. STAT. § 6111(b)(1).

Federal law, however, imposes its own recordkeeping requirements on gun stores. *See, e.g.*, 18 U.S.C. § 923(g)(1)(A) (requiring licensed gun stores like Delia's to maintain "records of importation, production, shipment, receipt, sale, or other disposition of firearms" as directed by federal regulations). These mandatory federal records include the federal transaction record on which background checks are notated (ATF Form 4473) and reports that gun stores must complete

when they sell multiple handguns at once (ATF Form 3310.4).¹ Customers and stores create these records because federal law requires them to do so. These federal records have nothing to do with Pennsylvania’s UFA, and the information they collect is not “furnished...under” Section 6111.

To reach a contrary result, Delia’s asks this Court to either strike the phrase “furnished ... under this section” from Section 6111 or to insert a reference to federal law. Either approach would contravene basic rules of statutory construction. *See Logue v. Workers’ Compensation Appeal Bd. (Commw.)*, 119 A.3d 1116, 1120 (Pa. Commw. Ct. 2015) (“[C]ourts must give effect to the legislative intention as expressed by the words of the statute and cannot, under the guise of construction, add requirements or conditions that the General Assembly did not include in the statute’s language.”); *see also Smith v. Ivy Lee Real Est., LLC*, 165 A.3d 93, 96 (Pa. Commw. Ct. 2017) (rejecting interpretation of “any ordinance enacted under this act” that would have added qualifying language absent from the statutory text).

If the General Assembly had intended Section 6111(i) to apply to federal records, it would have written it accordingly. By comparison, Section 6111(g)(4)(ii) criminalizes materially false statements “on any form promulgated by Federal or State agencies.” *See* 18 PA. CONS. STAT. § 6111(g)(4)(ii). This reference—in a different provision of the very same statute—confirms the General Assembly’s awareness of the difference between state and federal firearms transaction records, and indicates that the absence of a reference to federal forms in Section 6111(i) was deliberate. This Court should reject Delia’s attempts to override this choice and rewrite Section 6111(i) to apply to federal records.

¹ *See* 18 U.S.C. § 923(g)(3)(a); 27 C.F.R. §§ 478.126a, 478.124, 478.129(b). In addition, federal law requires gun stores to maintain a record of all firearm acquisitions and dispositions, *see* 27 C.F.R. §§ 478.125(e), 478.129(e).

2. Delia's Reading of 6111(i) as Barring Civil Discovery Is Illogical

Even if federal transaction forms fell within Section 6111, the statute would still not prohibit their disclosure—or the disclosure of any other records—in civil discovery because this does not constitute “public disclosure.” *See* 18 PA. CONS. STAT. § 6111(i). The Commonwealth Court recently suggested as much, holding that disclosure during civil discovery is not “public disclosure,” particularly if further dissemination is restricted by a protective order like the one the City offered here. *See, e.g., Toland v. Pa. Board of Probation & Parole*, 311 A.3d 649, 666 (Pa. Commw. Ct. 2024) (discovery does not implicate the “policy concern of wide potential public disclosure, especially given the safeguards courts may erect around the discovery process”); *see also United States v. Wecht*, 484 F.3d 194, 209 (3d Cir. 2007) (“Discovery, whether civil or criminal, is essentially a private process because the litigants and the courts assume that the sole purpose of discovery is to assist trial preparation.”). And Pennsylvania courts routinely permit discovery into sensitive personal, health, school, and financial records that are protected by statute, balancing the truth-seeking functions of discovery with statutory confidentiality limits by using protective orders. *See, e.g., T.M. v. Elwyn, Inc.*, 950 A.2d 1050, 1059-61 (Pa. Super. Ct. 2008) (permitting discovery into health information protected by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and school records protected by the Family Educational Rights and Privacy Act of 1974 (FERPA)).

Moreover, reading Section 6111(i) as a total bar on discovery of gun store records would effectively nullify a different provision of the UFA, Section 6111(g)(6), which makes gun stores that knowingly sell crime guns civilly accountable for the downstream harm of those sales:

Notwithstanding any act or statute to the contrary, any person, licensed importer, licensed manufacturer or licensed dealer who knowingly and intentionally sells or delivers a firearm in violation of this chapter who has reason to believe that the firearm is intended to be used in the commission of a

crime or attempt to commit a crime shall be liable in the amount of the civil judgment for injuries suffered by any person so injured by such crime or attempted crime.

18 PA. CONS. STAT. § 6111(g)(6). A dealer's transaction records are indispensable evidence for prosecuting a Section 6111(g)(6) claim, as they are likely to be the best (if not only) evidence that the store sold a particular gun, whom they sold it to, and whether the circumstances of the transaction constituted a predicate violation of the UFA.

Adopting Delia's reading of Section 6111(i) and blocking all civil discovery of gun store transaction records would produce absurd results at odds with basic tenets of statutory construction. Courts "must presume that in drafting [a] statute, the General Assembly intended the entire statute, including all of its provisions, to be effective." *Tr. Under Agreement of Taylor*, 640 Pa. 629, 645-46 (2017) (citing 1 PA. CONS. STAT. § 1922). "Importantly, this presumption requires that statutory sections are not to be construed in such a way that one section operates to nullify, exclude or cancel another, unless the statute expressly says so." *Id.*; *see also Previte v. Erie Cnty. Bd. of Elections*, 320 A.3d 908, 915 (Pa. Commw. Ct. 2024) (same). Notably, Sections 6111(g)(6) and (i) were enacted by the very same piece of legislation, 1995 Pa. Legis. Serv. Sp. Sess. No. 1 Act 1995-17 (H.B. 110) (SS1) (PURDON'S). It strains credulity that the General Assembly intended to create a civil cause of action to hold irresponsible gun dealers accountable while at the same time precluding all discovery of the very evidence that would make such a cause of action viable. *See Smith* 165 A.3d at 99 (reversing trial court and declining to adopt interpretation of one section of the Municipalities Planning Code that would have foreclosed private enforcement actions created by a different section of the code). Delia's misreading of the statute should therefore be rejected.

Delia’s heavy reliance on *Doe v. Franklin County*, 139 A.3d 296 (Pa. Commw. Ct. 2016), in its opening brief and at oral argument on September 24, 2024,² does not aid it. *Doe* never addressed whether confidential disclosure of firearms sales records in a civil case enforcing the UFA constitutes public disclosure. Delia’s asserts that *Doe* bars the discovery of gun store records because civil discovery is not one of the four permissible types of disclosure enumerated in that case. (Delia’s Br. at 5.). However, because the factual circumstances underpinning *Doe* are so different from the current case at bar, its fact-bound holding has little applicability here.

Doe concerned a county sheriff’s office mailing “unenvveloped postcards” containing the approval, denial, revocation, and expiration of gun licenses, thereby exposing sensitive information to anyone who saw the postcards. *Doe*, 139 A.3d at 300-01. The court addressed whether mailing these postcards could be considered a public disclosure under 6111(i). *See id.* at 304 (identifying statutory language about “public disclosure” as the “key phrase” for analysis). In applying Section 6111(i)’s confidentiality language to the disclosure of licensing information, the court carefully reviewed Section 6109 of the UFA, which establishes Pennsylvania’s firearms licensing system. *See id.* at 305-06. The court did so because, in the context of firearms licensing, sheriffs are responsible for duties such as vetting license applicants and confirming the validity of licenses in response to inquiries—and these administrative duties require the disclosure of firearms license information. *See id.* at 305-06; *see also id.* at 321 (allowing disclosure to check applicants’

² At oral argument, counsel for Defendant Frank’s—which was an interested party but not a movant at that hearing—asked to be heard and requested that the Court stay all discovery pending the Commonwealth Court’s resolution of Delia’s and Frank’s petition for allowance of an appeal of the interlocutory orders overruling their preliminary objections. This Court properly rejected that request. No party has moved for a stay in either the Commonwealth Court or in this Court, and neither Delia’s nor Frank’s has raised a stay as a basis to oppose the City’s pending motions to compel in any briefing to date. In any case, such a stay would be unwarranted.

character references in accordance with Section 6109 (d) & (e)). Ultimately, the court held that there were four permissible reasons for a sheriff to “reveal[] an applicant’s name or identity”; one reason was that the recipient was “authorized to receive such information by statute.”³ *Id.* at 307.

Doe had nothing to do with gun stores, transaction records for gun sales, or civil discovery. The court was not asked, nor did it decide, whether Section 6111(i) applies to all gun store records or only to the form SP4-113 required by state law. Because *Doe* focused solely on firearms licensing, the court did not interpret the phrase “furnished by a potential purchaser or transferee under this section,” which is the key provision before *this* Court. *See id.* at 300-301 (summarizing complaint). Nor did the *Doe* court evaluate how 6111(i) interacts with civil discovery, whether production under a protective order is nonetheless “public,” or whether a party entitled to discovery under Pennsylvania’s codified rules is “authorized to receive such information by statute.” Simply put, *Doe* dealt with materially different facts and focused on aspects of the UFA related to firearms licensing, making its findings irrelevant here.

Thus, Section 6111(i) does not prevent Delia’s from producing relevant documents in discovery, and *Doe* should not be read to instruct otherwise.

3. Federal Law Does Not Expand the Scope of Section 6111(i) or Enable States to Control the Disposition of Federal Records

Delia’s argues that a provision of the federal Gun Control Act, 18 U.S.C. § 927, “cedes ... regulatory authority” over ATF Form 4473s to Pennsylvania, allowing the Commonwealth to “control[]” their disposition via UFA Section 6111(i). (Delia’s Br. at 4.) But the Gun Control Act makes no such delegation of authority to states. Section 927 reads in full:

³ Under Section 6111(i), an “applicant” is someone applying for a firearms license under Section 6109. It does not mean someone at a gun store acquiring a firearm, referred to in the statute as a “potential purchaser or transferee” instead.

No provision of this chapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together.

18 U.S.C. § 927. This merely disavows federal field preemption concerning firearms and clarifies that states may institute their own parallel or complementary regulations so long as they do not interfere with the federal regulatory scheme. *See Oefinger v. Zimmerman*, 601 F. Supp. 405, 412 (W.D. Pa. 1984), *aff'd*, 779 F.2d 43 (3d Cir. 1985), and *aff'd sub nom. Appeal of Oefinger*, 779 F.2d 43 (3d Cir. 1985). Thus, it permits Pennsylvania to promulgate its own record-keeping requirements separate from, and in addition to, those established by federal law, as it has done through the implementation of Pennsylvania form SP4-113.

There is simply no reading of 18 U.S.C. § 927 that could confer on states the power to regulate federal firearms records like ATF Forms 4473 and 3310.4. Nothing in Section 927 allows Pennsylvania to decide how or when federal records like ATF Form 4473 are created, maintained, and disposed of—aspects that are already extensively regulated under other provisions of federal law. *See, e.g.*, 27 C.F.R. §§ 478.124, 478.129. And even if the Gun Control Act did give Pennsylvania that authority, Section 6111(i) makes no attempt to exercise it, because it expressly limits its effect to records required by the UFA itself.

Therefore, Section 927 has no bearing on Section 6111(i) or on Delia's discovery obligations.

CONCLUSION

For the foregoing reasons, the City respectfully asks this Court to order Delia's to produce responsive documents and meaningfully respond to the City's First Set of Discovery Requests.

DATED this 8th day of October 2024.

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CERTIFICATE OF SERVICE

I, Melissa Medina, hereby certify that on the date below, the foregoing Supplemental Memorandum of Law was served on all counsel of record by electronic filing and is available for viewing and downloading.

Dated: October 8, 2024

/s/ Melissa Medina
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