

Notice Pursuant to Executive Order 12600 of Receipt of Freedom of Information Act (FOIA); Requests for Wildlife/Flora Import and Export Data stored in LEMIS

The U.S. Fish and Wildlife Service (Service) has received Freedom of Information Act (FOIA) requests for information related to the import and export of wildlife specimens and flora into and out of the United States contained in the Law Enforcement Management Information System (LEMIS) database. Information contained in LEMIS comes from data collected on the *U.S. Fish and Wildlife Service Declaration for Importation or Exportation of Fish and Wildlife (Form 3-177)*. The Service has prepared this notice to provide businesses (submitters) who have submitted information on Form 3-177 with an opportunity to review the information subject to potential disclosure under the FOIA and object to such disclosure.

This Notice DOES NOT apply to individuals who import or export wildlife specimens or flora for personal use and personally (without a broker) file *U.S. Fish and Wildlife Service Declaration for Importation or Exportation of Fish and Wildlife (Form 3-177)*.

Exemption 7(C) of the FOIA protects information about individuals in “records or information compiled for law enforcement purposes” when disclosure of such information “could reasonably be expected to constitute an unwarranted invasion of personal privacy.” Exemption 6 of the FOIA protects information about individuals in "personnel and medical files and similar files" when the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy.”

This Notice ONLY applies to businesses (submitters) who import or export wildlife specimens and flora for business use OR on behalf of an individual (i.e. a broker) and file *U.S. Fish and Wildlife Service Declaration for Importation or Exportation of Fish and Wildlife (Form 3-177)*. Submitters of this type of information can contact the US Fish and Wildlife Service (Service) to review records subject to possible release (see below). If you are a submitter of this information, you have a limited opportunity to object to the disclosure of such information. The Service will presume that you do not object to the disclosure of

your information if a response to this Notice is not received by the date specified at the end of this Notice.

**TO RECEIVE A COPY OF THE INFORMATION CONTAINED IN LEMIS
RELATED TO YOUR BUSINESS, SEND YOUR REQUEST TO:**

- Email to fwhq_fws.gov
- Fax at (703) 358-2271
- *U.S. mail or hand-delivery:* U.S. Fish and Wildlife Service, Office of Law Enforcement (FOIA), 5275 Leesburg Pike (MS: OLE), Falls Church, Virginia 22041.

I. Background

The FOIA generally requires federal agencies to disclose information requested by the public unless the information falls under one of the FOIA exemptions. Information related to records for the import and export of all wildlife specimens to and from the United States may be disclosed under FOIA. The Service seeks information about potential objections to the public release of possibly confidential **business** (not individual) information regarding import and export activities filed on the Form 3-177 and stored in the Service's Law Enforcement Management Information System (LEMIS). With this Notice the Service is soliciting views from submitters with respect to whether certain information collected on the Form 3-177 and stored in LEMIS constitute "trade secrets and commercial or financial information obtained from a person [that are] privileged or confidential" information under the FOIA Exemption 4. *5 U.S.C. § 552(b)(4)*. The records at issue concern information stored in LEMIS relating to the import and export of all wildlife specimens and flora products. The information stored in LEMIS was collected from the Service's Declaration for Importation or Exportation of Fish or Wildlife (Form 3-177), from January 1, 2015 to December 31, 2020.

II. Issue for Comment

This Notice relates to several FOIA requests which ask for the release of all data related to the import and export of all wildlife specimens and flora stored in LEMIS from January 1, 2015 to December 31, 2020.

If your business (“you”) submitted information to the Service on Form 3-177, this notice provides you with the opportunity to object to the public release of data that may be protected under FOIA Exemption 4, which protects from disclosure “trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential.” [5 U.S.C. § 552\(b\)\(4\)](#).

The data from the 3-177 stored in LEMIS which may be exempt from disclosure pursuant to Exemption 4 of the FOIA, [5 U.S.C. § 552\(b\)\(4\)](#), is described below. You may also refer to the Form 3-177 at <https://www.fws.gov/le/pdf/3177.pdf>.

Data Field	Description
Port of Entry	2 letter Port code for the Region where the port is located
Import/Export License Number	No description needed
Carrier Name	Carrier used to import or export, i.e. airline, vessel, rail, etc.
Air Waybill Number	Master and House Air Waybill number or Bill of Lading
Automobile License Number	No description needed
Automobile License State	No description needed
Bonded Location of Wildlife	Physical location where shipment is available for inspection
Number of Cartons	No description needed
Importer/Exporter Business Name	No description needed
Importer/Exporter Last Name	No description needed
Importer/Exporter First Name	No description needed
Importer/Exporter Middle Name	No description needed
Importer/Exporter Address	No description needed
Importer/Exporter City	No description needed
Importer/Exporter State	No description needed
Importer/Exporter Zip	No description needed
Importer/Exporter Zip	No description needed
Importer/Exporter Phone Number	No description needed
Importer/Exporter e-Mail Address	No description needed
Importer/Exporter ID Number	Identifier number for U.S. exporter or importer, i.e. DUNS Number, Customs account number, etc.
Importer/Exporter ID Type	Identifier type, i.e. DUNS, Customs account

Foreign Shipper/Receiver (FSR)	
FSR Business Name	No description needed
FSR Last Name	No description needed
FSR First Name	No description needed
FSR Middle Name	No description needed
FSR Address	No description needed
FSR City	No description needed
FSR Country	No description needed
FSR Phone Number	No description needed
FSR e-Mail Address	No description needed
FSR ID Number	Identifier number for foreign exporter or importer, i.e. DUNS Number, Customs account number, etc.
FSR ID Type	Identifier type, i.e. DUNS, Customs account
Customs Broker ID	
Broker Phone Number	No description needed
Broker Fax Number	No description needed
Broker e-Mail Address	No description needed
Broker Last Name	No description needed
Broker First Name	No description needed
Broker ID Number	Identifier number, i.e., DUNS number, Customs account number) for the U.S. Customs Broker, Shipping Agent or Freight Forwarder
Broker ID Type	Type of identifier, i.e., DUNS, Customs account, for the U.S. Customs Broker, Shipping Agent or Freight Forwarder
ForCITES	Foreign CITES Permit Number
USCITES	U.S. CITES Permit Number
Quantity	No description needed
Units	No description needed
Value	Total value of items containing wildlife
Origin	No description needed

If you wish to object to the release of any of this information, please provide a detailed written statement that specifies all grounds for withholding the information under any FOIA exemption 4. Further, if you wish to object to disclosure on the basis that the information is protected by Exemption 4 of the FOIA, the detailed written statement referenced above must

explain why the information is a trade secret or, if the information is not a trade secret, you **must provide certification** that the business both customarily and actually treats the information as private. A certification should include the position of the certifier, that their certification is based on personal knowledge, the certification is true and correct, and a dated signature. This statement must also include any available background on whether the information was provided to the government under an assurance that the government would keep it private. [43 C.F.R. § 2.30 to § 2.31\(a\)](#).

Be advised this is your opportunity to let us know why some of the information you submitted should be protected. Please review the guidance below carefully and be very clear and specific about your concerns and rationales. A submitter who does not respond within the time period specified under will be considered to have no objection to disclosure of the information.

Information may qualify for protection under Exemption 4 as a “trade secret” if it is information that is “a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort.” *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983). This definition requires there be a direct relationship between the information at issue and the productive process. Should you wish to object to the disclosure of any of the information in the records because it is a trade secret, the specific and detailed discussion that you submit must explain how *each category* of information to which the objections are related qualifies for protection under Exemption 4 as a trade secret. The explanation must also identify a direct relationship between the information and the productive process.

Alternatively, information may qualify for protection under Exemption 4 if it is commercial or financial information that is privileged or confidential. Should you wish to object to the disclosure of any of the information in the records for this reason, your specific and detailed discussion must explain how *each category* of information to which the objections are related

qualifies for protection under Exemption 4 as commercial or financial information that is privileged or confidential.

In determining whether information is commercial or financial, the terms are given their “ordinary meanings.” *Nat’l Ass’n of Home Builders v. Norton*, 309 F.3d 26, 38 (D.C. Cir. 2002). You therefore must provide a specific and detailed explanation of how the information relates to your commercial or financial interest and either the commercial/financial function the information serves or the commercial/financial nature of the information.

The Supreme Court has noted that “[a]t least where commercial or financial information is both customarily and actually treated as private by its owner and provided to the government under an assurance of privacy, the information is ‘confidential’ within the meaning of Exemption 4.” See *Food Mktg. Inst. v. Argus Leader Media*, 588 U.S. __ (2019). You therefore must certify and explain that the information you object to disclosing is confidential, the business has not disclosed the information to the public, the information is not routinely available to the public from other sources, and the business treats it as private. Finally, you must let us know whether you provided the information to the government under an express or implied assurance of privacy.

Please be aware that the FOIA requires that “any reasonably segregable portion of a record” must be released after appropriate application of one of the FOIA’s nine exemptions. See [5 U.S.C. § 552\(b\)](#) (discussion after exemptions). Where a record contains both exempt and nonexempt material, the bureau will generally separate and release the nonexempt information. See [43 C.F.R. § 2.25](#). You should be mindful of this segregability requirement in formulating any objections you may have to the disclosure of the records. Information that does not qualify as a trade secret or as confidential commercial or financial information will not qualify for Exemption 4 protection and will be released unless another FOIA exemption applies.

III. Submission of Objections

Should you wish to object to the disclosure of any of the requested records (or portions thereof), the Service must receive from you all the information requested above by **June 1, 2021**. If you do not submit any objections to the disclosure of the information (or portions thereof) to the public on or before **June 1, 2021**, the Service will presume that you do not object to such disclosure and may release the information without redaction. Please note that the Service, not you, is responsible for deciding whether the information should be released or withheld. If the Service decides to release records over your objections, the Service will inform you at least 10 business days in advance of the intended release. Please note that any comments you submit to the Service objecting to the disclosure of the information may be subject to disclosure under the FOIA if the Service receives a FOIA request for them. In the event your comments contain commercial or financial information and a requester asks for the comments under the FOIA, the Service will notify you and give you an opportunity to comment on the disclosure of such information.

DATES: You must submit any objection to the release of the identified requested material **on or before June 1, 2021**.

ADDRESS for SUBMISSION: You may submit comments or objections by one of the following methods:

- Email to Submitter_Notice@fws.gov.
- Fax at (703) 358-2271
- *U.S. mail or hand-delivery:* U.S. Fish and Wildlife Service, Office of Law Enforcement (FOIA), 5275 Leesburg Pike (MS: OLE), Falls Church, Virginia 22041.

FOR FURTHER INFORMATION REGARDING THIS NOTICE CONTACT:

- Email to fwhq_fws.gov
- Fax at (703) 358-2271
- *U.S. mail or hand-delivery:* U.S. Fish and Wildlife Service, Office of Law Enforcement (FOIA), 5275 Leesburg Pike (MS: OLE), Falls Church, Virginia 22041.