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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF PENNSYLVANIA

AMERICAN ANTI-VIVISECTION
SOCIETY,

Plaintiff,

v.

U.S. DEPARTMENT OF THE INTERIOR, and
U.S. FISH AND WILDLIFE SERVICE.

Defendants.

Civil Action No. _____

**Complaint for Declaratory and
Injunctive Relief**

INTRODUCTION

1. The United States Fish and Wildlife Service (“FWS”) uses an electronic database, the Law Enforcement Management Information System (“LEMIS”), to maintain records of, *inter alia*, all wildlife imported into and exported from the United States – including live and dead animals (and their parts and derivatives) used in industries such as biomedical research, testing, and education.

2. The commercial sale and use of animals is matter of great importance to millions of Americans. In order to fulfill a central function of its organizational mission, Plaintiff American Anti-Vivisection Society (“AAVS” or “Plaintiff”) annually seeks information about the number of monkeys and other primates, and other species, that are imported into and exported from the United States. This information is vital to AAVS because most of those animals are used in the research and testing industries on which AAVS focuses its work.

3. For years FWS routinely released this information to the public (including AAVS), and the data always contained the quantity of animals imported and exported, without claiming any exemptions to disclosure of the number of animals involved. But in 2015, FWS suddenly changed its position and, based on some new and undisclosed “guidance,” claimed that it was treating the number of animals imported and exported as statutorily exempt from disclosure.

4. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, to compel disclosure of LEMIS data requested by AAVS in two FOIA requests.

JURISDICTION AND VENUE

5. The Court has jurisdiction over this action pursuant to 5 U.S.C. §§ 552(a)(4)(B), 702, 706, and 28 U.S.C. § 1331.

6. Venue is proper in the Eastern District of Pennsylvania under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e). This action is brought against officers of the United States acting in their official capacity. AAVS has its principal place of business in Jenkintown, Pennsylvania.

PARTIES

7. Plaintiff American Anti-Vivisection Society (“AAVS”) is a non-profit organization incorporated in Pennsylvania and headquartered in Jenkintown, Pennsylvania. AAVS focuses its work on the proper treatment of animals involved in commercial trade, and also works to eliminate or reduce the use of animals in product testing and in product and biomedical research. AAVS publishes news and in-depth reports in print and electronic media and is involved in humane education in all these areas, and promotes and encourages satisfactory alternatives to the use of animals in such testing, educational demonstrations, and research. AAVS also provides vital support to sanctuaries housing animals who were previously subjected to research and testing, and provides its members, the public, and the press with information on a broad spectrum of issues related to these areas.

8. Part of AAVS’s mission is to advance animal welfare by advocating for and supporting the development, validation, and adoption of non-animal methods in biomedical research, product testing, and education. Focused on methods and models used in research, AAVS works constructively with partners in the scientific community to bring alternative technologies and compassion to modern laboratories and classrooms.

9. For years, AAVS has annually sought information from FWS with respect to the trade of animals used in research, including the species of animals imported or exported and the number of animals imported or exported. FWS collects this information through its Law

Enforcement Management Information System (“LEMIS”) program. LEMIS data are critical to AAVS’s operations, and AAVS maintains internal records of more than a decade of LEMIS data obtained through FOIA requests, which it uses to evaluate trends and inform organizational strategy to improve protections where needed. AAVS is the requestor of the public information at issue in this action and does not intend to use the requested information for commercial purposes.

10. Defendant U.S. Fish and Wildlife Service (“FWS”) is the federal government agency within the Department of Interior that is responsible for enforcing federal wildlife laws and maintaining the LEMIS database. FWS has possession and control of the records AAVS requested and is therefore subject to FOIA pursuant to 5 U.S.C. § 552(f). FWS made the two decisions under FOIA that AAVS is challenging in this lawsuit.

11. Defendant U.S. Department of the Interior (the “Department”) is the federal governmental agency with ultimate authority over decisions made by FWS, including the two decisions under FOIA that AAVS is challenging in this lawsuit.

STATUTORY FRAMEWORK

12. FOIA requires agencies of the federal government to release information to the public upon request, unless the agency demonstrates that one of nine specific exemptions applies. FOIA “encourages accountability through transparency” and “is the most prominent expression of a profound national commitment to ensuring an open Government.” Presidential Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act, 74 Fed. Reg. 4683, 4683 (Jan. 21, 2009). FOIA “should be administered with a clear presumption: In the face of doubt, openness prevails. . . . The presumption of disclosure should be applied to all decisions involving FOIA.” *Id.*

13. To lawfully withhold responsive information, the agency in receipt of a FOIA request has the burden to demonstrate that a particular exemption applies to the requested material. To meet this burden the agency must provide precise and certain reasons for withholding confidential information in its response to a request. If the agency decides that portions of responsive records are exempt from disclosure, the agency must provide any reasonably segregable portion after redacting the exempt information, and must explain why the redacted portions were withheld.

14. FOIA Exemption 4 allows an agency to withhold information concerning matters that involve trade secrets and commercial or financial information that is privileged or confidential.

15. FOIA Exemption 6 allows an agency to withhold information concerning matters in personnel and medical files and similar files when the disclosure of those files would constitute a clearly unwarranted invasion of personal privacy.

16. FOIA Exemption 7(C) allows an agency to withhold records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records could reasonably be expected to constitute an unwarranted invasion of personal privacy.

17. Upon receiving a FOIA request, an agency has twenty working days to respond to the request. A requestor may file an administrative appeal of an agency's failure to disclose requested records in part or in full. An agency must make a determination on any such appeal within twenty working days. However, a requestor is deemed to have exhausted its administrative remedies, and may seek immediate judicial review of the matter, if the agency fails to comply with either of these time limits.

18. Judicial review of an agency's interpretation of a FOIA exemption is de novo.

19. Pursuant to statute, FWS requires that upon every importation of wildlife or wildlife parts or products, the importer must complete a federal Form 3-177, Declaration for Importation or Exportation of Fish or Wildlife form ("Declaration Form").

20. LEMIS was developed as a method to organize information from these Declaration Forms so that it would be easily accessible and available to the public and to the federal agencies that use this information.

FACTUAL BACKGROUND

21. The United States is one of the largest consumers of the world's wild animals. The wildlife trade includes live animals that may be used in research or testing protocols, or sold for use in the exotic pet or entertainment industries, as well as the parts and products (including "trophies") from those animals – which are used in a variety of ways.

22. Since FWS established LEMIS, both FWS and private organizations like AAVS have used the data to analyze trade in various wildlife species. Such analyses help AAVS evaluate the use of animals in testing and research in America, and monitor the number of animals that are being used by the testing and research industries.

23. The information AAVS obtains from the LEMIS database helps AAVS determine areas of focus for its ongoing work, and also allows it to provide important information to its members and the public.

24. LEMIS data provide key information that quantifies the role the United States plays in the trade in animals used in testing and research. For example, AAVS uses LEMIS data to identify both the sources and recipients of some of the most commonly used research animals, monkeys and frogs. The discovery of this information provides AAVS with vital information

that it then disseminates to its members and utilizes in its important work in trying to reduce or eliminate the use of animals in testing, research, and education. This information also provides AAVS with the kind of information it needs to target areas for the promotion of alternatives to the use of animals.

25. The identity of importers and exporters and the number of individual species imported and exported are significant data points for determining the scope of the United States' testing and research industries' role in the wildlife trade. AAVS has relied on such data in the past and plans to continue relying on such data in its efforts to protect animals and to influence ongoing debate on the use of animals in research, testing, and education. AAVS also compiles this information in order to track the progress of its efforts and the trend in the use of animals in America as compared to other countries.

26. Although the LEMIS database is not always complete – because its data are based on forms submitted by members of the public who may have omitted information – LEMIS nevertheless is the most comprehensive source of information about wildlife trade in the United States.

27. Each year beginning in 2001, through 2015, AAVS submitted a FOIA request to FWS requesting LEMIS data from previous years. Each year during this time period FWS provided those data without redacting any quantity information pursuant to § 552(b) of FOIA.

28. FWS routinely and consistently released data concerning the quantity of animals imported and exported when requested up to and including 2015, but sometime in 2015 FWS reversed its position and began withholding large amounts of data.

29. On January 26, 2016, AAVS submitted two FOIA requests to FWS for electronic LEMIS records, request numbers FWS-2016-00388 (the 388 Request) and FWS-2016-00389 (the 389 request).

30. The 388 Request sought (a) “[LEMIS] information from both the Investigations and LEMIS subsystems, concerning all imports and exports (i.e., live, dead, trophies, etc.) of animals under the order primate from 1 January 2015 to 31 December 2015” and (b) “all LEMIS information concerning all imports and exports (i.e., live, dead, trophies, etc.) of animals under the order primate for all complete years available.”

31. The 389 Request sought the following information from LEMIS: (a) “Imports of animals under the genus *Squalus*” (dogfish sharks); (b) “Imports of animals under the genus *Rana*” (frogs); and (c) “Imports of animals by the Importers: Bio Corporation, WARDS, Rana Laboratories, Inc., Carolina Biological Supply Company, Science Kit, Inc. Boreal, and South Texas Biology, Inc.”

32. On February 2, 2016, FWS sent a final response to the 388 Request. Under Exemption 4, FWS withheld information regarding the quantity of primates imported and exported. In that letter, despite a long history of producing quantity information, FWS did not even acknowledge that it was withholding the quantity information. Under Exemptions 6 and 7(C), FWS also withheld the names of individual U.S. importers and exporters. And without claiming an exemption, FWS failed to provide any information regarding violations by importers and exporters of primates (called “Violation Report” information by FWS in prior FOIA responses) and did not provide any response to the request for LEMIS information concerning all imports and exports of animals under the order *Primate* for all complete years available.

33. In a follow-up response, FWS provided LEMIS information concerning imports of all animals, not just primates, that were coded as trophies, for all complete years available, but did not provide the requested information for primates imported under all other wildlife description codes (live specimen, dead specimen, hair, etc.) and did not provide any export information.

34. On February 10, 2016, FWS sent a final response to the 389 Request. As it did in response to the 388 Request, FWS withheld information regarding the quantity of frogs and dogfish sharks imported and exported, based on Exemption 4, and withheld the names of individual U.S. importers and exporters under Exemptions 6 and 7(C).

35. FWS did not explain its departure from its long-held position that quantity information is public in its responses to either the 388 Request or the 389 Request.

36. On March 7, 2016, AAVS submitted a timely administrative FOIA appeal to the Department of Interior, based on FWS' instructions.

37. In its appeal, AAVS argued that:

- a. FOIA Exemption 4 does not apply to the quantity data, because this information is not confidential under the relevant legal standard;
- b. FOIA Exemptions 6 and 7(C) do not apply to information concerning corporations or other entities because only individuals have personal privacy interests; and
- c. FWS had no legitimate basis for failing to provide information on the import and export of primates from all wildlife description codes, instead of just for the "trophy" code.

38. The Department of Interior failed to respond to AAVS's appeal within twenty working days.

39. On April 7, 2016, AAVS sent the Department of Interior a letter requesting a response to its March 7, 2016 FOIA appeal. In its letter, AAVS explained that the Department's failure to make a determination on the appeal within twenty working days meant that AAVS had exhausted its administrative remedies and could seek immediate judicial appeal.

40. On April 29, 2016, AAVS attempted to contact the Department of Interior via telephone to inquire on the status of appeal. AAVS left a voice message and sent a follow-up email.

41. AAVS again called, left voice messages, and sent follow-up emails on each of May 3, May 5, and May 12, 2016.

42. As of the date of this Complaint, long after the Department of Interior's twenty working day deadline, and despite several efforts to contact the agency to obtain a response to its appeal, AAVS has received no decision on its appeal. Nor has AAVS received a response to its April 7, 2016 letter or any of its subsequent voice messages or emails.

CLAIMS FOR RELIEF

Count I: Defendants Unlawfully Withheld Records under FOIA (388 Request)

43. Plaintiff hereby incorporates by reference the preceding paragraphs as if fully set forth herein.

44. Plaintiff has a statutory right of access to the public records requested under FOIA, and there is no lawful basis for Defendants' withholding of the three redacted categories of LEMIS data under FOIA Exemptions 4, 6, or 7(C) in response to the 388 Request.

45. First, quantity data is not exempt as “trade secrets and commercial or financial information obtained from a person” that are “privileged or confidential” under FOIA Exemption 4. As the law requires importers and exporters to provide this information, public disclosure would not impair the agency’s ability to obtain the same information in the future. And there would be no substantial harm to the competitive position of importers and exporters providing this data to FWS.

46. Second, the identities of importers and exporters who are corporations or other entities are not exempt from disclosure under FOIA Exemptions 6 and 7(C) because only individuals have personal privacy interests.

47. Third, Defendants had no legitimate basis for failing to provide information on the import and export of primates from all wildlife description codes, instead of just for the “trophy” code.

48. As the requested records were improperly withheld, Defendants violated Plaintiff’s legal right to access these records under 5 U.S.C. § 552(a)(3).

Count II: Defendants Unlawfully Withheld Records under FOIA (389 Request)

49. Plaintiff hereby incorporates by reference the preceding paragraphs as if fully set forth herein.

50. Plaintiff has a statutory right of access to the public records requested under FOIA, and there is no lawful basis for Defendants’ withholding of the three redacted categories of LEMIS data under FOIA Exemption 4, 6, or 7(C) in response to the 389 Request.

51. First, quantity data is not exempt as “trade secrets and commercial or financial information obtained from a person” that are “privileged or confidential” under FOIA Exemption 4. As the law requires importers and exporters to provide this information, public disclosure

would not impair the agency's ability to obtain the same information in the future. And there would be no substantial harm to the competitive position of importers and exporters providing this data to FWS.

52. Second, the identities of importers and exporters who are corporations or other entities are not exempt from disclosure under FOIA Exemptions 6 and 7(C) because only individuals have personal privacy interests.

53. Third, Defendants had no legitimate basis for failing to provide information on the import and export of primates from all wildlife description codes, instead of just for the "trophy" code.

54. As the requested records were improperly withheld, Defendants violated Plaintiff's legal right to access these records under 5 U.S.C. § 552(a)(3).

Count III: Defendants Failed to Adhere to Deadlines under FOIA (388 Request)

55. Plaintiff hereby incorporates by reference the preceding paragraphs as if fully set forth herein.

56. Defendants failed to issue a determination as to Plaintiff's March 7, 2016 administrative FOIA appeal of the 388 Request within FOIA's twenty working day deadline, and have yet to issue such determinations as of the date of this Complaint.

57. Therefore, Defendants failed to adhere to FOIA's statutory deadlines, in violation of 5 U.S.C. § 552(a)(6)(A)(ii).

Count IV: Defendants Failed to Adhere to Deadlines under FOIA (389 Request)

58. Plaintiff hereby incorporates by reference the preceding paragraphs as if fully set forth herein.

59. Defendants failed to issue a determination as to Plaintiff's March 7, 2016 administrative FOIA appeal of the 389 Request within FOIA's twenty working day deadline, and have yet to issue such determinations as of the date of this Complaint.

60. Therefore, Defendants failed to adhere to FOIA's statutory deadlines, in violation of 5 U.S.C. § 552(a)(6)(A)(ii).

RELIEF REQUESTED

Wherefore, Plaintiff requests that this honorable Court:

- A. Declare that Defendants' withholding of the three categories of LEMIS data is unlawful under FOIA;
- B. Declare that Defendants violated FOIA's deadline to respond to Plaintiff's administrative appeal;
- C. Order Defendants to make the requested records available within ten working days;
- D. Award Plaintiff its costs and reasonable attorney's fees, pursuant to 5 U.S.C. § 552(a)(4)(E)(i); and
- E. Award Plaintiff any other relief that is just and proper.

Respectfully submitted this 8th day of August, 2016



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