



Office of Information Programs and Services  
A/GIS/IPS/RL  
U.S. Department of State  
2201 C Street N.W., Suite B266  
Washington, D.C. 20520-0000

July 15, 2021

Re: Freedom of Information Act request

Dear Sirs:

On behalf of the nonprofit Ancient Coin Collectors Guild this is a request, pursuant to the Freedom of Information Act (FOIA) 5 U.S.C. § 552, for the following documents regarding the Designated List of restricted ancient coins “from the Republic of Turkey” identified and published by the U.S. Customs and Border Protection (CBP) at 86 Federal Register 31910-31916 (June 16, 2021).

The Designated List of restricted ancient coins occurred, according to the CPB, after “March 27, 2020, [when] the Assistant Secretary for Educational and Cultural Affairs, United States Department of State, after consultation with and recommendation by the Cultural Properties Advisory Committee,<sup>1</sup> made the determinations required under the statute with respect to certain archaeological material originating in Turkey that is described in the Designated List....” The Designated List restrict the importation of ancient coins, found at 86 Federal Register 31912, and specifically lists six centuries of Greek Archaic, Classical and Hellenistic coins, eight centuries of “Roman provincial coins,” nine centuries of “Byzantine period coins,” and seven centuries of “Medieval and Islamic coins” “that circulated primarily in Turkey.”

**I. Freedom of Information Act Request:** We request the following records<sup>2</sup>:

1. All documents on the consultation with and recommendation by the Cultural Properties Advisory Committee, including any dissenting views.
2. The Report of the import restrictions submitted to Congress, that is required by 19 U.S.C. § 2602(g), which directs that “the President shall, promptly after taking such [import restriction] action, submit a report to the Congress.”

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<sup>1</sup> The CPAC had earlier requested public comments at 84 Federal Register 65209 (November 26, 2019)(Docket ID: DOS-2019-0043).

<sup>2</sup> Pursuant to 5 U.S.C. § 552(f)(2)(A) the term "records" includes "any information that would be an agency record . . . when maintained by an agency in any format, including an electronic format."

3. All documents that addressed, analyzed, considered or justified each of the agency's "determinations," required under 19 U.S.C. § 2602(a)(1)(A)-(D). Since the five "determinations" were only briefly summarized in a single conclusionary sentence at 86 Federal Register 31910 (June 19, 2021), we request the documents that detail the reasons how and why the agency made each of its five "determinations" that:

A. "... the cultural patrimony of Turkey is in jeopardy from the pillage of archaeological or ethnological material representing Turkey's cultural heritage ...."

B. "... the Turkish government has taken measures consistent with the Convention to protect its cultural patrimony ....;"

C. "... import restrictions imposed by the United States would be of substantial benefit in deterring a serious situation of pillage ....;"

D. "... remedies less drastic are not available ....;"

E. "... the application of the import restrictions set forth in this final rule is consistent with the general interest of the international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes ...."

4. All documents regarding the discussion and creation of the Designated List of restricted ancient coins "from the Republic of Turkey" identified and published by the CBP at 86 Federal Register 31912.

5. All documents describing how and why the import restrictions of ancient coins was for those that "circulated primarily in Turkey," when 19 U.S.C. § 2601(2)(C) instead requires that any designated "archaeological or ethnological material" be "first discovered within, and subject to export control by, the State Party."

6. All public comments submitted to the U.S. Cultural Property Advisory Committee at [regulations.gov](https://www.regulations.gov),<sup>3</sup>

7. All documents on how the agency considered and addressed the public comments which raised significant issues. This includes but is not limited to the comments submitted in:

A. Peter Tompa's 23-page comments [listed as Comment DOS 2019-0043-0036], which raised a number of significant issues, including but not limited that:

I. Questions how coins—which exist in many multiples—are of "cultural significance," a prerequisite for restrictions.

II. Questions how the import restriction of "Turkish" coins can meet the requirement of 19 U.S.C. § 2601 that they be "first discovered within" and subject to State "export control," since scholarly evidence demonstrates that the vast majority of "Turkish" coins are often found outside of the confines of modern-day Turkey.

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<sup>3</sup> The website <https://www.regulations.gov/docket?D=DOS-2019-0043ststes> (viewed February 25, 2020), states that 99 comments were submitted to [regulations.gov](https://www.regulations.gov).

III. Questions whether the Turkish government has taken measures consistent with the Convention to protect its cultural patrimony, since the CPAC's public summary of Turkish enforcement efforts ignores recent documented controversies of a failed government stewardship of its cultural patrimony.

IV. Questions whether and how the cultural heritage of Turkey is in jeopardy, whether and how Turkey has "unclean hands," and whether and how Turkey has engaged in a "concerted international response" to combat looting.

V. Questions how import restrictions on coins could qualify as a "less drastic" remedy, since Turkey has not adopted policies like the United Kingdom's Treasure Act and Portable Antiquities Scheme, appears to allow the use of significant numbers of metal detectors, and since sales of common ancient coins would promote tourism in a way consistent with the UNESCO Convention and the CPIA.

VI. Questions how the "concerted international response" requirement is met with respect to coins, when they are widely traded as collector's pieces and curiosities worldwide, and where restrictions on American collectors and small businesses will do little, if anything, to limit any alleged damage to Turkish cultural artifacts.

VII. Questions how coin import restrictions can be consistent with general interests of the international community in cultural interchange, since restrictions on historic coins will only impoverish our ability to appreciate ancient Armenian, Greek, Roman, Byzantine and Turkish culture.

B. Randolph J. Myers' 3-page comments [listed as Comment DOS-2019-0043-0001], which raised a number of significant issues, including but not limited that:

I. Questions how individual ancient coins, which are essentially duplicates minted from coin dies and produced in the thousands, can meet the "cultural significance" requirement at 19 U.S.C. § 2601(2)(C)(i)(I).

II. Questions how an import restriction of "Turkish" coins can meet the "first discovered within" requirement at 19 U.S.C. § 2601(2)(C), since scholarly evidence demonstrates that impacted "Turkish" coins were also minted, and are now typically found, outside the confines of modern-day Turkey

III. Questions how an import restriction of coins can occur, under the "remedies less drastic than the application of restrictions...are not available" test required by 19 U.S.C. § 2602(a)(1)(C)(ii), since Turkey has not adopted remedies less drastic and available like the United Kingdom's Treasure Act and its Portable Antiquities Scheme.

IV. Questions whether Turkey showed that they engaged in "credible enforcement efforts," since it appears they did not provide the CPAC with "data of sufficient duration and scope to provide the information necessary for a reliable determination" as required by the Bureau of Educational and Cultural Affairs at <https://eca.state.gov/cultural-heritage-center/cultural-property-advisory-committee/foreigngovernment-requests>.

**Obligations under the Freedom and Information and Administrative Procedure Acts:**

Please note that 5 U.S.C. § 552(b) requires that "[a]ny reasonably segregable portion of a record shall be provided to any person requesting such a record after deletion of the portions which are exempt." An agency cannot "justify withholding an entire document simply by showing that it contains some exempt material." *Mead Data Cent., Inc. v. Dep't of the Air Force*, 566 F.2d 242, 260 (D.C. Cir. 1977).

We make this FOIA request since the public and the courts are entitled to view the agency's complete rationale for its five "determinations," which was only briefly summarized in a single conclusory sentence at 86 Federal Register 31910 (June 19, 2021). As Chief Justice Roberts noted in *Department of Commerce v New York*, 588 U.S. \_\_\_ (2019)(slip opinion at 23) it is a "settled proposition" that "in order to permit meaningful judicial review, an agency must 'disclose the basis' of its action. *Burlington Truck Lines, Inc. v. United States*, 371 U. S. 156, 167-169 (1962)(internal quotation marks omitted); see also *SEC v. Chenery Corp.*, 318 U. S. 80, 94 (1943)("[T]he orderly functioning of the process of review requires that the grounds upon which the administrative agency acted be clearly disclosed and adequately sustained.")"

The Fourth Circuit has already held that the Administrative Procedure Act (APA) applies to the import restrictions imposed by the State Department and CBP, when it conducted an APA review whether the agency action was arbitrary and capricious. *Ancient Coin Collectors Guild v. U.S. Customs & Border Prot.*, 698 F.3d 171, 183-84 (4th Cir. 2012). Further, as explained in *N.C. Growers Ass'n. Inc. v. United Farmers Workers*, 702 F.3d 755, 769 (4th Cir., 2012) "The notice and comment provisions of the APA require, among other things, that the agency give "interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments," and that the agency shall explain its decision, "[a]fter consideration of the relevant matter presented." 5 U.S.C. § 553(b), (c).

The Supreme Court has also emphasized that agency action normally will be deemed "arbitrary and capricious" when the agency "entirely failed to consider an important aspect of the problem." *Motor Vehicles Manufacturers Ass'n v. State Farm*, 463 U.S. 29, 43 (1983). And during notice and comment proceedings, the agency is obligated to identify and respond to relevant, significant issues raised during those proceedings. *S.C. ex rel. Tindal v. Block*, 717 F.2d 874, 885-86 (4th Cir.1983). Indeed, in *Sierra Club v. EPA*, 863 F.3d 834 (D.C. Cir. 2017) the D.C. Circuit remanded back to the agency its pollution rule, because the agency had left "unanswered" substantive comments that raised meritorious issues. In doing so, the D.C. Circuit noted, at 863 F.3d at 838 that "[w]e have frequently held in various contexts that, in APA review, we will often find agency decisions arbitrary or capricious where the agency has failed to respond to major substantive comments. See *Pub. Citizen, Inc. v. FAA*, 988 F.2d 186, 197 (D.C. Cir. 1993)(citations omitted)." As such, it is critical that you provide agency's Administrative Record that includes all comments submitted to regulations.gov and how the agency considered them, so that it can be determined whether the agency properly identified and responded to relevant, significant issues raised during its proceedings.

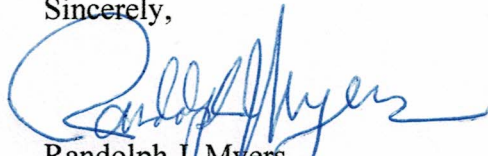
**II. Freedom and Information Act Response Format Request:** Pursuant to FOIA 5 U.S.C. § 552(3)(b)(B), we request that the released records be in an electronic format, if the records are readily reproducible in that format. If possible, we also request that the released records be Bates-stamped numbered.

**III. Freedom and Information Act Fee Waiver Request:** We request a fee waiver under 5 U.S.C. § 552(a)(4)(A)(ii)(II)(III) insofar as the Ancient Coin Collectors Guild is a nonprofit organization with a "mission of promoting and nurturing the free and independent collecting of coins from antiquity through education, political action and consumer protection." We also make this fee waiver request as a news organization, insofar as we are "an entity that gathers

information of potential interest to a segment of the public, uses its editorial skills to turn that raw material into a distinct work, and distributes that work to an audience.” To that end, we plan to analyze and report on your FOIA response, which we will make available to both Guild members and the public at our “news” subsection on our website at accguild.org.

Your assistance is greatly appreciated. If you have any questions, please do not hesitate to contact me.

Sincerely,



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