



North American Falconer's Association Inspection Guidelines

Dear Member:

It appears that the California inspections have started up again. Below is some info that members may find helpful if faced with an inspection either by state law enforcement, federal law enforcement, or both.

Be sure that:

- Insure that your paperwork is up to date and matches the birds you have on your permits.
- Insure that your facilities meet the state and federal requirements for housing raptors.
- Make certain that your birds are maintained in good health and feather.

Below is advice provided by NAFA General Counsel Frank Bond:

Being cordial and forthright is important, but I do remind you that falconers do have some inherent rights. A falconer can limit the visits to just the mews/breeding facilities and the location of his/her paperwork. **[I currently have 3 birds in 3 separate mews. Attached to each mew is a glass enclosed picture frame with copies of my permits and the applicable 3-186A for each bird. Inside the walk in area of the mews are copies of all my historical falconry records. Someone wishing to inspect my paperwork would be led straight to the mews. DAP]** FWS has no right to be anywhere else on the falconer's property nor even in his/her house if the falconry paperwork is not kept there. To inspect anything else requires a search warrant. Routinely they will also look into freezers where hawk food is kept. Once inside the freezer they can look at anything else. That said, every falconer should review what is kept in a freezer.

The inspectors have no right to inspect the contents of a falconer's computer or to take custody of a falconer's computer without the consent of the falconer or a search warrant. A falconer should not voluntarily give up custody of a personal computer. The falconer is not obligated to answer any question except directly about a falconry document. Questions beyond his/her falconry activities are out of bounds, and there is no obligation to respond. If there is a problem, the falconer should do all that he can to rectify the paperwork problem, but if something is deficient, then he/she might expect a citation.

Citation: Here is the big issue. If a citation is issued and the falconer agrees to it, even a minor one, the falconer will be routinely subject to revocation. Under 50 CFR 13, **any** violations of a [falconry] permit are grounds for revocation. So if a citation is issued to a falconer, then he/she should not agree to it unless he/she has in writing from the federal AND STATE law enforcement officials that they will not seek revocation, if he/she pays the fine. Payment of a fine is essentially a plea of guilty to the citation which begins the revocation process. Law Enforcement will not do the revocation. It passes back to permitting authorities, in your case to the Portland FWS Office. With a payment of a fine

the falconer will receive a notice of revocation. He will have a right to appeal it under 50 CFR 13, but I have never seen a notice of revocation withdrawn. Revocation is routinely for 5 years, and then the falconer may reapply for the permit. However, I am now seeing prior revocations used as a basis for denying a new permit even after the 5 year revocation period. I have never seen a simple suspension for a shorter period of time.

The reason that a falconer must keep all paperwork of all types for 5 years is because that is the statute of limitations for the Migratory Bird Treaty Act. After a 5 year period, the FWS cannot do a prosecution on a MBTA violation. However, I recommend that you keep all paperwork for as long as you are a falconer. If a falconer is cited. I strongly urge him/her to retain a lawyer immediately before agreement to any citation. The risks of losing his/her permit is very great.

Question? "CA DFG agents are working in conjunction with FWS doing the inspections. How does that affect our rights or what we should do if inspected?"

Answer: It means that if there is a citation, then the authorities will go after a revocation of both permits. That is why if a citation is issued, before signing it and paying the "ticket" fine, he/she should have agreement in writing that there will be no revocation proceedings. If he/she does not agree or pay the fine, then he/she should plan to plead not guilty and be prepared to go to court. As soon as the falconers of Colorado took this approach for similar inspections last year, after a year FWS still has not issued any citations, because the FWS does not have a US Attorney inclined to prosecute. Perhaps that will change but so far no tickets have even be issued. The authorities in California will try to characterize a "ticket" like it is a routine traffic "ticket." It is not; that ticket will be the basis for subsequent revocation of the falconer's permit.

Question? Can they come in my house and inspect my filing cabinet? Or if I bring my paperwork outside to them, does that limit their inspection scope? How would you recommend falconers deal with this section to limit their exposure? Can we refuse them entry if we bring our paperwork outside when they knock?"

Answer: They can inspect your filing cabinet if you say all of your papers are in it and you do not take the paperwork out for inspection. If you take them out, yes that does limit their scope. I recommend that the falconer take his paperwork out, and then provide them with the document that they request and nothing more. If they ask to look at all of your file documents, then let them look. But in order not to be confrontational provide them a place, even outside where they can look at them. That place does not have to be the falconer's home. And you may refuse them entry. The easiest and most cordial way is for the falconer to step outside, show them the mews, and then if they ask for documentation, ask them to wait, go in for the information and provide it to them. If a falconer keeps a bird in a part of his home, then that part alone will be subject to inspection.

Question. Can they look in my freezer?

Answer: They may ask to see a falconer's raptor food because that is part of the activity. If they ask to see where your hawk food is, routinely that is a freezer. Once in the freezer they may ask about any other game which might be visibly present. The falconer better have a hunting permit supporting the retained game.

