

March 22, 2010

Tennessee Valley Authority Chief FOIA Officer Report

I. Steps Taken to Apply the Presumption of Openness

1. Describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. This section should include a discussion of the range of steps taken by your agency to apply this presumption, from publicizing the President's FOIA Memorandum and Attorney General's FOIA Guidelines and providing training on them, to implementing the presumption in response to FOIA requests and administrative appeals, with examples or statistics illustrating your agency's action in making discretionary releases of records or partial releases when full disclosure is not possible.

TVA operates its FOIA program with openness as a top priority. All records responsive to FOIA requests are carefully examined to determine if they can be released in whole or in part.

The primary reason any records are withheld under FOIA is to protect personal privacy. The FOIA privacy exemption is non-discretionary and may not be waived if a privacy interest exists.

FOIA exemption 5 protects inter-agency and intra-agency documents. This exemption protects an agency's interests and can be waived if no foreseeable harm would result from disclosure of the information. In almost all cases, TVA makes discretionary releases of information for records containing inter-agency or intra-agency information.

TVA conducted comprehensive reviews of the entire FOIA program in 2000 and 2006. A more detailed discussion of those reviews is contained in Section II of this report.

TVA's FOIA Officer and support personnel participate in training conferences sponsored by the Department of Justice Office of Information Policy and the American Society of Access Professionals. Most recent conference participation was in 2009 and included training on the initiatives described in the President's FOIA Memorandum and the Attorney General's FOIA Guidelines.

With regard to making discretionary disclosures, a recent example of a significant discretionary disclosure is the release of two reports cited in a review of TVA's Maintain and Gain Lakeshore Management Program by the TVA Office of the Inspector General. The two reports, which were not publicly released by the Inspector General with the main subject report, became the object of several FOIA requests initiated by interest from local and national media and the public.

TVA also is making ongoing discretionary disclosures of information regarding a significant environmental event at its Kingston Fossil Plant in December 2008. A more detailed discussion of TVA's disclosures of information related to this event and the subsequent recovery action is included in Section III of this report.

2. Report whether your agency shows an increase in the number of requests where records have been released in full or where records have been released in part when compared with those numbers in the previous year's Annual FOIA Report.

TVA FOIA statistics show an increase from Fiscal Year 2008 to Fiscal Year 2009 in full disclosures of information and in the total number of full and partial disclosures of information in response to FOIA requests.

	Full Grants	Partial Grants	Total
FY09	51	66	117
FY08	21	80	101

II. Steps Taken to Ensure that Your Agency has an Effective System for Responding to Requests

1. As the Attorney General emphasized in his FOIA Guidelines, "application of the proper disclosure standard is only one part of ensuring transparency. Open government requires not just a presumption of disclosure, but also an effective system for responding to FOIA requests." Describe here the steps your agency has taken to ensure that your system for responding to requests is effective and efficient. This section should include a discussion of how your agency has addressed the key roles played by the broad spectrum of agency personnel who work with FOIA professionals in responding to requests, including, in particular, steps taken to ensure that FOIA professionals have sufficient IT support.

In 2000, TVA established a working group to review existing FOIA processes and procedures. The group included senior agency officials and staff responsible for the FOIA program. The group reviewed all aspects of TVA's FOIA processes, including the mechanics, timing, fee policy, and disclosure policy. The group proposed two changes that were implemented and are still in effect today. The first recommendation was a shift in agency policy regarding FOIA disclosure from one that primarily favored withholding to one that promotes disclosure. The second recommendation established a process for expedited responses to requests for information from public officials.

Another review was conducted in 2006 as part of the agency's response to Executive Order 13392, Improving Agency Disclosure of Information. All areas of TVA's FOIA program were reviewed. A Chief FOIA Officer and FOIA Public Liaison were designated and a FOIA Requester Service Center was established in response to the Executive Order. The 2006 review found that TVA's administration of the FOIA was consistent with current

guidance, met or exceeded statutory response times, and was carried out in a customer-friendly manner.

With regard to IT support, in 1997 TVA's IT department developed a Windows based system for tracking FOIA requests and administrative appeals. In 2009, the tracking system was updated to a Web-based application with increased functionality. TVA's IT department provides all services and support necessary to maintain the tracking system.

III. Steps Taken To Increase Proactive Disclosures

Both the President and Attorney General focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received. Describe here the steps your agency has taken to increase the amount of material that is available on your agency website, including providing examples of proactive disclosures that have been made since issuance of the new FOIA Guidelines.

In December 2008, TVA experienced a significant event in Kingston, Tennessee, at the Kingston Fossil Plant when an ash pond failed and released 5.4 million cubic yards of coal ash into the Emory River and surrounding area. On the first day of the event, TVA initiated proactive disclosure of information about the event and began posting information on its external Web site about the spill and the recovery efforts. Thousands of pages of documents currently are posted regarding the event, recovery plans and progress. The release and posting of information is on-going.

Additional actions to promote electronic disclosure include, but are not limited to:

Web postings of all news releases on a continuing basis to inform the media and the public about TVA activities

A "News Room" for media with links to topics of interest, information on all aspects of TVA's operational activities, various fact sheets, a calendar of Board meetings and other information

Live Web video broadcasts of TVA Board of Directors meetings and archived downloads of previous meetings

Posting of all financial reporting to the U.S. Security and Exchange Commission, including annual, quarterly and update reports

Launch of social media outreach (i.e. Twitter, Facebook)

Posting of monthly Tennessee River and Reservoir System Updates (TVA recently posted 47 data sets containing reservoir information on data.gov)

IV. Steps Taken to Greater Utilize Technology

A key component of the President's Memorandum was the direction to "use modern technology to inform citizens about what is known and done by their Government." In addition to using the internet to make proactive disclosures, agencies should also be exploring ways to utilize technology in responding to requests. For this section of the Chief FOIA Officer Report, please answer the following questions:

1. Does your agency currently receive requests electronically? **Yes. We accept requests by email.**
2. If not, what are the current impediments to your agency establishing a mechanism to receive requests electronically? **N/A**
3. Does your agency track requests electronically? **Yes. We currently use a tracking system that TVA's IT department initially developed in 1997. The tracking system was updated in 2009 to a Windows based system with increased functionality.**
4. If not, what are the current impediments to your agency utilizing a system to track requests electronically? **N/A**
5. Does your agency use technology to process requests? **Yes. Email is used to communicate with field offices that have responsive records. Records are sent electronically to the FOIA Office when possible either by email or on disc. In some cases, internal agency electronic shared folders are used to provide responsive documents to the FOIA Office. Scanning equipment is used to convert hard copy records into electronic format. We provide electronic documents to requesters whenever possible. In addition, the tracking system is used to track and process requests.**
6. If not, what are the current impediments to your agency utilizing technology to process requests? **N/A**
7. Does your agency utilize technology to prepare your agency FOIA Annual Report? **Yes. The TVA-developed tracking system is programmed to provide reports with information that is required for annual reporting. Reports can be exported from the tracking system into electronic formats.**
8. If not, what are the current impediments to your agency utilizing technology in preparing your FOIA Annual Report? **N/A**

V. Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests

Improvements to timeliness in responding to pending FOIA requests and reductions in backlogs is an ongoing agency effort. Both the President and the Attorney General emphasized the importance of improving timeliness in responding to requests. Section XII of your FOIA Annual Report includes figures that show your agency's backlog of pending requests and administrative appeals for the previous fiscal year and for this current fiscal year. Your Chief FOIA Officer Report should address the following elements.

1. If you have a backlog, report here whether your backlog is decreasing. That reduction should be measured both in terms of the numbers of backlogged requests and administrative appeals that remain pending at the end of the fiscal year, and in terms of the age of those requests and appeals. **TVA does not have a backlog of FOIA requests. The Freedom of Information Act, 5 USC §**

552 (a)(6)(D), specifically provides for the establishment of a multi-track processing system for responding to FOIA requests. In accordance with this section TVA promulgated regulations (18 CFR § 1301.5) providing for such a processing system. Determinations as to which track a request will be processed under are made within 20 days of receipt of the request. Generally, requests are processed on a first in/first out basis within each track. The majority of requests made to TVA are processed in Track 1, the fastest track. TVA does not have a backlog of administrative appeals. Responses to administrative appeals are made within 20 business days of receipt.

	Simple Median (no. of days)	Simple Average (no. of days)	Complex Median (no. of days)	Complex Average (no. of days)
FY09	3	6	27	64
FY08	13	9	44	96

2. If there has not been a reduction in the backlog describe why that has occurred and what steps your agency is taking to bring about a reduction. **N/A**
3. Describe the steps your agency is taking to improve timeliness in responding to requests and to administrative appeals.

TVA’s FOIA Officer continually monitors pending requests to ensure responses are made in a timely manner.

FOIA monitoring includes, but is not limited to, following up with field personnel to obtain requested records in a timely manner; timely review of responsive records and expedited review, when warranted; corresponding with requesters on the status of their requests; working with requesters to clarify and modify their requests when needed to expedite responses; proper disposition of requests into the multi-track processing system; timely responses to requests for consultations or referrals from other agencies.

TVA’s FOIA Office consists of one full-time person with part-time support personnel. TVA receives no appropriated funds. TVA’s FOIA program is fully funded by revenues from the sale of electricity.