

(iv) A statement as to how the need for the information outweighs any need to maintain the confidentiality of the information and outweighs the burden on TVA to produce the documents or testimony.

(v) A statement indicating that the information sought is not available from another source, from other persons or entities, or from the testimony of someone other than a TVA employee, such as a retained expert.

(vi) The name, address, and telephone number of counsel to each party in the case.

(d) *Additional information.* TVA reserves the right to require additional information to complete the request where appropriate or to waive any of the requirements of this section at its sole discretion.

§ 1301.55 Responding to demands.

Generally, authorization to provide the requested material or testimony shall not be withheld unless their disclosure is prohibited by law or for other compelling reasons, provided the request is reasonable and in compliance with the requirements of this part, and subject to the following conditions:

(a) *Demands for testimony.* TVA's practice is to provide requested testimony of TVA employees by affidavit only. TVA will provide affidavit testimony in response to demands for such testimony, provided all requirements of this part are met and there is no compelling factor under paragraph (c) of this section that requires the testimony to be withheld. The General Counsel may waive this restriction when necessary.

(b) *Demands for production of records or official information.* TVA's practice is to provide requested records or official information, provided all requirements of this part are met and there is no compelling factor under paragraph (c) of this section that requires the records or official information to be withheld.

(c) *Factors to be considered in determining whether requested testimony or records or official information must be withheld.* The General Counsel shall consider the following factors, among others, in deciding whether requested

testimony or materials must be withheld:

(1) Whether production is appropriate in light of any relevant privilege;

(2) Whether production is appropriate under the applicable rules of discovery or the procedures governing the case or matter in which the demand arose;

(3) Whether the material requested is relevant to the matter at issue;

(4) Whether allowing such testimony or production of records would be necessary to prevent a miscarriage of justice;

(5) Whether disclosure would violate a statute, Executive Order, or regulation, including, but not limited to, the Privacy Act of 1974, as amended, 5 U.S.C. 552a;

(6) Whether disclosure would impede or interfere with an ongoing law enforcement investigation or proceeding, or compromise constitutional rights or national security interests;

(7) Whether disclosure would improperly reveal trade secrets or proprietary confidential information without the owner's consent;

(8) Whether disclosure would unduly interfere with the orderly conduct of TVA's functions;

(9) Whether the records or testimony can be obtained from other sources;

(10) Whether disclosure would result in TVA appearing to favor one litigant over another;

(11) Whether the demand or request is within the authority of the party making it; and

(12) Whether a substantial Government interest is implicated.

(d) *Restrictions on testimony or production of records or official information.* When necessary or appropriate, the General Counsel may impose restrictions or conditions on the production of testimony or records or official information. These restrictions may include, but are not limited to:

(1) Limiting the area of testimony;

(2) Requiring that the requester and other parties to the legal proceeding agree to keep the testimony under seal;

(3) Requiring that the testimony be used or made available only in the legal proceeding for which it was requested;

(4) Requiring that the parties to the legal proceeding obtain a protective

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order or execute a confidentiality agreement to limit access and any further disclosure of produced records or official information.

(e) *Fees for Production.* Fees will be charged for production of TVA records and information. The fees will be the same as those charged by TVA pursuant to its Freedom of Information Act regulations, 16 CFR 1301.10.

§ 1301.56 Final determination.

The General Counsel makes the final determination whether a demand for testimony or production of records or official testimony in a legal proceeding in which TVA is not a party shall be granted. All final determinations are within the sole discretion of the General Counsel. The General Counsel will notify the requesting party and, when necessary, the court or other authority of the final determination, the reasons for the grant or denial of the request, and any conditions that the General Counsel may impose on the production of testimony or records or official information.

§ 1301.57 Waiver.

The General Counsel may grant a waiver of any procedure described by this part where a waiver is considered necessary to promote a significant interest of TVA or the United States, or for other good cause.

Subpart E—Protection of National Security Classified Information

SOURCE: 76 FR 39261, July 6, 2011, unless otherwise noted.

§ 1301.61 Purpose and scope.

(a) *Purpose.* These regulations, taken together with the Information Security Oversight Office's implementing directive at 32 CFR part 2001, Classified National Security Information, provide the basis for TVA's security classification program implementing Executive Order 13526, "Classified National Security Information," as amended ("the Executive Order").

(b) *Scope.* These regulations apply to TVA employees, contractors, and individuals who serve in advisory, consultant, or non-employee affiliate capac-

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ities who have been granted access to classified information.

§ 1301.62 Definitions.

The following definitions apply to this part:

(a) "Original classification" is the initial determination that certain information requires protection against unauthorized disclosure in the interest of national security (i.e., national defense or foreign relations of the United States), together with a designation of the level of classification.

(b) "Classified national security information" or "classified information" means information that has been determined pursuant to Executive Order 13526 or any predecessor order to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form.

§ 1301.63 Senior agency official.

(a) The Executive Order requires that each agency that originates or handles classified information designate a senior agency official to direct and administer its information security program. TVA's senior agency official is the Director, TVA Police & Emergency Management.

(b) Questions with respect to the Information Security Program, particularly those concerning the classification, declassification, downgrading, and safeguarding of classified information, shall be directed to the Senior Agency Official.

[76 FR 39261, July 6, 2011, as amended at 83 FR 48373, Sept. 25, 2018]

§ 1301.64 Original classification authority.

(a) Original classification authority is granted by the Director of the Information Security Oversight Office. TVA does not have original classification authority.

(b) If information is developed that appears to require classification, or is received from any foreign government information as defined in section 6.1(s) of Executive Order 13526, the individual in custody of the information shall immediately notify the Senior Agency Official and appropriately protect the information.