

## Tennessee Valley Authority

## § 1301.5

the agency to which the record was referred, including that agency's FOIA contact information.

(3) *Coordination.* The standard referral procedure is not appropriate where disclosure of the identity of the agency to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemptions that protect personal privacy or national security interests. For example, if a non-law enforcement agency responding to a request for records on a living third party locates within its files records originating with a law enforcement agency, and if the existence of that law enforcement interest in the third party was not publicly known, then to disclose that law enforcement interest could cause an unwarranted invasion of the personal privacy of the third party. Similarly, if an agency locates within its files material originating with an Intelligence Community agency, and the involvement of that agency in the matter is classified and not publicly acknowledged, then to disclose or give attribution to the involvement of that Intelligence Community agency could cause national security harms. In such instances, in order to avoid harm to an interest protected by an applicable exemption, the agency that received the request should coordinate with the originating agency to seek its views on the disclosability of the record. The release determination for the record that is the subject of the coordination should then be conveyed to the requester by the agency that originally received the request.

(d) *Classified information.* On receipt of any request involving classified information, the agency must determine whether the information is currently and properly classified in accordance with applicable classification rules. Whenever a request involves a record containing information that has been classified or may be appropriate for classification by another agency under any applicable executive order concerning the classification of records, the receiving agency must refer the responsibility for responding to the request regarding that information to the agency that classified the information, or that should consider the information for classification. Whenever an

agency's record contains information that has been derivatively classified (for example, when it contains information classified by another agency), the agency must refer the responsibility for responding to that portion of the request to the agency that classified the underlying information.

(e) *Timing of responses to consultations and referrals.* All consultations and referrals received by TVA will be handled according to the date that the first agency received the perfected FOIA request.

(f) *Agreements regarding consultations and referrals.* TVA may establish agreements with other agencies to eliminate the need for consultations or referrals with respect to particular types of records.

### § 1301.5 Timing of responses to requests.

(a) *In general.* TVA ordinarily will respond to requests according to their order of receipt and placement in an appropriate processing track as follows.

(b) *Multitrack processing.* TVA has established three tracks for handling requests and the track to which a request is assigned will depend on the nature of the request and the estimated processing time. Among the factors TVA may consider are the number of records requested, the number of pages involved in processing the request and the need for consultations or referrals. TVA will also designate a specific track for requests that are granted expedited processing, in accordance with the standards set forth in paragraph (e) of this section. TVA will advise requesters of the track into which their request falls and, when appropriate, will offer the requesters an opportunity to narrow or modify their request so that it can be placed in a different processing track.

(1) *Track 1.* Requests that can be answered with readily available records or information. These are the fastest to process. These requests ordinarily will be responded to within 20 working days of receipt of a proper request by the FOIA Officer. The 20 working day time limit provided in this paragraph may be extended by TVA for unusual circumstances, as defined in paragraph (c)

of this section, upon written notice to the person requesting the records.

(2) *Track 2.* Requests where we need records or information from other offices throughout TVA, where we must consult with other Government agencies, or when we must process a submitter notice as described in §1301.8(d), but we do not expect that the decision on disclosure will be as time consuming as for requests in Track 3.

(3) *Track 3.* Requests which require a decision or input from another office or agency, extensive submitter notifications because of the presence of Business Information as defined in §1301.8(b)(1), and a considerable amount of time will be needed for that, or the request is complicated or involves a large number of records. Usually, these requests will take the longest to process.

(c) *Unusual circumstances.* Whenever the statutory time limit for processing a request cannot be met because of “unusual circumstances,” and TVA extends the time limit on that basis, TVA will, before expiration of the 20-day period to respond, notify the requester in writing of the unusual circumstances involved and of the date by which TVA estimates processing of the request will be completed. Where the extension exceeds 10 working days, TVA will, as described by the FOIA, provide the requester with an opportunity to modify the request or arrange an alternative time period for processing the original or modified request. TVA will make available its FOIA Officer or its FOIA Public Liaison for this purpose. A list of agency FOIA Public Liaisons is available at <https://www.foia.gov/report-makerequest.html>. TVA will also alert requesters to the availability of the Office of Government Information Services (OGIS) to provide dispute resolution services. As used in this paragraph, “unusual circumstances” means, but only to the extent reasonable necessary to the proper processing of the particular requests:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(d) *Aggregating requests.* To satisfy unusual circumstances under the FOIA, TVA may aggregate requests in cases where it reasonably appears that multiple requests, submitted either by a requester or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances. TVA cannot aggregate multiple requests that involve unrelated matters.

(e) *Expedited processing.* (1) TVA will process requests and appeals on an expedited basis whenever it is determined that they involve:

(i) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged Federal Government activity, if made by a person who is primarily engaged in disseminating information;

(iii) The loss of substantial due process rights.

(2) A request for expedited processing may be made at any time. For a prompt determination, requests based on paragraphs (e)(1)(i) and (ii) of this section should be submitted to the TVA FOIA Officer. Requests based on paragraph (e)(1)(iii) of this section should be submitted in accordance with the agency’s requirements as described in §1301.3. When making a request for expedited processing of an administrative appeal, the request should be submitted to the TVA Chief FOIA Officer and Appeals Official.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct, explaining in detail the basis for making the request for expedited processing.

For example, under paragraph (e)(1)(ii) of this section, a requester who is not a full-time member of the news media must establish that the requester is a person whose primary professional activity or occupation is information dissemination, though it need not be the requester's sole occupation. Such a requester also must establish a particular urgency to inform the public about the government activity involved in the request—one that extends beyond the public's right to know about government activity generally. The existence of numerous articles published on a given subject can be helpful in establishing the requirement that there be an "urgency to inform" the public on the topic. As a matter of administrative discretion, TVA may waive the formal certification requirement.

(4) TVA will notify the requester within 10 calendar days of the receipt of a request for expedited processing of its decision whether to grant or deny expedited processing. If expedited processing is granted, the request must be given priority, placed in the processing track for expedited requests, and must be processed as soon as practicable. If a request for expedited processing is denied, the agency must act on any appeal of that decision expeditiously.

#### § 1301.6 Responses to requests.

(a) *In general.* TVA, to the extent practicable, will communicate with requesters having access to the Internet electronically, such as email.

(b) *Acknowledgments of requests.* TVA will acknowledge the request in writing and assign it an individualized tracking number if it will take longer than 10 working days to process. TVA will include in the acknowledgment a brief description of the records sought to allow requesters to more easily keep track of their requests.

(c) *Estimated dates of completion and interim responses.* Upon request, TVA will provide an estimated date by which the agency expects to provide a response to the requester. If a request involves a voluminous amount of material, or searches in multiple locations, TVA may provide interim responses, releasing the records on a rolling basis.

(d) *Grants of requests.* Once TVA determines it will grant a request in full or in part, it will notify the requester in writing. TVA will also inform the requester of any fees charged under § 1301.11 of this subpart and will disclose the requested records to the requester promptly upon payment of any applicable fees.

(e) *Adverse determinations of requests.* If TVA makes an adverse determination denying a request in any respect, it will notify the requester of that determination in writing. Adverse determinations, or denials of requests, include decisions that: the requested record is exempt, in whole or in part; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been destroyed; or the requested record is not readily reproducible in the form or format sought by the requester. Adverse determinations also include denials involving fees or fee waiver matters or denials of requests for expedited processing. In the event of an adverse determination, TVA will inform the requester of the availability of its FOIA Public Liaison to offer assistance to requesters.

(f) *Content of denial.* The denial must be signed by the head of the agency or their designee and must include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reasons for the denial, including any FOIA exemption applied by the agency in denying the request;

(3) An estimate of the volume of any records or information withheld, such as the number of pages or some other reasonable form of estimation, although such an estimate is not required if the volume is otherwise indicated by deletions marked on records that are disclosed in part or if providing an estimate would harm an interest protected by an applicable exemption; and

(4) A statement that the denial may be appealed under § 1301.9(a) of this subpart, and a description of the appeal requirements.

(5) A statement notifying the requester of the assistance available