

the information constitutes a trade secret or commercial or financial information that is confidential.

(3) A submitter who fails to respond within the time period specified in the notice will be considered to have no objection to disclosure of the information. TVA is not required to consider any information received after the date of any disclosure decision. Any information provided by a submitter under this subpart may itself be subject to disclosure under the FOIA.

(f) *Analysis of objections.* TVA will consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose the requested information.

(g) *Notice of intent to disclose.* Whenever TVA decides to disclose information over the objection of a submitter, TVA will provide the submitter written notice, which will include:

(1) A statement of the reasons why each of the submitter's disclosure objections was not sustained;

(2) A description of the information to be disclosed or copies of the records as TVA intends to release them; and

(3) A specified disclosure date, which must be a reasonable time after the notice.

(h) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of confidential commercial information, TVA will promptly notify the submitter.

(i) *Requester notification.* TVA will notify the requester whenever it provides the submitter with notice and an opportunity to object to disclosure; whenever it notifies the submitter of its intent to disclose the requested information; and whenever a submitter files a lawsuit to prevent the disclosure of the information.

#### § 1301.9 Appeals.

(a) *Requirements for making an appeal.* A requester may appeal any adverse determinations to TVA's office designated to receive FOIA appeals (FOIA Appeals Office). Examples of adverse determinations are provided in § 1301.6(e) of this subpart. Requesters can submit appeals by mail to TVA FOIA Appeals Official, Tennessee Valley Authority, 400 W. Summit Hill Drive (WT 7C), Knoxville, TN 37902-

1401. The requester must make the appeal in writing and to be considered timely it must be postmarked within 90 calendar days after the date of the initial response. The appeal should clearly identify the agency determination that is being appealed and the assigned request number. To facilitate handling, the requester should mark both the appeal letter and envelope "Freedom of Information Act Appeal."

(b) *Adjudication of appeals.* (1) The TVA Chief FOIA Officer and FOIA Appeals Official or designee will act on all appeals under this section.

(2) An appeal ordinarily will not be adjudicated if the request becomes a matter of FOIA litigation.

(3) On receipt of any appeal involving classified information, the Chief FOIA Officer and FOIA Appeals Official will take appropriate action to ensure compliance with applicable classification rules.

(c) *Decisions on appeals.* TVA will provide its decision on an appeal in writing. A decision that upholds TVA's determination in whole or in part must contain a statement that identifies the reasons for the affirmance, including any FOIA exemptions applied. The decision must provide the requester with notification of the statutory right to file a lawsuit and will inform the requester of the dispute resolution services offered by the Office of Government Information Services (OGIS) of the National Archives and Records Administration as a non-exclusive alternative to litigation. If TVA's decision is remanded or modified on appeal, TVA will notify the requester of that determination in writing. TVA will then further process the request in accordance with that appeal determination and will respond directly to the requester.

(d) *Engaging in dispute resolution services provided by OGIS.* Dispute resolution is a voluntary process. If TVA agrees to participate in the dispute resolution services provided by OGIS, it will actively engage as a partner to the process in an attempt to resolve the dispute.

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(e) *When appeal is required.* Before seeking review by a court of TVA's adverse determination, a requester generally must first submit a timely administrative appeal.

### § 1301.10 Preservation of records.

TVA will preserve all correspondence pertaining to the requests that it receives under this subpart, as well as copies of all requested records, until disposition or destruction is authorized pursuant to title 44 of the United States Code or the General Records Schedule 4.2 of the National Archives and Records Administration. TVA will not dispose of or destroy records while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

### § 1301.11 Fees.

(a) *In general.* (1) TVA will charge for processing requests under the FOIA in accordance with the provisions of this section and with the OMB Guidelines. For purposes of assessing fees, the FOIA establishes three categories of requesters:

- (i) Commercial use requesters;
- (ii) Non-commercial scientific or educational institutions or news media requesters; and
- (iii) All other requesters.

(2) Different fees are assessed depending on the category. Requesters may seek a fee waiver. TVA will consider requests for fee waivers in accordance with the requirements in paragraph (k) of this section. To resolve any fee issues that arise under this section, TVA may contact a requester for additional information. TVA will ensure that searches, review, and duplication are conducted in the most efficient and the least expensive manner. TVA ordinarily will collect all applicable fees before sending copies of records to a requester. Requesters must pay fees by check or money order made payable to the Tennessee Valley Authority, or by another method as determined by TVA.

(b) *Definitions.* For purposes of this section:

(1) Commercial use request is a request that asks for information for a use or a purpose that furthers a commercial, trade, or profit interest, which can include furthering those interests

through litigation. TVA's decision to place a requester in the commercial use category will be made on a case-by-case basis based on the requester's intended use of the information. TVA will notify requesters of their placement in this category.

(2) Direct costs are those expenses that TVA incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records in order to respond to a FOIA request. For example, direct costs include the salary of the employee performing the work (*i.e.*, the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating computers and other electronic equipment, such as photocopiers and scanners. Direct costs do not include overhead expenses such as the costs of space, and of heating or lighting a facility.

(3) Duplication is reproducing a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, audiovisual materials, or electronic records, among others.

(4) Educational institution is any school that operates a program of scholarly research. A requester in this fee category must show that the request is made in connection with his or her role at the educational institution. TVA may seek verification from the requester that the request is in furtherance of scholarly research and TVA will advise requesters of their placement in this category.

*Example 1.* A request from a professor of geology at a university for records relating to soil erosion, written on letterhead of the Department of Geology, would be presumed to be from an educational institution.

*Example 2.* A request from the same professor of geology seeking drug information from the Food and Drug Administration in furtherance of a murder mystery he is writing would not be presumed to be an institutional request, regardless of whether it was written on institutional stationery.

*Example 3.* A student who makes a request in furtherance of their coursework or other school-sponsored activities and provides a copy of a course syllabus or other reasonable documentation to indicate the research purpose for the request, would qualify as part of this fee category.