

## 2016 Chief FOIA Officer Report

### Tennessee Valley Authority

**Janet J. Brewer, Vice President, Communications**

#### Section I: Steps Taken to Apply the Presumption of Openness

The guiding principle underlying the President's **FOIA Memorandum** and the Attorney General's **2009 FOIA Guidelines** is the presumption of openness.

Please answer the following questions in order to describe the steps your agency has taken to ensure that the presumption of openness is being applied to all decisions involving the FOIA. You may also include any additional information that illustrates how your agency is working to apply the presumption of openness.

#### **FOIA Training:**

*1. Did your FOIA professionals or the personnel at your agency who have FOIA responsibilities attend any FOIA training or conference during the reporting period such as that provided by the Department of Justice?*

TVA's FOIA professionals participated in workshops, conferences and webinars sponsored by the Department of Justice Office of Information Policy (OIP) and the American Society of Access Professionals (ASAP) most recently in 2012 and 2015. In addition, the FOIA Officer and TVA's advisory attorneys stay informed of news and developments in FOIA through online resources available from the Department of Justice such as FOIA Post and the FOIA Guide; membership in professional organizations such as the American Society of Access Professionals (ASAP); subscriptions to newsletters such as Access Reports and Privacy Times; and through social media sites such as the FOIA Blog, among others. TVA did not conduct formal training sessions for agency personnel specifically on FOIA during the reporting period. However, informal training and counsel is provided to agency personnel by the FOIA Officer and TVA's advisory attorneys year-round, as needed. TVA's standard procedures governing communications incorporate the presumption of openness and outline the responsibilities of all agency personnel to comply with the requirements of FOIA. Both the FOIA Officer and the primary advisory attorney who supports the FOIA Office have more than 10 years experience working with FOIA.

*2. Provide an estimate of the percentage of your FOIA professionals and staff with FOIA responsibilities who attended substantive FOIA training during this reporting period.*

50% (FOIA Officer and primary advisory attorney)

*3. OIP has directed agencies to "take steps to ensure that all of their FOIA professionals attend substantive FOIA training at least once throughout the year." If your response to the previous*

*question is that less than 80% of your FOIA professionals attended training, please explain your agency's plan to ensure that all FOIA professionals receive or attend substantive FOIA training during the next reporting year.*

TVA has a small FOIA Office (FOIA Officer and part time legal and clerical support) located at TVA headquarters in Knoxville, Tennessee. This makes it more difficult and less cost effective to attend training based primarily in the Washington DC area. In Fiscal Year 2016, we plan to utilize online webinars provided by The American Society of Access Professionals (ASAP) to meet the training requirements. In-person attendance at DOJ or ASAP sponsored training in Fiscal Year 2016 will be considered.

***Discretionary Releases:***

*4. Does your agency have a distinct process or system in place to review records for discretionary release?*

TVA conducts a thorough review of records responsive to each FOIA request to determine whether full or partial disclosure is possible. TVA routinely makes discretionary releases of information if no specific foreseeable harm is identified.

*If your agency is decentralized, please specify whether all components of your agency have such a process or system in place?* N/A. TVA has a centralized FOIA Office.

*5. During the reporting period, did your agency make any discretionary releases of information?*

Yes.

*6. What exemption(s) would have covered the material released as a matter of discretion?*

Exemption 5

*7. Provide a narrative description, as well as some specific examples, of the types of information that your agency released as a matter of discretion during the reporting year.*

A few examples are information related to TVA's plans to install selective catalytic reduction systems and scrubbers at the Gallatin Fossil Plant and communications related to the strategic review of TVA.

*8. If your agency was not able to make any discretionary releases of information, please explain why. or example, you should note here if your agency did not have an opportunity to make discretionary disclosures because you provided full releases in response to all requests or the only exemptions that were applied were those that do not lend themselves to discretionary release (i.e. Exemptions 1, 3, 4, 6, 7A, 7B, 7C, 7F). N/A*

*9. If there are any other initiatives undertaken by your agency to ensure that the presumption of openness is being applied, please describe them here. N/A*

## **Section II: Steps Taken to Ensure that Your Agency Has an Effective System in Place for Responding to Requests**

The Attorney General's 2009 FOIA Guidelines emphasized that "[a]pplication 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." It is essential that agencies effectively manage their FOIA program.

Please answer the following questions to describe the steps your agency has taken to ensure that the management of your FOIA program is effective and efficient. You should also include any additional information that that describes your agency's efforts in this area.

### ***Processing Procedures:***

*1. For Fiscal Year 2015, what was the average number of days your agency reported for adjudicating requests for expedited processing? Please see Section VIII.A. of your agency's Fiscal Year 2015 Annual FOIA Report.*

Five (5) days

- *Please note here if your agency did not adjudicate any requests for expedited processing during Fiscal Year 2015. N/A*

*2. If your agency's average number of days to adjudicate requests for expedited processing was above ten calendar days, please describe the steps your agency will take to ensure that requests for expedited processing are adjudicated within ten calendar days or less. N/A*

*3. On July 2, 2015, OIP issued new guidance to agencies on the proper procedures to be used in the event an agency has a reason to inquire whether a requester is still interested in the processing of his or her request. Please confirm here that to the extent your agency may have had occasion to send a "still interested" inquiry, it has done so in accordance with the new guidelines for doing so, including affording requesters thirty working days to respond. N/A.*

TVA did not have cause to send a "still interested" inquiry during the reporting period. TVA's communication with requesters is conducted in a respectful and customer friendly manner and is in accordance with OIP's new guidance.

### ***Requester Services:***

*4. Agency FOIA Requester Service Centers and FOIA Public Liaisons serve as the face and voice of an agency. In this capacity they provide a very important service for requesters, informing them about how the FOIA process works and providing specific details on the handling of their individual requests. The FOIA also calls on agency FOIA Requester Service Centers and FOIA Public Liaisons to assist requesters in resolving disputes. Please explain here*

*any steps your agency has taken to strengthen these services to better inform requesters about their requests and to prevent or resolve FOIA disputes.*

- *If your agency has not taken any steps recently to strengthen these services, either because there has been no need to due to low demand or because these services are already robust, please briefly explain that that here.*

TVA receives a relatively small number of FOIA requests compared to many other federal agencies (less than 200 per year). As such, the majority of requests are processed within 20 business days of receipt. TVA provides a phone number on its website for the public to call for the status of a FOIA request. This line is answered in person, by the FOIA Officer, during business hours. Any messages to this line are generally returned within 24 hours. Historically, the TVA FOIA Public Liaison has received only one or two inquiries per year. The FOIA Officer and the Public Liaison work together to provide information and counsel to requesters and to prevent or promptly resolve any disputes in a respectful manner.

*5. If there are any other steps your agency has undertaken to ensure that your FOIA system operates efficiently and effectively, such as conducting self-assessments to find greater efficiencies, improving search processes, eliminating redundancy, etc., please describe them here. N/A.*

### **Section III: Steps Taken to Increase Proactive Disclosures**

Both the President's and Attorney General's FOIA memoranda focused on the need for agencies to work proactively to post information online without waiting for individual requests to be received.

Please answer the following questions to describe the steps your agency has taken to increase the amount of material that is available on your agency websites. In addition to the questions below, you should also describe any additional steps taken by your agency to make and improve proactive disclosures of information.

#### ***Posting Material:***

*1. Describe your agency's process or system for identifying "frequently requested" records required to be posted online under Subsection (a)(2) of the FOIA. For example, does your agency monitor its FOIA logs or is there some other system in place to identify these records for posting.*

The FOIA Officer closely monitors information requested under FOIA to identify records that meet the requirement for online posting under Subsection (a)(2) of the FOIA.

*2. Does your agency have a distinct process or system in place to identify other records for proactive disclosure? If so, please describe your agency's process or system.*

The TVA FOIA Office is part of TVA's Communications organization. As such, the FOIA Office is closely aligned with TVA's Public and Media Relations team. This alignment, along with knowledge of information being requested under FOIA, allows the FOIA Office to stay abreast of issues and information of interest to the public and to advocate for the proactive disclosure of such information.

TVA has several processes in place to proactively disclose activities, decisions and records including, but not limited to, the following: Sarbanes-Oxley Program (disclosures in financial reporting including 10-Qs, 8-Ks and 10-Ks); news releases, media advisories, social media posts and website postings; Federal Register notices; and newspaper advertisements (public notices).

*3. When making proactive disclosures of records, are your agency's FOIA professionals involved in coding the records for Section 508 compliance or otherwise preparing them for posting? If so, provide an estimate of how much time is involved for each of your FOIA professionals and your agency overall.*

TVA's FOIA professionals are not involved in coding records for Section 508 compliance. This function is the responsibility of the TVA Chief Information Officer.

*4. Has your agency encountered challenges that make it difficult to post records you otherwise would like to post? No.*

*5. If so, please briefly explain those challenges. N/A*

*6. Provide examples of material that your agency has proactively disclosed during the past reporting year, including links to the posted material.*

Boone Dam seepage issues and subsequent actions, environmental reviews, etc.  
<https://www.tva.com/Newsroom/Boone-Dam-Project>; weekly update electronic newsletter also available through a subscription provided on the website.

Financial updates, Board of Directors actions, environmental reports, and other issues and agency actions are posted on the website and news releases distributed pointing the public to the documents. <https://www.tva.com/Newsroom/Press-Releases>;  
<https://www.tva.com/Environment/Environmental-Stewardship/Environmental-Reviews>

Financial records <https://www.snl.com/IRWebLinkX/corporateprofile.aspx?iid=4063363>

*7. Did your agency use any means to publicize or highlight important proactive disclosures for public awareness? If yes, please describe those efforts.*

Social media posts via Facebook, Twitter and LinkedIn provide proactive disclosure of agency actions, reporting, issues, etc.

<https://www.facebook.com/TVA>

<https://twitter.com/tvanews>

<https://www.youtube.com/user/TVANewsVideo>

<https://www.flickr.com/photos/tennesseevalleyauthority/>

<https://www.linkedin.com/company/tva>

<https://www.instagram.com/tva/>

8. *If there are any other steps your agency has taken to increase proactive disclosures, please describe them here.* N/A.

#### **Section IV: Steps Taken to Greater Utilize Technology**

A key component of the President's FOIA 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.

Please answer the following questions to describe how your agency is utilizing technology to improve its FOIA administration and the public's access to information. You should also include any additional information that that describes your agency's efforts in this area.

##### ***Making Material Posted Online More Usable:***

1. *Beyond posting new material, is your agency taking steps to make the posted information more useable to the public, especially to the community of individuals who regularly access your agency's website?* Yes.

2. *If yes, please provide examples of such improvements.*

We executed a complete overhaul of TVA's web properties in the last year to enhance our ability to make information available to our users. The redesign focused on streamlining our available content, a mobile-first approach, improved usability, and an all-new search engine. TVA also has a Lake Info app, an easy-to-use resource for operating on and around reservoirs and dams in the TVA region. TVA has several feedback mechanisms in place for website visitors to comment on all aspects of information posted on its website and strives for continuous improvement.

##### ***Other Initiatives:***

3. *Did your agency successfully post all four quarterly reports for Fiscal Year 2015?* All four quarterly reports were uploaded to the TVA website, but only 3 of 4 quarters displayed on foia.gov.

4. If your agency did not successfully post all quarterly reports, with information appearing on FOIA.gov, please explain why and provide your agency's plan for ensuring that such reporting is successful in Fiscal Year 2016. We are working with OIP to ensure successful posting of the reports in FY 16.

5. Do your agency's FOIA professionals use e-mail or other electronic means to communicate with requesters whenever feasible? See OIP Guidance, "*The Importance of Good Communication with FOIA Requesters 2.0: Improving Both the Means and the Content of Requester Communications.*" (Nov. 22, 2013) If yes, what are the different types of electronic means that are utilized by your agency to communicate with requesters?

TVA regularly corresponds with requesters via email if that is their preference.

6. If your agency does not communicate electronically with requesters as a default, are there any limitations or restrictions for the use of such means? If yes, does your agency inform requesters about such limitations? See *id.*

TVA communicates via email and telephone with requesters as a default. There are no limitations or restrictions on communicating with the TVA FOIA Office electronically.

#### **Section V: Steps Taken to Improve Timeliness in Responding to Requests and Reducing Backlogs**

The President's *FOIA Memorandum* and the Attorney General's *2009 FOIA Guidelines* have emphasized the importance of improving timeliness in responding to requests. This section of your Chief FOIA Officer Report addresses both time limits and backlog reduction. Backlog reduction is measured both in terms of numbers of backlogged requests or appeals and by looking at whether agencies closed their ten oldest requests, appeals, and consultations.

*For the figures required in this Section, please use the numbers contained in the specified sections of your agency's 2015 Annual FOIA Report and, when applicable, your agency's 2014 Annual FOIA Report.*

**Simple Track:** Section VII.A of your agency's Annual FOIA Report, entitled "FOIA Requests – Response Time for All Processed Requests," includes figures that show your agency's average response times for processed requests. For agencies utilizing a multi-track system to process requests, there is a category for "simple" requests, which are those requests that are placed in the agency's fastest (non-expedited) track, based on the low volume and/or simplicity of the records requested.

1. Does your agency utilize a separate track for simple requests? Yes.

2. If so, for your agency overall in Fiscal Year 2015, was the average number of days to process simple requests twenty working days or fewer? Yes.

3. Please provide the percentage of requests processed by your agency in Fiscal Year 2015 that were placed in your simple track. 64% of requests were placed in Track 1, the simple track.

4. If your agency does not track simple requests separately, was the average number of days to process all non-expedited requests twenty working days or fewer? N/A

**Backlogs:** Section XII.A of your agency's Annual FOIA Report, entitled "Backlogs of FOIA Requests and Administrative Appeals" shows the numbers of any backlogged requests or appeals from the fiscal year. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2014 and Fiscal Year 2015 when completing this section of your Chief FOIA Officer Report.

## **BACKLOGGED REQUESTS**

5. If your agency had a backlog of requests at the close of Fiscal Year 2015, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2014? No.

The number of backlogged requests increased from 9 in FY 14 to 11 in FY 15. Of the requests pending more than 20 business days at the end of FY 15, 7 of those requests were received on the same day (August 31, 2015) and had been pending 22 days at year-end. All of the requests have since been closed in FY 16.

6. If not, explain why and describe the causes that contributed to your agency not being able to reduce its backlog. When doing so, please also indicate if any of the following were contributing factors:

As explained above, 7 of the requests pending more than 20 days at Fiscal Year end were received on August 31, 2015 and had been pending 22 days at year end. The one remaining request involved a search for records over a 40 year time frame. All of these requests have since been closed in Fiscal Year 2016.

7. If you had a request backlog please report the percentage of requests that make up the backlog out of the total number of requests received by your agency in Fiscal Year 2015.

At the end of Fiscal Year 2015, there were 11 requests or 5.6% of the total number of requests received, pending more than 20 business days. Those requests have since been closed in Fiscal Year 2016.

## **BACKLOGGED APPEALS**

8. If your agency had a backlog of appeals at the close of Fiscal Year 2015, did that backlog decrease as compared with the backlog reported at the end of Fiscal Year 2014?

TVA did not have a backlog of appeals in FY 14 or FY 15.

9. If not, explain why and describe the causes that contributed to your agency not being able to reduce backlog. N/A

10. *If you had an appeal backlog please report the percentage of appeals that make up the backlog out of the total number of appeals received by your agency in Fiscal Year 2015. If your agency did not receive any appeals in Fiscal Year 2015 and/or has no appeal backlog, please answer with "N/A."* N/A

**Status of Ten Oldest Requests, Appeals, and Consultations:** Section VII.E, entitled "Pending Requests – Ten Oldest Pending Requests," Section VI.C.(5), entitled "Ten Oldest Pending Administrative Appeals," and Section XII.C., entitled "Consultations on FOIA Requests – Ten Oldest Consultations Received from Other Agencies and Pending at Your Agency," show the ten oldest pending requests, appeals, and consultations. You should refer to these numbers from your Annual FOIA Reports for both Fiscal Year 2014 and Fiscal Year 2015 when completing this section of your Chief FOIA Officer Report.

### **TEN OLDEST REQUESTS**

11. *In Fiscal Year 2015, did your agency close the ten oldest requests that were reported pending in your Fiscal Year 2014 Annual FOIA Report?* Yes.

12. *If no, please provide the number of these requests your agency was able to close by the end of the fiscal year, as listed in Section VII.E of your Fiscal Year 2014 Annual FOIA Report.* N/A

13. *Of the requests your agency was able to close from your ten oldest, please indicate how many of these were closed because the request was withdrawn by the requester. If any were closed because the request was withdrawn, did you provide any interim responses prior to the withdrawal?* None of the requests were withdrawn.

### **TEN OLDEST APPEALS**

14. *In Fiscal Year 2015, did your agency close the ten oldest appeals that were reported pending in your Fiscal Year 2014 Annual FOIA Report?* No appeals were pending at the end of FY 14.

15. *If no, please provide the number of these appeals your agency was able to close by the end of the fiscal year, as listed in Section VII.C.(5) of your Fiscal Year 2014 Annual FOIA Report.* N/A

### **TEN OLDEST CONSULTATIONS**

16. *In Fiscal Year 2015, did your agency close the ten oldest consultations that were reported pending in your Fiscal Year 2014 Annual FOIA Report?* TVA had no pending consultations at the end of FY 14.

17. *If no, please provide the number of these consultations your agency was able to close by the end of the fiscal year, as listed in Section XII.C. of your Fiscal Year 2014 Annual FOIA Report.* N/A

18. *Briefly explain any obstacles your agency faced in closing its ten oldest requests, appeals, and consultations from Fiscal Year 2014.* N/A

19. *If your agency was unable to close any of its ten oldest requests because you were waiting to hear back from other agencies on consultations you sent, please provide the date the request was*

*initially received by your agency, the date when your agency sent the consultation, and the date when you last contacted the agency where the consultation was pending. N/A*

*20. If your agency did not close its ten oldest pending requests, appeals, or consultations, please provide a plan describing how your agency intends to close those "ten oldest" requests, appeals, and consultations during Fiscal Year 2016. N/A*

**Use of the FOIA's Law Enforcement Exclusions**

*1. Did your agency invoke a statutory exclusion, 5 U.S.C. § 552(c)(1), (2), (3), during Fiscal Year 2015? No.*

*2. If so, please provide the total number of times exclusions were invoked. N/A*